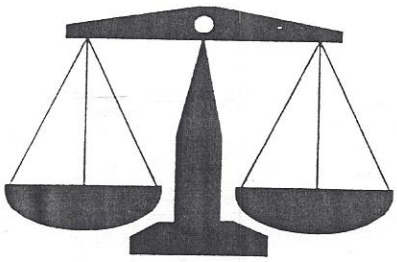
JUDICIAL POWER

and

ACCOUNTABILITY



Presented by : Hon. Mr. Justice Panton
at a

SEMINAR

at the

JAMAICA BAR ASSOCIATION

at the

Norman Manley Law School

October 21, 2000

JUDICIAL POWER AND ACCOUNTABILITY

Presented by Mr. Justice Panton,
At a seminar held by the Jamaican Bar Association
At the Norman Manley Law School on October 21, 2000.

I wish to say that it is a pleasure to be at this spot at this time this morning notwithstanding whatever may be going on at Sabina Park.

I regard it as an honour to have been afforded this privilege to address the members of such an august body as the Jamaican Bar Association. It goes without saying, yet I shall say it, that I do not speak for the Judiciary. The views that I shall express are mine. I take full responsibility for them and would not wish you to hold them against any member of the Judiciary as I am not here as a spokesman for the Judges. At the same time, it bears saying that I would not be surprised if many of my esteemed colleagues share some of my humble views.

You have selected for me a topic that may well be described as open-ended in that, simply put, discussions on it can have no end. However, I shall try to put some of my thoughts on the table. You will appreciate that a serving Judge has to be very careful while expressing thoughts publicly, or indeed privately when the matter at hand is not one for a decision by him or her!! After all, expressions of thoughts have been used to secure, quite rightly in some instances, the disqualification of Judges from the hearing of some matters before the Courts. The most recent notable instance that reached the Court of Appeal was the matter of **Perkins v. Irving** (Supreme Court Civil Appeal 80/97- delivered on July 31, 1997). There is no need to delve into the details of that case except to say that the Judge's expression of thought had preceded by several years his appointment as a Judge. By the time the Court was delivering its judgment, the statement

by the learned Judge had been made eighteen years earlier. Incidentally, I should say that I fully agreed with the decision of the Court of Appeal, of which I was not then a member, and was somewhat surprised that there was a dissent by my late and good friend and colleague Gordon, J.A. He said in his dissent that the learned Judge had spoken "in a flush of poetic eloquence not to be outdone by eminent counsel who had spoken before him". The remarks had been made at a time when the learned Judge, as Counsel, had appeared in a constitutional action . That case, in my view, highlights the importance of the role of the Judge. So important is the function of the Judge that a remark made years before one's appointment may brand one in such a way that makes it imprudent for the maker of the remark to try a matter involving the object of the remark.

In expressing my thoughts, you will also appreciate that judicial comity forbids me from being too critical of my colleagues in the public domain unless I am doing so in a case that is before me for judgment. In dealing with judicial power, it is necessary for me to say this at the outset. The situation is even more understandable when it is considered that in Jamaica on an occasion such as this there are persons, not present of course, who may wish to distort what is said and then proceed to highlight the distortion. In any event, I would not wish to give too much of an introduction to what may be in my book or books when I retire, assuming that I am allowed the privilege to live to the age of retirement . After all, because I do not speak for the Judiciary, you will appreciate that some of my statements may well be autobiographical in nature.

Judicial Power

I am of the view that the term 'judicial power' covers the authority and influence expressly and impliedly conferred on the Courts of the land. Those who wield this

'power' happen to be the judges. They come in the form of Justices of the Peace, Resident Magistrates, Puisne Judges, Judges of the Court of Appeal and, finally, the Law Lords sitting in the Judicial Committee of the Privy Council.

