THE CARIBBEAN LEGAL PROFESSION IN THE NEW MILLENNIUM

TECHNICOLOR OR TECHNICULTURE?

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A. THE ROLE OF THE LAWYER

1. In the Oxford Dictionary the word "millennium" is ascribed two principal meanings: first, "a period of one thousand years; second, a period of happiness or benign government. The duality of the connotation poses the issue of whether we regard the year 2000 as a chronological computation or as highlighting the challenges which confront us as well as the opportunities for creativity and development. It is in the latter sense that I wish to approach the subject whilst also retaining a sensitivity to our Caribbean legal evolution and contemporary social environment. As we share a common heritage with our Caribbean brothers and sisters, a unified scheme of legal education and a developing system of free movement of legal practitioners within the Region it is appropriate to consider our subject in the Caribbean setting.

2. Law is an essential element in societal and political organization. If the laws increase in scope and sophistication and the Rule of Law is operative, the framers of and the practitioners in the law must be creative, competent and creditable. In 1816 Thomas Jefferson stated:

"Laws and institutions must go hand in hand with the progress of the

> human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy, as civilized society to remain ever under the regimen of their barbarous ancestors".

3. Constitutionalism and the rule of law are essential to the preservation of our democratic values and human rights. The critical nature of their importance has not been diminished by the emaciation of communism or the retreat of military dictatorships. The threats to democracy and human rights will reappear and are even now reappearing in more subtle and surreptitious forms. Our rights to cultural identity, to a clean environment, to domestic privacy, to genuine participation in government, to protection against personal abuse by security forces are threatened by political expediency and emotional responses to the menaces of violent and narcotic crimes. Our right to a fair access to opportunities for self-actualization, to the enjoyment of peace and to aspire to a fair quality of life will be under severe stress from the power of national and transnational enterprises, indiscipline and corruption as well as permeating governmental regulation.

4. History is replete with examples of members of the legal profession who have aligned themselves on one side or the other of the line between freedom and slavery, liberty and dictatorship, morality and expediency. Linowitz and Mayer conclude their book, *The Betrayed Profession*, with the following challenging statement:

"In Geoffrey Hazard's terms, lawyers must find ways to "fantasize" about themselves and their profession - to see and thus to create the possibility of a legal profession that is once again independent, willing to sacrifice money for pride, eager to reassert its role as the guarantor of rights. To make the contribution only lawyers can make to the future of our country and the world, we must accept rather than simply assert our responsibilities. When we look at our fellows and we decide whom we respect, civic leadership should count for more than hourly rate, the sense of justice for more than a record of victories at trial, service to those who need the law for more than representation of those who merely use the law. The fault is not in our stars but in ourselves."

B. THE LAWYER'S TRADITIONAL IMAGE

5. The ambivalence of the public perception of the legal profession borders on schizophrenia. Throughout time there has been immense admiration for the advocacy of lawyers. Roman literature gives pride of place to the eloquent orations of Cicero. Apostolic maturity is dramatically displayed and the scriptures enriched in the defence advocacy of St. Stephen's fatalistic speech to the High Priest in the Council of Elders and Priests, of St. Peter's discourse to the Council of Jewish Leaders, and St. Paul's skillful addresses to the Sanhedrein and to Agrippa. Shakespeare glorified advocacy in Portia's defence of Antonio. There is probably no greater elevation of the virtues of advocacy than St. John's characterisation of the intercession of Jesus Christ.

"If any man sin, we have an Advocate with the Father, Jesus Christ the righteous."

6. In novels and in drama, on the big and small screens, in classics and in soap operas, playwrights, producers and actors continuously exploit the public attraction to and fascination with the skills of the advocate. Millions of people over a sustained period remained riveted to the O. J. Simpson trial not only because of the personality of the accused but also because of the forensic display of the trial lawyers. It is this theatrical dimension of legal practice that dominates public perception of the lawyer. Portia's admirable advocacy is itself constructed in the framework of dramatic simulation as she and her assistant, Nerissa, donned the dress of young male lawyers, "in such a habit that they shall think we are accomplished with what we lack". It is therefore not difficult to switch from admiration to condemnation when deceptive skills are used to achieve the wrong end and to write "the first thing we do, let's kill all the lawyers".

