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MATTERS CONCERNING LAWYERS

The Newsletter of the Jamaican Bar Association

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**JUSTICE C. DENNIS MORRISON, OJ, CD, QC,
COMMISSIONER, RJLSC**

He was called to the Bar in Jamaica in 1975, after attending the University of the West Indies, the Norman Manley Law School and later, the University of Oxford as a Rhodes Scholar.

In 1994, he was appointed Queens' Counsel. In 2008, he was appointed to the Jamaican Court of Appeal and in 2016, he was appointed President of the Court. His accolades are many and his professional influence extends to appellate courts in Belize, the Cayman Islands and the Eastern Caribbean Court of Appeal.

In this issue of *Matters Concerning Lawyers*, we sat down with one of the Caribbean's most distinguished jurists, for a little light banter over a virtual coffee.

JUSTICE C. DENNIS MORRISON: AN OPEN-MINDED JUDICIAL PHILOSOPHY



Article by Mikhael A. McLeod

Editor's Note: This interview has been edited and condensed due to space limitations.

Q: After 25 years in private practice you transitioned from the Bar to the Bench. What are some of the things that prompted your interest in moving to the Bench, what concerns, if any, did you have about becoming a judge and do any of those concerns persist today?

Well, I had always had an idea, which I suppose is a kind of traditional idea that becoming a judge was a logical end to a career in the law. That is really a kind of English idea I suppose, as that is exactly what occurs in England. All the judges in England have spent considerable time in private practice and then ended up ascending to the Bench, at a certain age, as a matter of course.

So I suppose I had always had that in my mind. But I didn't actually think it was going to happen. I didn't set about doing it, but a set of circumstances occurred, one of which is that I took up a part time judicial appointment in Belize and things kind of took on their own momentum from that. The Belize experience and certainly the encouragement of the late Justice Boyd Carey as well as, Elliott Mottley of Barbados, who was the President of the Court of Appeal of Belize when I was appointed, were strong influences on me.

There was also a feeling of wanting to give back to the public service. I greatly enjoyed being in private practice. I think I had a good run but I thought it was time to give back something.

At the time, my major concern about transitioning was actually financial. I had to look at whether it was at all affordable given my own commitments.

I also had concerns about curtailment of rights, including free speech. I felt then and throughout my time as a judge, I have felt greatly constrained by the fact that I can't just jump up and write a letter to the Editor or call one of those call in programmes and speak my mind.



In the end, I suppose one was able to look it clinically and say, let's take the jump. Nothing is perfect and there's no right time to change.

Overall, I have no regrets about it, it was a good personal move for me and I suppose by some measure, it worked out.

Q: The concept of judicial philosophy speaks to the way that a judge understands and interprets the law. While laws are universal, their application to particular cases with unique circumstances will depend on how a judge interprets the law and determines its meaning or the draftsman's intent.

How would you describe your judicial philosophy?

If I have a philosophy it is to be open-minded, to be open to new ideas and new ways of looking at things, and at the same time, to be as fair as possible. Underlying that, is the importance of constitutionalism and human rights which form the basis of our social organization in Jamaica and in the rest of the Caribbean.

We all have written constitutions. We all have ideas in the constitution that we describe as fundamental. I think that, as far as possible, the administration of justice should seek to preserve constitutional rights and to enhance them.

Q: What is your opinion on the concept of judicial activism versus judicial restraint and the role of either philosophy in advancing the development of Jamaican jurisprudence?

I think judicial activism has a part to play and there are some environments in which in fact, it has proven to be very useful.

If you look at some of the judgments coming out of the South African Constitutional Court in the early days after the dismantling of apartheid, you will see very strong examples of judicial activism which were needed in that environment, to set the platform for a brand new society in which apartheid was dead and which was built on the notion that all men were equal. So you need a certain degree of activism in that kind of situation.

Having said that, I am generally personally inclined to judicial restraint, on matters that really ought to be dealt with by Parliament - who are elected by the people.

I think that judges need to be careful about making law, so to speak.

Your oath is to uphold the law and it doesn't mean that you are going to be insensitive to the mores, the ways, the philosophies, to the behavior of the people in the society in which we live, but your duty is to apply the law as it is.