The Judges in Jamaica, as I see it, if I am allowed to say so, do not regard themselves as powerful people, nor are they power seekers, although they recognize the vast power that is given to them to exercise. We are by and large simple people living simple lives in the service of our country, very much over-utilized and seriously underpaid. We feel confident however that we are serving a very useful purpose in keeping this beautiful nation of ours together, especially in the very stressful times that we seem to be passing through forever. Speaking for myself, I should think that when comparisons are made between ourselves and Judges elsewhere, it would be imperative that the stress factor be taken into account. Incidentally, considering the week that we are in, it may be quite proper for me to ask how many attorneys are aware that in England, a country that we have been urged from days of yore to pattern, Judges of the superior courts are knighted upon appointment. If anyone in the audience should learn what the true policy is in relation to Judges in Jamaica, I would be happy to be told.

For the purposes of the present paper, I shall concentrate primarily on the exercise of judicial power by the higher Judiciary, that is, that segment that is recognized by the Constitution. No disrespect is meant to the Justices of the Peace or Resident Magistrates. The fact of the matter is that in the 1970s and 1980s, when I was a Resident Magistrate, along with several of my colleagues, we tried hard to put the Resident Magistrate in the Constitution, but we failed. The simple point we tried to get the Executive to understand was that Resident Magistrates are Judges and should be recognised by the Constitution in

the same way that High Court Judges and Court of Appeal Judges are. I am confident that one day the point will be appreciated.

Now, there is no doubt that Judges in the higher Judiciary do exercise considerable authority and influence over the lives of individuals as well as over the affairs of State. This is not just here in Jamaica, but wherever Judges are found. The very nature of their work makes it impossible for it not to be so. They have the power to fine, to imprison, to put on bond, and even to sentence to death—even when everybody knows that there will be no death. They have the power to determine who gets what and how much in civil cases and whether persons should be forbidden from doing something or whether they should be compelled to do an act. Quite often, too, it goes without saying, that the Judiciary is required to play an important role in issues between the state and the citizen. In such situations, it may mean the difference between peace and civility as opposed to tyranny and oppression.

We need, therefore, to take a quick look at the source of judicial power in Jamaica. The immediate source is the relevant legislation or the common law as the case may be. However, the ultimate source is the Constitution. It not only creates Judges, but it also preserves them. It does so for the benefit of the community. So, it is to the Constitution that I now invite you to look to see how the wielders of judicial power are appointed, and how strong is their appointment.

Sections 98 and 104 of the Constitution provide for the appointment of Puisne Judges and Judges of the Court of Appeal respectively. The Chief Justice, President of the Court of Appeal, Judges of the Court of Appeal and Puisne Judges are appointed by the Governor-General. In the case of the Chief Justice and the President of the Court of

Appeal, the appointment is on the recommendation of the Prime Minister after consultation with the Leader of the Opposition. In relation to the other Judges, the appointment is on the advice of the Judicial Service Commission. Speaking personally, I have not been able to understand so far the reason for the difference in the mode of the appointment considering that when a Judge sits in Court his or her powers are the same as those of the Chief Justice or the President of the Court of Appeal sitting in the same situation. The Constitution does not say what it is that the Prime Minister should take into consideration in making his recommendation. Nor does it say that the Prime Minister should take advice before he makes his recommendation. If Prime Ministers have taken advice, they have not so far as I know published the advice received and from whom it was received. I mention these matters not in criticism, but merely to state facts. However, the question arises: does the public have a right to know the details surrounding these recommendations? For my part, I would say yes.

The Judicial Service Commission has the following members:

The Chief Justice, who is the Chairman;

The President of the Court of Appeal;

The Chairman of the Public Service Commission; and

Three 'appointed' members.

The three 'appointed' members are appointed in the same way as the Chief Justice and the President of the Court of Appeal, and shall include one serving or retired Judge of unlimited jurisdiction in civil and criminal matters from any part of the Commonwealth or a Judge of Appeal from such a Court. The three also must include two from a list of six persons who are not lawyers in active practice submitted by the General Legal Council.