7. Famous trials are no longer assiduously read in hundred of pages by the individual reader but by virtue of technological developments are displayed in action before millions of viewers thus magnifying the theatrical elements of legal practice. This technological contribution has heightened the public perception of lawyers as actors in a technicolor presentation of surrealist situations in which the search for the truth is not a primary objective. This perception ignores the silent and solid role played by the non-advocate lawyers as well as by advocates who perform the functions of counsellors and

consolers for their clients.

8. Yet, there is no profession or vocation, saving probably the clergy, which has been the subject of as great a measure of cynicism as the legal profession. This is illustrated by the proliferation of jokes which portray the lawyer as tricky, dishonest and untrustworthy. The wider exposure of cases in which lawyers run foul of the law or are disciplined for contravention of their professional code of ethics aggravates the unhealthy image. Extensive media coverage has increased the notoriety and the enhanced familiarity has breeded contempt.

C. THE TECHNOLOGICAL REVOLUTION

9. At the beginning of the 20th century, a lawyer's office could readily accommodate the basic treaties and reports which he needed for the conduct of his practice. His most extensive research would take him to the Supreme Court Library to consult Coke's, *Institute*, Blackstone's, *Commentaries*, Stephen's *Digest* or Halsbury's *Laws* (if he did not have personal copies) or to find an old case in the English reports. A search for relevant authorities normally involved an examination of a limited number of carefully prepared indices. Today, the expansion of law reporting, the multiplication of legal text-books and the proliferation of legal journals and periodicals have made legal research a formidable and hazardous task. This situation nevertheless provided an important challenge to the lawyer's perseverance and an opportunity for self-fulfillment.

10. In the early stage of the famous *Nasralla Case* which was the first case to demand judicial construction of one of our Caribbean Constitutions, I recall that when the

issue arose as to whether the accused could be re-tried for manslaughter after the jury acquitted him of murder but were divided on the issue of manslaughter, there could be found no answer to the question in Archbold, English reports or the famous treaties on English Criminal Law. The Jamaican Supreme Court Library had only recently received some Law Reports and Journals of other Commonwealth countries which had formed part of the Law Officers' Library in the now defunct West Indies Federation. As junior counsel I began to search through these reports and discovered to the wonderment of my senior colleagues a commentary in the *Australian Law Journal* on a similar case in New South Wales. The profession had not yet emerged from its insularity and eminent counsel on the other side reacted to the citing of this case by remarking that the Australians are more renown for cricket than for law.

11. I had a not dissimilar experience with another famous constitutional case. In the *Hinds Case* when the Jamaican Gun Court Act was challenged on the fundamental question of the separation of the judicial power and the constitutionality of executive intervention in the determination of the severity of sentences. I once again encountered relevant judicial authority of critical importance in the somewhat unexpected location of the Irish Reports.

12. Such manual searches of indices and the physical location of documents are disappearing. The technological revolution is rapidly changing the methodology of legal practice. The trend is irreversible. It is becoming increasingly impossible to store, manually index and retrieve judicial authorities or factual statements from the mass of material which

is being manufactured every minute. Law Practice organisation and management must materially change and so must the training and outlook of lawyers. A new techniculture is becoming pervasive.

13. There are numerous computer software producers who are in hot competition to sell lawyers techniques and programmes which simplify office planning and control, simplify your calendaring and monitoring of deadlines, simplify your reporting and follow up, simplify your filing and retrieval, simplify your pricing and billing, simplify your recovery and all these at great speed. These programmes will edit case notes, create to-do lists, monitor time-tables and track documents and e-mails chronologically. In fact, there are so many of these products being offered now that there is a separate software programme to facilitate the lawyers' searching of catalogues which include specifications, photographs and videos relating to the products being offered for sale.