Q: In the absence of judicial activism, how best can judges push the envelope or otherwise accelerate the development of Jamaican Jurisprudence?

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If I have a philosophy it is to be open-minded, to be open to new ideas and new ways of looking at things, and at the same time, to be as fair as possible.

Pushing the envelope may be necessary in some areas. Unfortunately, most of the textbooks we consult, most of the precedents we use are still from a different cultural milieu. Historically they tend to be British, these days we look to Canada, we look to Australia.

We don't actually look enough to Africa, that might be helpful. We don't, even in Jamaica, look enough to the rest of the Caribbean, which we should. And that's not just a criticism of Jamaica, that's true in the rest of the Caribbean as well.

There's a strong role for that, if you want to call that activism, broadening the base of the influences that you bring to bear on your decisions. To be in search of greater relevance in what your judicial decisions are to the Jamaican society.

Q: Your commitment to the advancement of the system of legal education in Jamaica is outstanding. You have been involved in the teaching programme at the Norman Manley Law School since 1977 and have also served as the Chairman of the Council of Legal Education from 1998-2005.

In your opinion, what are some of the ways in which our system of legal education can be reformed and/or improved to the benefit of the profession?

We started out with an excellent model of academic training at UWI, the Faculty of Law at Cave Hill quite quickly made itself into a credible and authoritative training facility. Its graduates have done very well in many areas, including teaching in universities outside of the region and so on. The UTECH Faculty of Law has come on very well in a short time as well. By and large, the graduates of UTECH have also proven themselves to be worthy.

There are other programs around and I am not meaning to reflect badly on any other programs in the country but I think we need to be careful about not wasting resources by too much diversity.

Diversity and competition are great, but in some areas where we have limited resources in the country we would need to consider whether we need to have 3 or 4 university offerings in law, at the same time, given the need for duplication or replication of library facilities, paying staff and all the things that go into it.

But that is an aside because that is tied up with government policy.

I think that one of our weaknesses at the government level, throughout the region, has been that for some reason, the governments have never found it necessary to do what has been proposed to them. Which is, to do some kind of needs survey, to try and understand how many lawyers we need, how many doctors we need etc.

In a region like ours, we need to have some general understanding of that. It's not cast in stone, it won't be the same this year, as it was in three years ago or as it will be in five years' time. But at least from time to time, to have some kind of notion of what you need.

Where I'm going with that is that I think we've concentrated on increasing the numbers, which is a good thing. I myself am a product, in my time, of the opening up of legal education and the making of it more accessible to people of limited means. So I am in favor of that.

But at the same time we have to make sure that we don't have an intake of numbers for which it is far beyond the capacity of our legal profession, to provide proper training.

There are also weaknesses in the profession, in the area of mentoring. The truth is that we don't have a sufficient commitment to mentoring in the profession.

We can't teach everything in law school. In fact, the law school curriculum assumes that you're going to get some form of mentoring, both during and after completing the program. This has to be done in collaboration with the Bar Associations. There has to be a commitment to improving our system of mentoring.

Greater exposure to actual court work is also necessary. That is apart from the way in which we do it now, which is that students attain court attendance targets.

Right after exams finish, everybody rushes to Court and at the end, you run up to the lawyers, the Registrar or you beg a judge to sign your Court attendance form for you and so on. I don't know if that works all that well.

It's great to be able to say you were in the Court of Appeal and you saw the judges and you saw a great Counsel saying something. But I don't know how much you actually learn from that.

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So there are some structures like that, that demonstrate that we may not have done enough to recognize the greater demands that increased numbers make on us to try and get better organized with our training opportunities and facilities.

Q: It has been said that all practicing attorneys develop some specialties or areas of concentration. Academic attorneys as well, often pride themselves on developing and/or contributing to specific legal disciplines.

Contrastingly, it is believed that the role of a judge is that of a generalist, rapidly shifting from one topic to the next, or simultaneously juggling a myriad of legal issues spanning the full length and breadth of the law, without the privilege of specialization.

How would you respond to such a characterization of the role of a judge?