I am not aware of any serving Puisne Judge or Judge of Appeal who has ever been recommended to serve on the Commission. I should have thought that there is room for the voice of such a person on the Commission as I have not seen any provision in the Constitution which states that either the Chief Justice or the President of the Court of Appeal has to consult with the general body of Judges on the question of appointments to the Supreme Court or the Court of Appeal. Furthermore, I wish to pose a question to the lawyers of Jamaica: Have you ever formally consulted with the general body of Judges as to their views on appointments that, through your representatives, you intended to recommend or oppose? It seems to me that in the same way a Judge is formally consulted when appointments are to be made as Queen's Counsel, there should be similar formal consultations with each and every serving Judge whenever appointments to judicial offices are being contemplated. At this stage, I wish everybody to try to appreciate that I am here seeking to look at our system and procedures. We in this country have an unfortunate habit of personalizing matters. I am not for that, and would hope that no one misconstrues what I am dealing with. A relevant question I think is this: Why shouldn't the serving Judge be formally consulted, especially when it is considered that we are all going to have to work together in any event? Of course, it would be helpful if there is a mechanism whereby members of the public are routinely informed of vacancies in the Judiciary so that qualified persons may have an opportunity to apply. Members of the public should also be routinely informed of the names of applicants so that comments may be submitted in writing to the Judicial Service Commission. Finally, on this aspect, I should think that if the Judicial Service Commission has been given adverse views by the General Legal Council or from any other quarter in respect of a candidate for judicial

office, the candidate should be heard in response. I am sure that the Judicial Committee of the Privy Council would agree with that view.

After I had committed to paper my thoughts on the question of publication of vacancies for judicial posts in Jamaica, my attention was drawn to an article in a publication entitled **"Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach"** in which none other than Lord Irvine of Lairg, the Lord High Chancellor of Great Britain is recorded as saying:-

> **"Objective criteria. Those criteria are readily available, both in paper form and on the "Over the past year, many changes have been initiated. The principles of application and open competition for appointment are now at the heart of the judicial appointments process. Transparency has become our watchword. Candidates are assessed against Internet."**

Lord Irvine was delivering the keynote address at a Joint Colloquium on Parliamentary Supremacy and Judicial Independence, held at Latimer House in the United Kingdom in June 1998.

I find his words comforting in respect of the position I have taken on the matter, and I go further to humbly suggest that the position that I am advocating is an ideal that should be implemented at the earliest moment.

Another question for the lawyers of Jamaica, today, is this: why should the Chairman of the Public Service Commission be on the Judicial Service Commission? I should have thought that the activities of the Chairman of the Public Service Commission would be better confined to the Public Service Commission which deals with civil servants. Is it a surprise that there are senior civil servants who do not understand that a Judge is not a civil servant? This anachronistic feature should be erased as early as

possible from the Judicial Service Commission. I suspect that very soon there will be proposals for constitutional amendments. I suggest here and now to the Attorney General that the Chairman of the Public Service Commission should be removed from the Judicial Service Commission. I personally would suggest further that the Judicial Service Commission would be well served if it included at all times a Puisne Judge and a Judge of the Court of Appeal instead. Has it ever been considered that quite often decisions of the Public Service Commission have to be reviewed by the Judges? Is there a conflict here? I should think so if the Chairman of the Public Service Commission continues to influence and partake in the appointment of Judges.

It is very good to note that no office of a Judge of the Supreme Court or of the Court of Appeal shall be abolished while there is a substantive holder thereof. **(Sections 97 (3) and 103 (4) of the Constitution).** This means that a Judge cannot be made redundant. Part 3 of the **Employment (Termination and Redundancy Payments) Act** has no relevance to us. A Judge having been appointed therefore has a firm base, if all other things are equal, to do his or her work in keeping with the oath of office as he or she cannot be sent packing at the end of the week with a dreaded redundancy letter. That provision should be sufficient to prevent a Judge from looking over his or her shoulder while he or she performs his or her work. Indeed, a Judge in the higher Judiciary shall hold office until he or she attains the age of 70 years, unless he or she resigns, or is removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour. **(Sections 100 and 106 of the Constitution).**

For those too young to know, I should point out that prior to 1990, a Judge held office until age 65 but with permission could continue until 67. There was one notable instance when a perfectly able and willing Judge was refused permission to continue for the two years. I saw the letter. It was very terse. No reason was given. As a young Judge then, I was quite shocked. As a result, I took the personal decision that if I were to be fortunate enough to live to 65, I would never seek such permission. Eventually, enlightened policy took over and the Constitution was amended. Today there is no need for a Judge to ask any such favour.