14 A few CD-Rom discs which can hold in one of the pockets of a jacket or in a lady's purse will be able to contain all the Law Reports, Commonwealth and Caribbean, Halsbury's, *Laws and Statutes* all the reports of judgments and statutes of Caribbean countries, Archbold's and the *English and Empire Digest*. By electronic linkages, the whole range of reports, commentaries and articles from all parts of the world can be accessed at the touch of a button. For the researcher the technology is not confined to retrieving material within a certain subject-matter but by a common sense association of catch-phrases the lawyer is now able to use the computer to eliminate irrelevant materials and identify relevant materials with speed and accuracy.

15. The new technology provides the legal practitioner not only with rapid document and information retrieval capabilities but also achieves some simulation of analytical and creative action. Software programmes now provide interactive documents which automatically updates itself with every transaction. Using existing forms and precedents, on the supply of new case particulars or client information, the programme will generate new contracts, trust deeds, wills, motions, pleadings, affidavits or other documents required for particular circumstances or clients. When this process is compared with the old system of manuscript drafting, the use of rubber erasures and correction fluid, the typing and re-typing on the typewriter, the radical nature of the transformation cannot be over-emphasized and there is the looming threat of extensive redundancies in the profession.

16. In January of this year the first brief in CD-rom format was submitted to a U.S. Court of Appeals for the federal circuit. Such a brief contains hypertext links. A Judge using his computer mouse can jump from key points in the legal argument to supportive case texts, video clips of testimony, demonstrations of relevant processes and simulations of situations. The effect on advocate's techniques on the appellate process and on equality of justice are potentially immense.

17. There is no doubt that with the increasing complexity of law, the vast proliferation of government regulations and the massive growth in legal literature, manual methods of handling the material were becoming inefficient, cumbersome and time-consuming. However, there is a real danger that these technological advances will convert the lawyer into a technician adept at manipulating a collection of techniques, but with limited

analytical skills and bereft of personal insights into the wider implications of his work or sensibility to the aspirations of his clients.

18. The development of law as an instrument of social justice and the institution of the lawyer as an agent for human liberation and amelioration may thereby be frustrated. Legal technologists will replace professional humanists and law will become inhumane if lawyers loose their humanity.

19. The old bifurcated profession, which existed before fusion became fashionable, facilitated the development of a rich legal culture of classical literature and philosophical depth. The barrister or advocate was usually university trained, grounded in the classics and steeped in philosophy. The Judges who were appointed from this intellectual pool had the academic training and the intellectual capacity to produce profound analysis and express their reasoning in attractive phraseology. Thomas Jefferson thought that history, politics, ethics, physics, oratory, poetry, criticism etc. are as necessary as law to form an accomplished lawyer. If the legal profession loses its links with history, literature and philosophy it will become a collection of journeymen rather than an association of professionals.

20. An advocate who challenges a murder conviction in an appeal in which the question of whether duress, insomnia or intoxication is a defence is not only dealing with profoundly important questions of law and morality but probably also the life expectancy of his client. The success of a lawyer who argues a question of custody of a child by one parent rather than another will have a permanent impact on the character and well-being of a human

being. The advocate's knowledge of the historical development of our fundamental freedoms and the wealth of international human rights literature on the subject may have a profound influence on the preservation of our democratic way of life. Learned Hand, the famous American jurist, was of the view that a judge who had to decide these questions should have great intellect and training:

> "I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon, and Carlyle, with Homer, Dante, Shakespeare, and Milton, with Machiavelli, Montaigne, and Rabelais, with Plato, Bacon, Hume and Kant as with books that have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the question before him. The words he must construe are empty vessels into which he can pour nearly everything he will. Men do not gather figs or thistles, nor supply institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined."