We live in a relatively small jurisdiction and it has always been the assumption that once appointed a judge, certainly in the Court of Appeal, that you are going to be a generalist.

I think an argument can be made and probably will be increasingly made now for specialization. When we were 7 judges in the Court of Appeal - which we were up to the beginning of 2019 - it was very difficult for one judge to specialize as that would put an unnecessary burden on everybody else. But now, that the Court of Appeal is up to 13 judges, it is arguably possible for there to be greater specialization.

I'm sure that the President and his judges may very well have some views on that, which they will want to develop in due course.

There is a role for specialization and in larger jurisdictions, you see the benefits of it. The thing that every member of the public is most interested in is a timely delivery of judgments. That is best achieved when you have a judge hearing a case who has, at least, some kind of background in the area, so you don't have to teach him or her, the ABC's of the thing.

So it's a good thing. The argument in our jurisdiction will be, whether we can afford the resource of keeping people on one side of the practice only and whether we have enough personnel to do something like that.

I would think that given the number of judges we currently have in the Supreme Court, greater specialization is possible and should be encouraged.

Q: What would you consider to be your most and least favorite aspects of your time spent on the Bench?

I can start out by saying that I really enjoy the time spent on the Bench. It certainly occupied the last one-third of my legal career. It has had a tremendous influence on me and I enjoyed the work of judging. I did to some extent, enjoy the 'generalism' of what you had to do. I really gained an extensive knowledge of many things. I also enjoyed the camaraderie of engaging with fellow judges.

During my time in the Court of Appeal, I enjoyed least of all, the fact that there was more work to do than you could reasonably ask a group of 7 (and now 13) judges to do.

There was a mismatch, and there still is - between the work and the judicial hands available. After a while, that kind of pressure can make you very miserable. If you were to ask any judge this same question, I suspect that would be very high on everybody's list.

There are other broader questions which are relevant, which have to do with the conditions under which you operate, by that I mean, the physical conditions in many courtrooms. In the Court of Appeal, you can't complain about that now, it is a very good facility.

But it took a lot of quarreling and fighting and struggling over many years, to get us to that. And there are judges in other areas of the system, judges who have to sit in Circuit out in the parishes and the Parish Court judges themselves, many of whom are operating in really substandard physical facilities.



I think that the Executive's response to the needs of judges has been really inadequate over the years, right up to the present. It is true that we do not operate in a rich economy. Police men are badly paid, teachers are dreadfully paid, nurses are even worse paid, so one has to struggle, in a sense, to make a special case for judges. But the case can be made, because you expect judges to retire at a certain age and not to work again for life. So you must ensure that during their working life, they are adequately compensated and that their pension arrangements are also adequate to sustain them for the rest of their lives.

And I'm not just talking about Court of Appeal judges, I'm talking about Parish Court judges as well whose remuneration is quite inadequate for what they have to do. They often take a very long time to get reimbursement of traveling, when they have to travel long distances to Court daily, and so on.

My least favorite aspect of the time spent on the Bench, has been the struggle to deal with some of those things and the lack of meaningful response from the authorities.

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But the case can be made, because you expect judges to retire at a certain age and not to work again for life.

Q: The Jamaican Judiciary has often been criticized for what may be interpreted as a reticence to engage the public on matters concerning controversial judgments or other issues affecting the Judiciary specifically, and the legal profession at large.

However in recent times, it appears that there is a greater willingness on the part of members of the Judiciary to comment publicly on such matters.

What is your opinion on the propriety or value of this kind of public engagement?

My general answer would be that I don't think that it is for the Judiciary to get engaged in matters of public controversy.

In relation to judgments, your judgment speaks for itself. If you are a Supreme Court Judge and your judgment is wrong, when you go to the Court of Appeal, if the Court of Appeal says it's wrong, then it is rectified. If you are a Court of Appeal Judge, then it goes to the Privy Council and the Privy Council tells you what it is and you must accept the Privy Council's position as there is nowhere else to go after that.

So that's how the system works. For instance, if there is a Gleaner editorial saying, "How could Judge So and So decide so and so..." I don't think there is any role for Judge So and So write a Letter to the Editor saying "You don't really understand what I was saying..." or to even address the Bar Association in a similar manner. I think judges should speak through their judgments only.