Whatever the constitutional safeguards may be so far as the appointment to, and retention of judicial positions are concerned, a Judge's authority and influence mean nothing if certain personal characteristics are missing. **Section 4 of the Judicature (Appellant Jurisdiction) Act** and **section 6 of the Judicature (Supreme Court) Act** provide that a person shall not be appointed a Judge of the Court of Appeal or the Supreme Court unless he or she is a member of the Bar of Jamaica, England, Scotland or Northern Ireland of at least ten years standing. So, it may appear that the primary qualification is length of time. That however is not so, I would venture to say. I am of the view that integrity is the prime factor, once one has met the minimum requirement of time at the Bar. After these two considerations, I would expect that knowledge of the law and how to interpret and apply it would be key ingredients. That a Judge should be courteous goes without saying. The general body of our civil law requires civil application by civil persons. There is no place for the rude Judge in a civilized society. Judges, whether they like it or not, have a duty to set a pattern of behaviour for the people they judge to follow. That does not mean that the Judge is to be a passive creature

suffering all including fools and boors. Boorishness by attorneys or members of the general public is to be firmly and swiftly dealt with. There should be no doubt as to whom is in charge in a Courtroom, and that may be achieved calmly and politely by proper use of the English language by the Judge. The power of words knows no bound once there is a full command of the language. So, I would say that a Judge whose use of the English language is limited will be severely handicapped in the face of boorishness by those who may be in their own right intellectual giants.

Persons who exercise judicial power must realize that the power is not theirs. The power is for the community. The Judge is merely asked to use it on behalf of the community. He or she ought not to feel that the power lies in his or her breast and so it may be used in any way that he or she thinks. A Judge should not be heard using the words "**my Court**" as if it is private, personal property. That will not do. That is the language of time long past. The exercise of judicial power requires that the Judge be constantly aware of that reality. Judges, although they cannot be uniform in behaviour, ought to have a good temperament to deal not only with issues but with people. Even when no civilian is in a courtroom, the power exercised by the Judge in that very courtroom affects the lives of numerous persons outside. The Gun Court is a good example of such a courtroom. Persons who are given to regular un-called for outbursts that disrupt the smooth flow of a case can hardly be expected to be good Judges. That goes for the cantankerous attorney-at-law as well as for the bellicose Judge. Fortunately, we have no bellicose Judges in our country. Justice may only be properly administered in a calm, dispassionate atmosphere. That does not say that there will not be very heated, pointed and tense moments; after all, without them, the courtroom may well become a

kindergarten school. That we do not wish. What I am really trying to highlight as an undesirable situation is one in which the attorney or the Judge is always seeming to be in a foul and belligerent mood. Everything is a problem. Everybody is a problem. No laughter, no smiles, no courtesy. That cannot be good for justice.

On the question of integrity, this is the most needed commodity for a judge. Persons who place issues for adjudication wish to know that the tribunal is indeed impartial, and that a reasoned, fair and just determination will be made. They do not wish extraneous influences to be brought to bear on the matters. Judges are human beings. We have preferences, prejudices, and pleasures. However, we have to, and we actually do, divorce ourselves from all undue influences when considering issues between citizen and citizen or between the citizen and the state. Where such a divorce is impossible, then the Judge disqualifies himself or herself. This is where integrity seriously comes to the fore because it may happen that one or more parties to a suit may not know of circumstances that would disqualify the judge. However, a Judge in Jamaica who knows of such circumstances would disqualify himself or herself. We are committed to doing justice to all, and we try very hard to ensure that justice is not only done but that it appears to be done. We are very happy that no one in Jamaica could justifiably behave as the Indonesian President behaved a few weeks ago when he had some very uncharitable things to say about the judges in his country.

