SPEECH BY CHIEF JUSTICE SIR MICHAEL BARNETT AT THE OPENING OF THE LEGAL YEAR ON 8TH JANUARY, 2014

On behalf of the judiciary, I wish to express a sincere thank you to all who have accepted our invitation to participate in the ceremonies surrounding the Opening of the Legal Year.

We were particularly pleased that their Excellencies, Sir Arthur and Lady Foulkes, attended both the service this morning at the Christ Church Cathedral, and The Red Massa on Sunday

I also acknowledge the presence of the President of the Court of Appeal, Justice Anita Allen and the other Justices of the Court of Appeal. It was drawn to my attention that I did not acknowledge their presence at the last Opening and I publicly

apologize to the President and Justices for that oversight last year.

I wish to thank His Grace Archbishop Patrick Pinder for celebrating the traditional Red Mass last Sunday; as well as Bishop Laish Boyd for this morning's service at Christ Church Cathedral.

As usual the Royal Bahamas Police Force and its world famous band add to this ceremony and I thank the Commissioner of Police and Supt, Campbell for their contributions to this Opening.

I welcome to the Bench Justices Rodger Gomez and Carolita Bethell. I also welcome to the Bench Acting Justice Ian Winder. I also acknowledge that Madam Justice Claire Hepburn demits office on the 31st January, 2014 having attained the constitutional age of retirement. I thank her for her years of service.

Justice Hepburn has been my professional colleague for more than 25 years. I will miss her collegiality although I have no doubt that she will always be a confidante.

This is the fourth time that I have had the privilege of presiding over the Opening of the Legal Year. This August, God Willing, I will have served for five years as the Chief Justice.

I speak this morning with the background of the experience and lessons learned over the past four plus years.

When I first came to office I made the decisions that a judge's primary duty is to be a judge. That is to adjudicate on matters and provide a judgment that is according to law and fair.

I shunned matters of administration to others and sought to spend time on the preparation of new Rules of Civil Procedure and new Criminal Case Management Rules.

I begin this Opening by announcing that the new Rules of Civil Procedure which have been circulated for some time will take effect on the 1st June, 2014. That date is fixed in granite.

I also announce that the new web site of the Supreme Court is operational. I invite you to visit the website www.supremecourt.org.bs.

I wish to publicly thank Mrs. Indira Francis for her tireless work in completing this project.

I recognize however that there is a greater need for more focused attention to be placed of restructuring

the Courts and introducing more protocols on how we do business.

The reality is that the Supreme Court has 14 Justices and the Supreme Court Act has been amended to accommodate 20 Justices. The Magistracy presently has 19 headed by Chief Magistrate Joyann Ferguson who was substantively appointed to that Office in October, 2013. The total staff in the Office of the Judiciary and Magistracy is 211 persons.

The reality is that it cannot be operated in the same manner as it has been for the past 50 years. The Registrar of the Supreme Court whose only qualification by the Supreme Court Act is 5 years call to the Bar cannot be expected to carry out the administrative responsibilities for the two court systems as well as being responsible for the

Registry of the Supreme Court in both New Providence and Grand Bahama. I have discussed the challenges with the Executive Branch of Government and renew my call for Parliament to consider the draft Court Services Bill which has been in circulation for some years. The draft bill is patterned on legislation found in other jurisdictions and if enacted will take the Office of the Judiciary out of the Public Service to be administered by an autonomous body similar to the Public Hospital's Authority. The Office of the Judiciary will have as its Chief Executive officer, an administrator whose primary qualifications is that of administration and not of law. This will leave the Registrar to deal with matters relating to the work of the courts (for example the Civil Registry and Criminal Registry both of which require focused attention). It will relieve the Registrar of administrative responsibility for matters dealing with personnel, maintenance

supplies, and other matters best suited to be dealt with by a person trained in administration, not law.

I am painfully aware of the criticism we have faced as judges as to the length of time it takes for judgments to be delivered, I do not seek to make excuse or condone those instances where judgments have been outstanding for more than two to three years. Those justices are aware that they risk proceedings for misconduct. They have been given ample time to correct the problem.

But the resolution of the problem is not as easy as it may seem. Judges cannot hear matters every day of the week. I am directing that Judges must take at least one day every fortnight simply to read and prepare judgments. They cannot continue to rely upon after 5 during the week and Saturdays Sundays and holidays to write their judgments.

At the same time, it cannot be denied that a significant factor contributing to delay is the need for Justices to do their own legal research and to write their judgments themselves without the assistance of qualified lawyers as judicial assistants. I again ask the Executive in the next fiscal period to make provision for judicial assistants to provide assistance to Judges in the preparation of their judgments.