I think there is a danger in judges getting involved in other matters of controversy because you never know what will come before you for decision. You don't want to put yourself in a position where you cannot, at a later stage, adjudicate on a matter because you have already expressed a view.

However, there are matters affecting the terms and conditions of judges which I think judges have a legitimate interest in and on which they would be inclined to speak. But, you don't want a free for all, you have to preserve a certain kind of aura and dignity about the whole thing.

The truth is that there are matters which affect the judges' terms and conditions. I think if it is a matter of correcting the public record, I don't think there is necessarily anything wrong with that.



Propriety is a strong word, so I prefer your use of the word value, in this question. I wouldn't say it is improper, but in most cases, it is not so valuable to do.

There will be cases in which I think a judge should have a right to say something. Now where you draw the line, is a matter for your judicial leadership, for the President in the Court of Appeal and the Chief Justice in the Supreme Court.

In general, it would be best if that kind of record correction be done either through the President or through the Chief Justice, so as to have one focal voice. There are 13 judges in the Court of Appeal now and 40 judges on the Supreme Court. You don't want everybody rushing in to the papers and going on talk shows and so on. So I think once the process is organized and the leadership is engaged, then I don't think that it should be a problem.

Q: How does that intersect with the broader discussion of the extent of the limitations that ought to be imposed on a judge's right to free speech?

A judge has a right of free speech. However, becoming a judge involves an acceptance of a range of curtailment of a number of your personal freedoms.

A big argument in Trinidad for instance, is if you become a judge, whether you should still jump in Carnival or be seen out there on Carnival Monday with a rum bottle in your hand. Additionally, if you are a female judge, whether you should be seen in something scantily clad or if you are a male judge, whether you should be seen hugging up somebody scantily clad. There are questions such as whether as a judge, you should be doing that.

On one level, it could be said well why not? It is Trinidadian culture and there is a human right to participate in and exercise one's culture.

But I think we can all accept that there are certain things you don't do when you are a judge. That is only because you don't want to do anything that will reduce the authority of the Judiciary, when the litigants see you in Court.

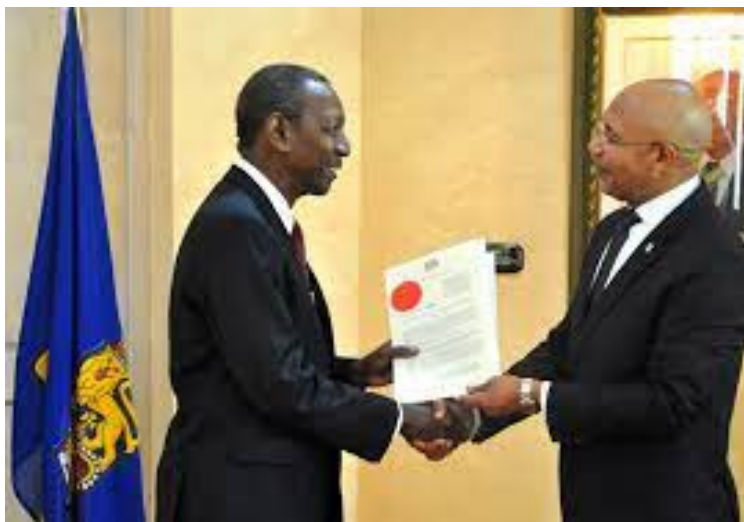
You don't want somebody to look at you and say, "You see him, I saw him completely drunk in the road on Carnival day". So we accept all kinds of curtailment on our freedoms and to some extent curtailment of our free speech as well.

For instance, we all have a vote. Most of us have some kind of political tendency in the sense that when we go into the voting booth on Election Day, we vote for somebody. So it means that we have a view. But on the other hand, I don't think we have a right of free speech in relation to that. So I think yes, there has to be some limitations on both your right of free speech and your general right of going about the society and doing what you used to do as a private citizen.

The question of where to draw the line is problematic. It will vary from person to person, but I think each judge needs to think about it and consider what it does for the public regard and public respect for the Bench, as an institution.