The proper exercise of judicial power demands that there be no compromise on the question of integrity. Simply put, a Judge has to be not only honest but also must appear to be honest. Every Judge at some time or other has to make either a difficult decision or a decision in a difficult case. At the end of the day it is desirable that it be

appreciated that the decision was honestly made after proper consideration of all that was put before the Court. Integrity demands that decisions be not made on a whim. The rights of every citizen are recognized by the law. That recognition means that Judges are to determine cases conscientiously on the evidence and the law.

Judicial power is accentuated whenever decisions are made on critical issues affecting the society, and/or in respect of seemingly important or influential persons, and/or where the Executive is involved. On such occasions, persons who are strangers to reasoning have a tendency to write or say ridiculous things. Indeed, some are given to moronic behaviour and expression as evidenced by a writer who libelled the Chief Justice, all the Judges of the Court of Appeal including those who were not sitting on the case being written of, and also at least two Judges of the Supreme Court. If the Judges in this country were given to harsh use of judicial power, the writer would probably be elsewhere even now, or at least the publisher would be contemplating the payment of an impossible sum as damages. That the Judges involved have not even commented should not be regarded as weakness. We have more important things to do and will not be side-tracked by nonsense. Jamaican Judges have no time to spend on idiocy. As one of our Judges is known to say in summing up a criminal case to a jury, "nonsense is nonsense, from whatever quarter it comes".

Twenty years ago, the late Mr. Justice Parnell, Senior Puisne Judge, breached judicial comity to which I referred earlier. He, while addressing a group at the Spanish Town police station, criticized a decision of the Court of Appeal. At a time when electricity supply in Jamaica was uncertain, the late, respected and very learned Senior Puisne Judge severely criticized a decision of the Court of Appeal indicating that the

decision may have contributed to a power shut-down. A former President of the Court of Appeal, Sir Cyril Henriques, took him to task for it. This is what Sir Cyril wrote:

> **"The Court of Appeal is not immune from, nor does it claim immunity from criticism. But such criticism should be carefully thought out and delivered in a fitting manner, having regard to the status of the institutions being criticized in the community and the consequences which any such criticism is likely to cause; that is, whether it will enhance the confidence of the public in the Court or undermine it".**

Sir Cyril, who had already retired at the time of his comments, continued:

> **"I know that members of the Court of Appeal will ignore the strictures levelled at them as befits those who hold offices of such a nature in one of our noblest professions, which by long-standing tradition would refrain from any consort or communications with the Press. Yet, I can hear them muttering silently: "O Tempora, O Mores".**

Sir Cyril's words, although referring to a Judge's criticism of the Court of Appeal, were, and indeed are, of general application. I would add, if I may, the thought that where persons are allowed to write or speak nonsense on matters that they know nought of, it is not the duty of any Court to instruct or to correct them. Media houses have an obligation to ensure that those whom they let loose on the public are able to read write and understand. If they fail in their obligation, sooner or later, they will reap their just reward. Of course, it is possible that some persons write and say untruthful and unworthy things so as to get cheap popularity or to gain favour in the eyes of individuals or groups whom they believe are in a position to help them. Judges have no axes to grind. Neither for themselves nor for anybody else. If we grind axes, it is for justice. That cannot be said about some who purvey malice in the printed media.

An interesting thing happened within four months of Sir Cyril's comments. Mr. Justice Parnell himself had occasion to criticize a radio commentary that had followed a certain Supreme Court decision. In the commentary, it had been outrageously suggested that there may have been collaboration between a Supreme Court Judge and the police in respect of the delivery of a judgment in a matter which involved politicians. This is what the late Senior Puisne Judge said:

> **"I was shocked at that suggestion. The suggestion being that the judge had given the police a hint of his judgment. I hope there will be an enquiry into this and that the Director of Public Prosecutions will take appropriate action. It is most outrageous, and when men of the media do such things they should be dealt with".**

Judges, in the exercise of their judicial functions, do expect that from time to time, there will be perceived clashes of power with the Executive. It should be clearly recognized that Judges are not in any struggle or power play with any other arm of the government of the state. We have our role, the Executive has its role and the Legislature has its role. The three arms are supposed to complement each other in the smooth running of the state apparatus. **What will never be permitted is unlawful encroachment by any other branch of the state in the operation and effectiveness of the Judiciary.**

