

Notes For Debate by

Fred Mitchell MP Fox Hill

On Amendments to the Supreme Court Act and the Court of Appeal Act

I have spent my career at the Bar seeking to improve the judiciary.

I have fought for the principle that the Judiciary should be Bahamianized and I stand by that today.

I believe that the idea of increasing judges by a specific statute should be revisited so that the Chief Justice can do so by order.

I believe and I fought for the Courts to control their own budget. I was surprised at a public meeting that the President of the Court of Appeal does not agree. I am surprised that the Chief Justice Sir Burton Hall denied that this was on offer when we were in office.

I have had a good relationship with all of the Chief Justices since my call to the Bar in 1986 but one who I thought was a pompous idiot.

My closest relationship was with the late Telford Georges. In researching this issue today, I looked back and some of the things that I have written about the Judiciary. I used to do an annual review of the Judiciary, which is started under the fig tree in front of the Supreme Court in 1989. The last of those came in January 2002. The themes are the same.

I had the opportunity to speak to the late Sir Leonard Knowles who was greatly embittered by his experience as Chief Justice. His salary and pension were inadequate and he was almost forced into penury by taking the job just after independence. But he said something which stuck with me and that is he found out the degree to which the Prime Minister controls the Judiciary during his time in office. Such is the structure of our government and I have no doubt that it still obtains today.

The executive controls judicial appointments through their appointments to the Judicial and Legal Services Commission.

The Prime Minister appoints the Chief Justice and the Head of the Public Service Commission, so the majority of the nominees on the Judicial and Legal Services Commission are his appointees.

Then there was a practice which we found still obtained when we came to office which the AG at my instance ruled was not constitutionally permissible, that of when a Judge was appointed by the Judicial and Legal Services Commission, the Prime Minister had to sign off on the appointment before the person could be paid - so called Establishment clearance. One day as Minister for the Public Service, I was asked to approve the pay in lieu of vacation for a Judge who had sentenced by brother to a term of imprisonment. I sent them running way with that file. Do not bring that to me. That is not for me. I hope that that policy decision survives today but I would not bet on it.

The Privy Council on appeal from Mauritius says that part of a democratic sovereign state is the separation of powers between the Judiciary, the Legislature and the Executive. I have fought all my public life to ensure that this is so.

Bahamianization must be the lynchpin of the independence of the Judiciary. Under this administration, the Court of Appeal is no longer Bahamian.

This Prime Minister has chosen since 1992 Chief Justice after Chief Justice and there has been no improvement in the system of justice. In fact, it has gotten progressively worse. The backlog is worse than ever in both the civil and criminal courts.

What strikes me as odd is the cynicism of a person who is given power by the Bahamian people who like the Emperor Jones seems to despise the people whom he leads.

The story of William Faulkner's Emperor Jones

V.S. Naipaul, the Nobel Laureate wrote in 1974 in his essay *The Killings In Trinidad*: "While the dream of redemption lasts, Negroes will continue to exist only that someone might be their leader. Redemption requires a redeemer; and a redeemer in these circumstances cannot but end up like the Emperor Jones: contemptuous of the people he leads, and no less a victim, seeking an illusory personal emancipation."

I thought back to the carefully constructed comments of the MP for North Abaco last week in response to the MP for Cat Is and the MP for Bain and Grants Town on the new Director of Public Prosecutions.

A Bahamian should get this job of DPP. You mean to tell me that 1000 people at the bar and not one Bahamian can be hired? And it was like we are proud to declare that no Bahamian is going to get the job and then there is this subterfuge to trash the reputations of the predecessors in the job, all without saying so but the innuendoes are heavy. And knowing the scorched earth policy of this administration one suspects it could get worse.

So what will have to happen is that these same Bahamians who have fought for him to get the job of Prime Minister, some of whom who voted for him and his government, who supported the independence of their country because they wanted a place in the Bahamas protected for them are now being told by the Emperor that there is no place for them. This is contemptuous.

I used to say in another dispensation that we could of course hire Margaret Thatcher to be Prime Minister of The Bahamas. She has more experience. She is more well known. Since every other job can be farmed out to a non-Bahamian then why not the Prime Minister's job, save an except that the law does not allow it. But why don't we just go ahead and amend the law.

The irony of this position is that a Jamaican is being brought in to head the department, pushing out one Bahamian who was recommended by her predecessor now a Judge of the Supreme Court. But we were told last week that his performance as DPP was not satisfactory either.

The individual, the new DPP, comes with a record of some discord in his last post in Bermuda but more importantly comes from a country where there was murder number 765 for the year just a few days, and where there is a backlog of cases in the hundreds of thousands. She will come to head a Department where two men who are also capable of heading the department are to be superseded and denied their chance and one woman. How do they feel? It appears to me that this is not the kind of atmosphere for a new DPP to be coming into. It puts her at a distinct disadvantage, and it will end up just as every other initiative of this government in the Judiciary has ended up with abject failure. I say this against the backdrop of the criticism that the candidate overlooked was not popular with the staff, a fact not proven and obviously not really important given the reported antecedents of the candidate who was chosen.