Q: To what do you attribute your success and consistent high performance over the course of your legal career?

A lot of hard work and long hours. I suppose at this late stage, I couldn't deny that I may have some acumen for this now. Preparation is also fundamental. The ability to work with others, as well as listening to others, I think is very important.



When asked if he had anything else to add, upon completion of the prepared questions, Justice Morrison contributed the following remarks:

These are the things that the Bar should be talking about more.

You've asked a question about judges' rights and free speech and related issues. The Bar should be speaking out about some of those things. The Bar should be speaking out about judges' terms and conditions.

Traditionally, that is what happens in other societies, recognizing that judges are constrained and restrained, the Bar takes on the responsibility of making the case.

If it is felt that judges should be better compensated, the Bar does the comparative research and makes the case.

If there is anything that I think needs greater emphasis, in this time, it is for a strong and independent role for the Bar in supporting the Judiciary. I think that is important.

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There will be cases in which I think a judge should have a right to say something.

Now where you draw the line, is a matter for your judicial leadership, for the President in the Court of Appeal and the Chief Justice in the Supreme Court.

When Outside was a Thing: A Throwback Collage

It has been said, that the days pass slowly but the years fly by.

Since we're socially distant at this time, we're throwing it back to when outside was a thing. Our Editorial Team reached out to the legal fraternity, for throwback photos from these simpler times.



Miss Law, 2013
University of the West Indies, Mona



JASAC Church Service 2013-2014
University of the West Indies, Cave Hill



Contributed by Sundiata Gibbs



Norman Manley Law School
Graduation 2008



Justice Carol Lawrence-Beswick, Senior Puisne Judge at the Supreme Court of Jamaica and the late Captain Paul Beswick, Attorney-at-Law (before they were married).

Photo taken at the graduation ceremony from the Faculty of Law at the University of the West Indies.



Her Majesty Queen Elizabeth II unveiling the plaque commemorating the opening of the Norman Manley Law School at Mona on April 28, 1975.

Behind her is Mr. H. Aubrey Fraser, Director of Legal Education and at right in the background are Prince Philip and Mrs. Edna Manley



Contributed by Cienna Smith



NORMAN MANLEY LAW SCHOOL 40TH ANNIVERSARY CHURCH SERVICE



A Tribute

to the Legal Stalwarts

we've lost since March 2020

As at September 18, 2021

"COVID has either caused the death of so many in the legal profession or has prevented us from truly celebrating the lives of those within it who have passed, as a result of other causes owing to the restrictions on traditional funerals.

The adverse effects of COVID go way beyond the physical health of an individual. Below are those that we have lost since the pandemic. This list no doubt, is a microcosm of the current situation amongst others in Jamaica. By now we all either have had a family member who has suffered the ravages of this infection or worse yet, known of someone who has died."

Written by: Peter Champagne, August 25, 2021

Retired Justice Horace Marsh
William McCalla
Paul Beswick
Raphael Codlin
Cecil July
Retired Justice Paul Harrison
Norman Manley
Roy Fairclough
Nigel Morgan
Retired Parish Judge Bobby Sang
Ernest Smith
Nathan Robb
Ronald Coates
Norman Samuels
Dorrell Wilcott
Howard Hamilton, QC
Henry Charles Johnson
Retired Justice Raymond King
Senior Parish Judge Stanley Clarke
Norman Douglas Manley
Senior Parish Judge Horace Mitchell

Oct. 28th- Nov. 19th 2021

November Conference 2021 – "Definitely" Another Virtual Event

**Considerations in Competition Law –
For Attorneys**

**Webinar Series by the
Companies Office of Jamaica**

- Virtual or Hybrid Meetings
- Amendments to Companies Act Regarding Beneficial & Ultimate Ownership of Shares
- General Amendments

POCA Workshop

- Setting up of POCA Compliance Programmes
- Implementation of POCA Requirements in your Business namely:-
 - a. sensitization
 - b. AML/FATF Framework
 - c. Risk Profile
 - d. Suspicious Transactions Reports (STR)