In the Caribbean community the attorney should be well read in some of the great classics

of the language in which we work as well as the modern writings of Eric Williams and Philip Sherlock, Claude McKay and Derek Walcott, Louise Bennett and George Lamming, Edward Braithwaite and C. L. R. James and our own legal luminary Dossie Carberry among others.

21. The danger in the Caribbean is that although the responsibilities of the legal profession have grown more challenging there is massive pressure to reduce the standards of legal education so as to make it more mechanical. Very few institutions of professional learning, with the student-tutor ratios which are being forced on our Law Schools by political and other pressures, would be accredited by the relevant governing bodies. The commercialization of legal education has resulted in the rapid manufacture of a variety and multiplicity of degrees and diplomas secured after shorter and shorter and shallower and shallower courses. This trend does not encourage the young practitioner to strive after standards of excellence or conduce to the making of law into a great profession and the practice of law as a noble calling. Similarly, although law is constantly changing, there is, among older members of the profession, limited interest in continuing legal education and there is resistance to a mandatory scheme of continuing legal education despite its potential for contributing to the professional development of lawyers.

D. THE COMMERCIALIZATION OF LEGAL PRACTICE

22. In the United States, advertising of their services by lawyers was sanctioned by the Supreme Court on the basis that it was a right protected by the constitutional guarantee of free speech. The result has been unseemly competitive advertising, puffing and pretentious proclamations not only of proficiency but of the capacity to confer abundant

benefits on the client who knocks on the door or calls a toll-free number. The technicolor syndrome has also infected this evolution. There are now lurid video presentations, glaring television advertisements, neon-lighted name signs and shop front posters more appropriate for an older but less noble profession. The restraints suggested by the American Bar Association's Code of Professional responsibility are thus largely ignored.

23. Elsewhere the doctrine of free trade has intruded into the professional field and the theory is that it is in the public interest that lawyers should be free to advertise their services.

24. As in the United States, Bar Associations and legal disciplinary bodies are fighting a rear-guard and probably losing battle to retain some control over advertising by lawyers. In Europe the Council of Ministers and the European Parliament recently agreed to the issue of a Directive on comparative advertising provided that

> "(i) It is not misleading; (ii) it compares goods or services meeting the same needs or intended for the same purpose; (iii) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services, which may include price; (iv) it does not create confusion in the market place; (v) it does not discredit or denigrate the trade marks, trade names, goods or services of a competitor; (vi) it does not take unfair advantage of the reputation of a trade mark. Although the Directive also applies to legal services, it states that self-regulating professions are not prevented from

> maintaining or introducing bans in relation to their goods or services. Thus, the Directive preserves the status quo in England & Wales and Scotland in relation to comparative advertising but does not prevent either Law Society from allowing comparative advertising concerning legal services in the future should they so wish. Member States have until the year 2000 to implement the Directive into national law."

25. In some Caribbean countries the traditional prohibition against advertising by lawyers has been promulgated in Codes of Ethics. In Jamaica, for example, except for limited and defined exceptions, an attorney is prohibited from making -

> "use of any form of public advertisement calculated to attract clients to himself or any firm with which he may be associated and he shall not permit, authorise, or encourage anyone to do so, or reward anyone for doing so, on his behalf."

In the case of the *General Legal Council v. The Fair Trading Commission* (November 14, 1995) the professional disciplinary body succeeded in obtaining a declaration from the Jamaican Supreme Court that in the performance of its professional regulatory functions, the Council was not subject to the Fair Trading Commission, a statutory body charged with the responsibility to ensure fair trading and consumer protection, so that it could, in prescribing standards of professional ethics, restrict advertising by attorneys. However, the apprehension is that Government may nevertheless wish to legislate to alter this position, and the profession itself is obliged to consider a modification of the traditional rules so as to give the

public useful information without permitting a descent to offensive displays.