Every citizen should realize that each arm of government is likely to view a particular matter in a different light. However, if the matter involves the interpretation of the law, that is the province of the Judiciary. Our system of government provides for the making of policy by the Executive, the passage of legislation by the Legislature, and the explanation and interpretation of legislation by the Judiciary. Sometimes it may appear that the Judiciary is trespassing on the grounds of the Legislature or even the Executive in

the way it explains and interprets. However, it is usually arguable that it is a mere appearance. What is undoubted under our system though is that the Legislature may pass laws for the good governance of the country. And so, from time to time, it passes legislation to be in tune with judicial thinking and expression, or indeed to counter judicial decisions. **Judicial power is most visible when the action of the Executive or the Legislature is influenced by a judicial decision**. In recent times, the Judicial Committee of the Privy Council has made decisions that are apparently acting as a spur to the Executive. It would of course be unwise of me to comment on that which has not yet occurred or may not occur. What I would say, however, is that an Executive, in whichever country, should not lightly push for the passage of laws to counter judicial decisions. The matter is to be given very serious thought and, after such, if a judicial decision is considered by the people's elected representatives to be inimical to the interests of the people, then it would be not only the right, but the duty of the Legislature to take corrective action that is constitutional.

I suspect that I am expected to comment on the proposed change from the Judicial Committee of the Privy Council to the Caribbean Supreme Court. I shall not disappoint in terms of offering a comment. You may however be disappointed that I have no intention today of coming down in favour of or against the proposal. I wish only to say that I am watching with careful interest the debate in the media and at the various seminars on the question of the final Court of Appeal for Jamaica. The records in my personal library indicate that at least two Chief Justices of this country are on record as having expressed support for the Caribbean Supreme Court. I do not think that I would be misrepresenting them if I were to say that they were expressing their personal views. For my own part, as

I expressed myself at a Gleaner Think Tank gathering in 1994, I would add though that there is no doubt that the Judges of Jamaica would support and respect any final Court of Appeal chosen by the people of Jamaica. At that gathering I also said:

> "I do not share the feeling that the Law Lords are the fountain of all wisdom in the law. I respect their experience and their expertise. They should.... be thanked for the contribution that they have made to the development of the law in Jamaica. I am sure that they themselves will agree that there are Judges in Jamaica and other parts of the Commonwealth who have experience and expertise in the law that they the Law Lords do not, and may never, have. I am satisfied also that they do not think that they are the only Judges who have a true sense of justice." (See paper- **"Better Judicial Procedures"**)

This earlier comment by me was as a result of a debate that was raging at the beginning of the 1990s when the Judicial Committee suddenly saw something wrong in the directions given by some Judges in respect of identification. Earlier similar directions had received the unqualified approval of the Law Lords in several cases. A mischievous Times Newspaper report had given the impression that the Judges had not been doing their homework. "Eager beavers" at the Jamaican Bar seized upon this report and proceeded to denigrate the Jamaican Judges generally, notwithstanding that the record of our Courts at the Privy Council had been quite good. The cartoonists had a field day. It was left to the late Professor Stone, a non-lawyer, and Mr. Patrick Robinson, Deputy Solicitor-General (now H.E.Judge Patrick Robinson sitting at the Hague) to rise to the defence of the Judges. The Privy Council had moved the goal posts then. They have apparently moved them again. The firm impression that some observers tell me that they have formed over the past ten to fifteen years is that it is quite alright with Jamaican lawyers when the Privy Council moves the goal posts or the stumps. Not so, if a Jamaican

Judge were to do it. In other words, we have no problem (in the language of tourism) when judicial power is exercised by the Judicial Committee of the Privy Council, but there may be some distaste or revulsion when it is exercised by Jamaican Judges. So the argument runs. The Privy Council, it is said, may, for example, set five years as a guide in respect of a matter. There would be a huge problem if a Jamaican Court were to say it should be six years.

In the early 1990s, a certain person trained in the law used a newspaper column to challenge the Government to hold a referendum on whether there should be a change from the Privy Council to the Caribbean Supreme Court. However, not very long ago, I thought I heard the individual on radio saying that there is no need for a referendum. Why has there been this apparent change in this individual's position?