**The Obligations of the
Strata Commission**

*"Law Firm Culture: Living by
the Billable Hours"*

**Labour Laws & Mandatory
Vaccine From The Employer
Perspective– Can Employers
Terminate Non-“Vaxxed”
Employees?**

**Development
Schemes**

**Responding To Clients
Complaints at the GLC: A
Procedural Guide**

**Working From Home:
Does it “Work” for You?**

**Vaccine Passports: “One
Size Definitely Does Not Fit
All!”**

*and many more other exciting
topics to be added*

**Contracts in the New
Dispensation & Covid’s Impact
on Force Majeure**

Legal Jokes

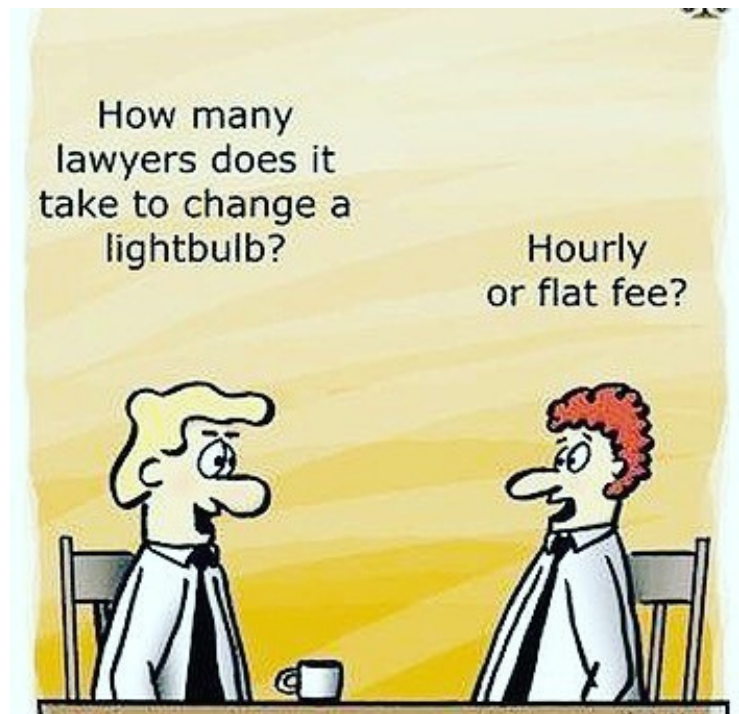
**Why are lawyers always so charming?
Because they have their own appeal.**



What do you call a priest that is also a lawyer?

17fredro 3772 points 4 months ago

A father in law

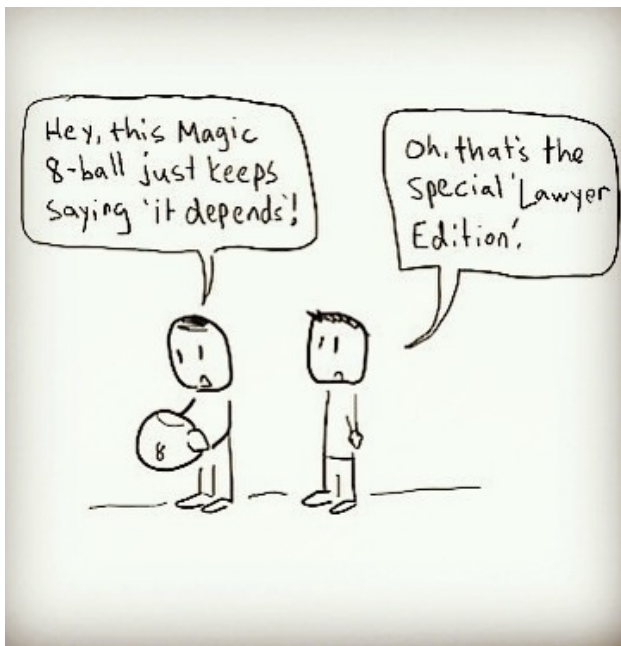


A man walks into a lawyer's office...

ottguy42 178 points 1 month ago

The man says, "I can't afford your hourly rate, but if I give you \$200 will you answer two questions for me?"

The lawyer says, "Absolutely - what is your second question?"



Thanks for reading!

**Be sure to look out for the next issue of the JamBar Journal
coming soon!**