26. The commercialization of legal practice has dramatically altered its organisation. The trend is now in favour of the formation of larger and larger firms which are characterised by greater and greater individual specialization. This trend has been accelerated by the growth in the range of legal subjects and new areas of industrial and commercial activity which require legal services. At the same time the commercial orientation of law firms has driven their members into non-legal fields such as land and housing development and intellectual property management. Some of the new activities are so specialized or technical that the work of the lawyer demands the expertise of other professionals. As a result, there is a thrust towards inter-disciplinary practice in which an accountant or estate manager may very well have more influence on the firm's policy and direction than the lawyer. These developments pose very serious challenges to the traditional ethical values of the profession. Many of these quasi-partners will be governed by different codes of ethics controlled by other disciplinary bodies or by none at all.

27. These developments are having a profound impact on the lawyer/client relationship. Like the old family doctor, the old family lawyer is disappearing. Personal relationships are replaced by case or transaction assignments. Formality has been substituted for cordiality. The dominant driving force of the legal practitioner is becoming the pursuit of wealth. Firms of lawyers are organised on a strictly profit oriented basis. Attention is being focussed on how refreshers and billable hours can be accumulated rather than how the legal business of clients can best be expedited and delays in the machinery of justice

minimized. The profession risks the loss of its soul.

28. It would be salutory for us to bear in mind the profound statement of U.S. Judge of Appeal Elbert Tuttle:

> "The professional man is in essence one who provides service... He has no goods to sell, no land to till. His only asset is himself. It turns out that there is no right price for service, for what is a share of a man worth? It he does, not contain the quality of integrity, he is worthless. If he does, he is priceless. The value of either nothing or it is infinite.
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> Like love, talen is only useful in its expenditure and it is never exhausted. Certain it is that man must eat: so set what price you must on your service. But never confuse the performance, which is great, with the compensation, be it money, power, or fame, which is trivial."

D. BLURRED VISION

29. Having reviewed the main trends in legal practice, it is not easy to envision the image which the legal profession will bear in the new millennium. In the 19th century, Alphonse de Lamartine stated "Experience is the only prophesy of wise men" and Jones Lowell admonished that "My gran'ther's rule was safer 'n' tis to crow: Don't never prophesy - unless ye know". Long before then St. Paul had acknowledged that "for now we see through a glass, darkly and now I know in part" only. It would therefore be foolhardy for me to advance any definitive answer to the question implicitly posed by the title of this lecture. What I can say without any diffidence is that what the future holds for the legal

profession will depend on what the legal profession upholds in the future.

30. Paul Freund said:

> "Like any profession which considers its function to be that of serving the public, the legal profession must strive for and will be measured by, three standards: its independence, its availability, and its learning".

As we attempt to formulate a vision of the future we must evaluate our prospects of satisfying each of these standards. It is probably illustrative of the uncertainties of the future developments that I will reverse the order in which I deal with these three areas.

31. I have already commented on the importance of educational standards and intellectual competence to the effective performance by lawyers of their responsibilities to society. A major factor which threatens our aspirations is the point of view held by many of influence and authority that legal education in Britain or the United States is adequate for our regional needs or equivalent to our indigenous system. This point of view is accompanied by the self-adulatory statement that we have succeeded on the basis of such training and what was acceptable in the past should be acceptable in the present and for the indefinite future. No account is taken of the fact that many clients have suffered from the inefficiencies which resulted from the inadequacies of those systems or of the deterioration which have occurred from time to time in their organisation.

32. In the discussion of these matters it is not usually revealed how chequered has been the history of legal education in England and how disparate the system in the United States. In 1834 Judge Thomas Lacy of the Superior Court of Arkansas Territory admitted

to the bar brash young Albert Pike ... who had merely been reading lawbooks on his own, without examination, on the ground that after all, it wasn't like issuing a diploma to practice medicine; he couldn't kill anybody by poor practice of law. In the sixteenth and seventeenth centuries the general pattern for Bar students involved about seven years of instruction in which "they frequent Readings mootings, bolting and other learned exercises, whereby, growing ripe in the knowledge of the laws and approved withal to be of honest conversation, they are ..... elected and called to the degree of utter barrister". Readers who conducted these courses would then entertain their students at Dinner at their messes in the Halls of the Inns of Court. Over the years the dinners became a perfunctory formality and their true purpose disappeared. From the early 18th century to the late 19th century there was virtually no system of legal education and no examinations for call to the Bar. In 1872 the Council of Legal Education was established and an examination system established but dining remained a formality. Entrance to the Bar Exams did not require a University degree but only matriculation.