Being overlooked for the job is about ten Bahamians who have a record of prosecutions which is more vigorous I am advised than the individual who is coming into the job.

It appears from the record that the number of murders in Bermuda where she worked does not equal what we face and have faced in The Bahamas.

She is first of all displacing Cheryl Grant Bethell who has been doing the job since the last DPP Mr. Turner left without being given the acting position. There are procedural flaws in the way this matter was approached which will likely end up in the courts.

In the first three months of this year Mrs. Bethell prosecuted 43 cases which equals that which was done by her predecessor all of last year. She has done that in three months.

She is qualified with a Masters Degree. She marshalled the evidence in the landmark Wreck Commission which was convened when there was that horrible accident on the way to Cat Island with the Sea Hauler. She has argued personally in front of the Privy Council and was part of the team in the landmark case Bowe and Davis. She argued for the last case of an execution in this country, the David Mitchell case. She specializes in DNA evidence in murder trials. Does her successor have this experience?

Mrs. Bethell was able to do this because of the support of the staff in the office who they are now saying don't like her and also because certain policy decisions were taken at the level of those who are responsible for those decisions.

The new Jamaican DPP was paid reportedly \$127,000 per year in Bermuda? In a time when people are being asked to pay cuts, what is she going to be paid here to take this job?

And this is the height of hypocrisy and irony, from a party that scuttled the closer relationship with the Caricom region under the CSME but quick to use Caribbean labour for all kinds of nefarious purposes.

This government is setting up a system where Caricom people are being despised by Bahamians and vice versa.

The more practiced amongst us believe that there are other motives for rejecting a Bahamian this position is for other reasons which having nothing to do with justice but probably injustice. A Bahamian might not take certain political directions as a DPP.

I think that this bill is designed to get at the backlog and designed to fight crime. I do not see how the Member for North Abaco who has been head of the country since 1992, 13 out of the 18 years can absolve himself of blame. Surely, he must accept responsibility for the failure of this system. It is not the fault of practitioners, as he seemed to suggest last week. The question of more judges, fixing the run down post office building where the toilets don't work and judges don't have air conditioning, nor lawyers not having access to the internet are not issues for the lawyers but for him, the Prime Minister. Physician heal thyself. The fault dear Brutus is in yourself and not in the stars.

Mrs. Bethell has been hard done by the Member for North Abaco and the other Bahamians have been profoundly disrespected by this government.

Then this week, I received the draft rules for the civil courts to change the price of starting litigation. As a member of the Bar Association, I was asked to comment on the new fee structure. The first thing I thought is the fees will now go up for starting an action in the courts from 9 dollars to \$300. Nine

dollars to three hundred dollars. Now I wonder why I need to comment on that. The comment should be self-evident. Compare this to 25 dollars in Barbados.

The only thing I have heard that is more outrageous than that in terms of the jump in costs has been the BEC pensioner who called me today from my constituency to say that the Colina Insurance company proposes with immediate effect to raise their health insurance monthly costs from the present 450 per month which is in itself outrageous by one hundred per cent to \$900. How is that even possible to be done? How does an insurance company even think that this is a conscionable thing to do?

Secondly, there is in the new proposed rules a sop to the poor by the following paragraph in the draft rules accepted to come into force on 1st July 2010:

Any person desirous of making an application to the Court as an indigent person may request a waiver of fees provided that-

- a) The person has a reasonable cause of action or defence
- b) The person has sought the written opinion of an attorney to show that there are reasonable grounds for the proceeding;
- c) The application is supported by a financial statement stating that the person is unable to pay the costs or procure financial security to support the cause of action or defence.

I've got to tell you, I think this is ludicrous. How will someone who is already impecunious to seek "the written opinion of an attorney to show that there are reasonable grounds for the proceeding".

This is anti the poor and the middle class.

And the problem here is that the public is entitled to ask what will be getting for this \$300. The service in the Supreme Court now is horrible, bogged down in bureaucracy and foolishness and now this.

This must be revisited.

The question must be asked will the service improve in the court in exchange for this humongous increase in fees.

I bet they will not.

Then there is this: The Chief Justice has also advised that the Government has been invited to eliminate the stamp duty payable under the Stamp Act and it has agreed to do so.

I thought that was interesting in the notice. The Chief Justice is able to announce what Parliament is going to do and to speak for the Executive.

I leave with this story: the Prime Minister of Barbados David Thompson recently effused to extend the time of former Chief Justice Sir David Simmons who was AG in Owen Arthur's government and then appointed to the bench. In defending his decision not to extend the time beyond the Chief's 65th birthday, he said when the appointment as made, I thought it was wrong then and the fact that he was a good chief justice does not make the appointment right and so I decline to reappoint him.

Those who have ears to hear ought to hear. Everything that the Government has tried has turned to mud and I have no doubt that the same will apply here.

Sir Leonard Knowles complained long ago about the way the Judiciary was structured. It seems to me that nothing has changed.

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