Given all this, I am sure that you will readily appreciate why I will not be drawn into any debate on the matter. After all, there may be questions looming that I may yet have to decide after hearing submissions in Court.

Judicial accountability

Accountability is not a very strong point in Jamaica. That view is formed from the numerous instances in which things go wrong in this country in the public sphere, and nobody takes responsibility for the failure or misdoing. Even when inquiries and investigations are conducted, from time to time, there is still no one who is found accountable. This is a very strange country in this respect. We claim to follow British patterns of existence in many respects, yet we ignore the fact that a Britisher is generally ready to own up when things go wrong under his or her watch. That commendable practice eludes us perennially.

To my way of thinking, Judges seem to be one of the few groups of persons in this country who seriously recognize what it is to be accountable. If you doubt me, ask the people who went to Sabina Park in 1998 to watch the cricket match between England and the West Indies. Judges try cases for the world to see. We must give our decisions in public. We also must give reasons for our decisions. If we err, the world knows. At times we are even held up to ridicule for having made silly errors. Commentators do not regard us as human, so the statement "to err is human" has no application to us. Because of the constant glare of publicity, and the fact that we are subject to reversal by higher courts, we are constantly accounting for our deeds. Quite often, we are accused of things we have not done or said, and we literally have no immediate recourse for the harm done to us.

To underline the fact that Judges are accountable, I wish to remind those who say that we are not or that we behave as if we are not, that there are provisions in the Constitution for removing Judges who are not performing their duties, or who are guilty of misbehaviour.

From discussions that I have been present at involving members of the Bench and the Bar, it appears that one sore point is the matter of reserved judgments. I must confess that since I have been sitting in the Court of Appeal, I have noticed a few matters in which the judgments of the first instance Judge have taken a little while to be delivered. In a few cases, I have also observed that important judgments have been given, yet the learned Judge has not offered any reasons. These matters require that Judges should set themselves time frames within which to work. I would wish to think that the late delivery of judgments is the result of the Judge being overworked or overstressed. Each Judge

faced with this problem has a duty to himself or herself and to the litigants to make appropriate arrangements to bring to a conclusion any matter that has been started, and to do so within a reasonable time. Judges need to recognize that it is misbehaviour to keep a judgment outstanding for an inordinately long time.

It would not be correct for anyone to think that the matter of overdue reserved judgments is not one that occupies the minds of Judges in Jamaica. It does. As some of you may know, our Judges have for several years been involved, like practising lawyers, in the process of formal continuing legal and judicial education. We have at fairly regular seminars at which manifold topics are discussed. In July, 1997, I presented what I called then a mini paper on the subject: **"Reserved judgments and partheard cases"**. The paper was aimed at Judges of the Supreme Court. I shall now quote from it:

> "It is difficult to see the reason for not promptly delivering judgments in cases involving mere damage to vehicles or personal injury of the uncomplicated type. Trespasses to person or property are usually determined on credibility so judgment should be virtually instantaneous.
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> A Judge in Jamaica seems to encounter more adversities than elsewhere. Notwithstanding these adversities, we have to realize that there comes a time when the decision has to be made and delivered. There comes a time when further delay in the delivery of a judgment will mean injustice to the victor who, under our system, is entitled to his spoils.
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> It is suggested that when one embarks on a trial, one should be thinking of the day when it will end-that is, when judgment will be delivered.
>
> In matters where the facts are brief, and there is no complexity, judgment should be delivered immediately after the closing addresses- even if it is intended to put the reasons in writing. In this situation, a date should be stated for the delivery of the reasons. In these cases, that is, the brief and simple ones, the Judge may even rise for a few minutes, retiring to Chambers, note the judgment and