33. In the post-war period it came to be well-known that the most popular and statistically effective passport to the Bar was the Gibson and Weldon cram courses and the nutshell series constituted the basic arsenal of legal literature for many Bar students. The Law Society's regulations required similar modest academic background and its examinations ignored the philosophy of law and concentrated on the practical essentials of the solicitor's practice. More recently the accreditation of several new institutions for the training of lawyers in England has aggravated rather than solved the problem. Multiple

choice questions have now become a standard technique in the scholastic production line. Not only does basic training vary in quality but many of these graduates are unable to obtain places in solicitors' law offices or barristers' chambers to carry out the practical part of their courses.

34. In the United States there is a similar proliferation of institutions which offer law courses. Much of the teaching is exam-oriented and is driven by the need for the institution to make a profit. The Socratic method which dominates American legal education emphasizes the importance of precise answers to fact-situations based on case law and minimises the underlining philosophy and moral justification for the legal principle. An American Bar Association's Task Force on Law Schools and the Profession commented:

> "The Socratic method of teaching emphasizes qualities that have little to do with justice, fairness, and morality in daily practice. Students too easily gain the impression that wit, sharp responses, and dazzling performance are more important than the personal moral values that lawyers must possess and that profession must espouse. The promotion of these values requires no resources and no institutional changes. It does require commitment."

35. The Caribbean Governments in establishing the Council of Legal Education for the purpose of establishing a scheme for legal education and training suited to the needs of the Caribbean expressed in the Preamble to the Agreement the ideals and objectives as follows:

> "AWARE that the objectives of such a scheme of education and training should be to provide teaching in legal skills and techniques as well as to pay due regard to the impact of law as an instrument of

orderly social and economic change;

CONVINCED that such a scheme of education and training can best be achieved by:-

Firstly, a University course of academic training in a Faculty of Law designed to give not only a back-ground of general legal principles and techniques but an appreciation of relevant social science subjects including Caribbean history and contemporary Caribbean Affairs;

Secondly, a period of further institutional training directed towards the study of legal subjects, having a practical content and emphasis, and the acquisition of the skills and techniques required for the practice of law."

36. After the first ten years of operation of the U.W.I. Faculty of Law the Marshall Report concluded:

"That so much has been achieved in ten short years is a matter for admiration not a target for impatience"

In 1993 the U.W.I. Faculty of Law Review Team on which I was privileged to serve concluded:

"Today, when the Faculty is more than twice as old as at the time of the Marshall Report, its achievements are even more noteworthy. A system of legal education designed specifically for the needs of the Caribbean has been established. Over the years a large number of external examiners of wide experience and unquestionable academic eminence have reported unanimously in laudatory terms on the quality of performance in examinations. Graduates of the system now comprise a majority of the current members of the practising

profession. Many are in public positions of responsibility."

37. The Review Committee on Legal Education in the Caribbean, on which I had the honour to serve as Chairman, concluded:

> "We are concerned that some of the recent developments and proposals threaten to undermine the foundations which have been so well established and to retard further progress. We are opposed to unrestricted admission of non-nationals to the Bars of the Caribbean countries or to nationals being given a means of circumventing the essential requirements of our system by obtaining legal education and training provided by other agencies within or without the Region."

38. When the Review Committee recommended that there should be an entrance examination to verify the competence of students seeking to enter the Law Schools and to allocate the limited places available for the many applicants there was a hue and cry by these very person who had sought training elsewhere. It was forgotten that entrance to the better Law Schools in the United States requires the successful passing of a competitive entrance examination. We have a genius for demolition engineering. We hardly allow Caribbean institutions to take root and grow before under the guise of insular needs we tear them down. There are now moves to undermine the West Indian system which is designed to develop a Caribbean jurisprudence and legal profession.

39. It is my view that now that the prevailing pattern is one of a fused profession from which emerge the counsel whose research and advocacy will help to shape legal

developments and the judges whose reasoning and analysis declare the law, it is of critical importance that the standards and objectives proclaimed by the Governments on the establishment of our own system of legal education should not be diluted to satisfy personal interests or short-term political expediency.

40. In the Caribbean the principle of equality before the law is a theory for which there is little idealistic support and less practical implementation. Large numbers of persons face the Courts without representation. Frequently in serious criminal cases accused persons have to struggle unrepresented against experienced state counsel. It is a blot on our constitutional history and a shame on the legal profession that despite high sounding human rights declarations our Courts have upheld the validity of trial of persons who were unrepresented in capital murder cases. Excepting possible for Jamaica and Trinidad and Tobago our statutory legal aid systems are rudimentary and as a general rule senior counsel do not accept the professional responsibility to do legal aid cases. Dock briefs where they occur are confined to murder cases. It is sad that the tradition of devoting time and personnel to *pro bono* legal work which many American law firms uphold is only tentatively followed in our own legal profession.

41. It is extraordinary that constitutional provisions have been made and legal systems established to provide the poor with social welfare services and to safeguard our fundamental rights and freedoms but no arrangements have been made to ensure that they have the means to achieve those benefits or protect those rights. Public esteem for the system of justice and for its main actors, the lawyers, will be proportionate to public

assurance that the system is accessible and the lawyers available to safeguard their interests.

42. If Bar Associations and the legal profession fail to fulfill the public expectations, less desirable means of providing the services will have to be devised. Already the contingency fee arrangement has been introduced in Jamaica and it will be irresistible elsewhere if legal aid in civil matters remains unavailable. Public defenders may be appointed if lawyers do not do criminal legal aid cases. Poor accused persons will have to be content with legal representatives who are employees of the State and lacking in the independence which is essential at the criminal bar. Unless senior practitioners set the example and Bar Associations as well as Law Schools emphasize this area of civic and professional responsibility the image of the profession will suffer. In the international human rights bodies, the Caribbean already has a reputation for denial of fundamental justice through the failure to provide competent legal representation for persons being tried on serious charges.

43. The maintenance of the independence of the legal profession is of importance to its prestige and effectiveness. In periods of crisis it is essential that the legal profession should stand up for principle against expediency. There have been many examples of this in the Caribbean. There is a risk however that the fear of offending politicians and the leaders of commerce or of losing the prospects of lucrative retainers and coveted awards may be a deterrence to many lawyers taking a stand on principle. Only the soundness of our philosophical development, the moral support of our professional associates and our personal integrity can guarantee the strength and independence which in the future will be necessary for the achievement of our ideals and objectives.

44. That independence must rest on our self-esteem and developed values. Neo-colonialist notions that whatever obtains in the metropolitan countries is good enough for us

must be put aside. The inferiority complex which devalues our own institutions and achievements must be abandoned. We must train lawyers who appreciate that despite all the greatness of the English common law it was fashioned in times in which its underlying moral principles were reduced to rules of expediency by Judges whose main motivation was the protection of privilege and the preservation of an intolerant establishment. We must have the intellectual qualities, the moral strength and the vision to reformulate the rules so as to recapture the principles. We will need wisdom to adapt these principles to novel and unexpected situations. It is impossible to predict whether learning, independence and altruism will be sufficiently present to ensure a noble image for the profession in the generations to come. It is a truism that the power to accomplish anything depends on a defined vision of a declared end. Success will only result from a determined will and honest endeavours to achieve the declared goals. The fault will not be in our stars but in ourselves.

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