> reasons in his notebook, return to the courtroom and deliver them orally.
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> Where the case requires further thought beyond the addresses, it is suggested that the Judge should have a time frame in mind and- preferably- should adjourn the matter to a stated date for delivery of the judgment. The Judge should then be self-programmed to meet the deadline.
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> The Judge's role is a difficult and time-consuming one. It has to be constantly appreciated that a substantial portion of a Judge's life outside the courtroom has to be spent doing judicial work- even if it is merely in the mind. It is herein that lies the rub for the Judge.
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> It is unwise, it seems, for a Judge to adjourn a case indefinitely for judgment, without having a date or period in mind. Where the matter is complex, it seems useful to look on the delivery of the judgment in the context of a term. For example, where the matter is completed in the first half of a term, it is suggested that efforts be made to deliver judgment by the end of the term-in any event, no later than in the early part of the next term.
>
> With such timely behaviour, litigants will be happy. The reputation of the Courts will rise; the lists may even get shorter and Judges will have more time for themselves-with their minds being uncluttered by thoughts of cases done many months or years ago.
>
> Before leaving this topic I wish to refer to the fact that the Honourable Chief Justice has suggested the passage of legislation to deal with reserved judgments.
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> It is clear that the tardiness of some Judges has pushed the Chief Justice in this direction. Although I appreciate the dilemma, I cannot say that I do not have reservations so far as the proposal is concerned."

These remarks were made by me at a time when I was a Puisne Judge. I still hold to the views I expressed then. Having seen the position at the Court of Appeal, I must say that there is no reasonable person who would say that there is delay in this respect at the Court of Appeal. I have been impressed by the diligence of my colleagues, and I hope to

keep up with them so that the known efficiency of that Court will continue. I strongly suspect that the younger lawyers are not aware that the manpower at the Court of Appeal has remained static since 1967. By **Act 17 of 1967**, the composition of that Court was increased to the grand total of seven including the President. We do not need statistics to show how the volume of work has increased, out-stretching by leaps and bounds the number of Judges. Yet we manage to cope. We do so at great expense to our family life and health. When the story of our time comes to be written, I hope that this aspect will not escape the attention of the critics. Let the truth be fully told.

There is much more that may be said on this topic, but as I said at the beginning, this is an open-ended subject. As the advertisement says, "the weekend would go on and on", if I do not bring this paper to an end. I cannot do so, however, before making a comment on the matter of a code of judicial conduct. I have seen the calls by eminent members of the profession for such a code. There are Judges who also support such a code. I personally do not support a written code of conduct for the simple reason that I do not see the need for it. Of course, seeing that I do not wish to be taken out of context so I will give brief reasons for my position. Every Judge, on appointment, stands before the Governor-General with Bible in hand and takes two oaths. They are in the First Schedule to the Constitution of our country. There is the **Oath of Allegiance** and the **Judicial Oath**. In my view, those oaths are sufficient to bind a Judge throughout his or her period of being the holder of a judicial office. Matters such as punctuality and good manners cannot be legislated for. The Judicial Service Commission ought not to be appointing persons to hold high judicial office if they have shown a pre-disposition to this type of behaviour. I am not saying that the Commission has done this. I am saying that it

ought not to do this. People do not change overnight. A punctual attorney-at-law does not suddenly become a time-hating Judge. The "opening up"of the appointment process would, in my view, help. It should not be thought that this is the first time that I have expressed this view about a code of conduct. I am on record as making this comment at a meeting of the Bench and Bar Consultative Committee.

As a Judge, I do not need anyone to tell me what my responsibilities are; that I am to be at Court on time, that I am to be civil and honest etc. Having undertaken the awesome task, I would resent persons telling me what is proper and what is not. I ought to know. Before closing the topic though, I need to say something on one other aspect. For years, I have called for the removal of the Ministry of National Security and Justice from the lives of Judges. The call has gone unheeded. I shall not cease making that call. Time does not permit a listing of my reasons for this call. It relates however to the question of judicial independence. I am amused when some of my own colleagues speak favourably of a code of judicial conduct without making the link with the input or non-input as the case may be of the various Ministries that interact with the Judiciary. The Ministry of National Security and Justice and the other ministries are seemingly under no code of conduct so far as honouring Judges' contractual rights is concerned. That is a very sore point which I shall deal with at some other time, maybe at some other place, if God is willing.

Seymour Panton
Judge of the Court of Appeal,
October 20, 2000.