I must take this opportunity to chide some members of the Bar on the quality of legal representation in matters before the court. Proper research and preparation are essential to their reputation work and the effectiveness of their representation of their clients.

I cite two instances in my own court in the last four weeks. The first involved an application for judicial review. The applicant sought to challenge the

decision of an appellate tribunal on the ground that the process before the tribunal of first instance breached the rules of natural justice as to be a nullity which the appellate tribunal could not rectify. The fact of the matter was that the identical argument had been made in this court before in 2003. It was rejected by the court. A similar argument was made before the Court of Appeal of British Columbia and rejected. That court adopted the same position of the Justice in this court. That decision was followed by a first instance judge in the courts of that province. The reality is that not one of these three decisions was cited by counsel for either party before me. I did not have a judicial assistant to do the research. I had to do it myself. Had counsel properly researched the case they ought to have discovered those three cases, and the advice they gave their client and submissions made to the court would have been different.

Another matter involved a slip and fall on an uneven pavement on premises belonging to an occupier. There are at least three cases where the courts have commented on the legal liability of a pedestrian and an occupier where a pedestrian fell on an uneven pavement. Again none of these three cases (or any similar case of a slip and fall on an uneven pavement) was cited to me by either counsel.

All of this contributes to the delay in the delivery of judgments. I have often told young lawyers that there are very few matters or issues that come before the court that have not been considered by the courts on a previous occasion. If counsel are better prepared and elicit relevant evidence it will make our task in adjudication easier and improve the quality and timeliness of our judgments.

This brings me to the urgent need for law reform. In my address last year I referred to the need to reform the Criminal Procedure Code in the fight against crime and for reform to the Matrimonial Causes Act to make the problem of divorce and separation less traumatic. Those needs still exist. Many of the necessary changes have no particular political agenda. It is simply a matter of reform and there are examples to follow all around the world. For example, The Bahamas still does not have an Occupiers Liability Act! I ask the simple question, why not? Such a statute is found in most modern jurisdiction that make law reform a greater priority than we do.

There is a crying need to reform the Limitation Act by giving the courts of The Bahamas a similar power to extend the limitation period in personal injury

actions or fatal accident claims as exist in other statutes, including the Limitation Act of England.

I give a real example. A person got sick in one of the settlements of the Family Island. After some delay at the clinic in the Family Island the person was airlifted to Nassau but died en route. The family felt that the death was caused by the negligence of the doctors and nurses in the Family Island settlement. They sued within the limitation period but named as the Defendant, the Public Hospital Authority, on the mistaken belief that the PHA was also responsible for the clinics in the Family Island. The PHA is only responsible for the Princess Margaret Hospital, Sandilands Hospital and the Rand Hospital. The clinics on the Family Islands are the responsibility of the Ministry of Health. When this mistake was discovered and the Plaintiff sought to replace the PHA with the Ministry of Health as defendant, the

limitation period had expired and the Ministry took the position that any action against them was statute barred. Had the Limitation Act of The Bahamas been amended to give the Bahamian court the same power given to other courts to extend the limitation period the court would have had the ability to permit the action to continue against the Ministry of Health and give the Plaintiff his day in court. There is presently no Law Reform Commissioner and I urge the Government to place greater emphasis on Law Reform which can modernize our laws and eliminate some obstacles to the fair adjudication of disputes.

Finally I would be remiss if I did not say something of the role of the courts in the fight against crime.

Justices do not live in ivory towers. We read the newspapers and we are equally appalled at the events in Fox Hill as well as the other areas of New

Providence. We are painfully aware that the outcome could have been much worse. We are aware that some persons whilst on bail commit serious offences and intimidate witnesses for the prosecution. We do not condone or sympathize with criminal behaviour and recognize that dangerous persons must be kept off the streets. Yes, “the safety of the people is the highest law”

We, at the same time, take seriously our judicial oath that we will do right to all manner of people after the laws and usages of The Bahamas without fear or favour, affection or ill will.

Judges do not investigate cases; we do not prosecute or defend cases. We simply preside over the trials to ensure fairness. Yes, we must aggressively manage cases and ensure that the law is observed, but our primary duty is to be fair. Our

duty is also to be available to adjudicate on trials; it is not our desire to be idle. Many judges have not taken the five weeks vacation time available to us. In addition, all justices on the Criminal side of the Supreme Court now have criminal matters scheduled well into 2015 and in some instances into 2016

I think it is helpful for the public to know that when matters are listed before the judges of the criminal division we usually have three matters fixed for trial. This is so just in case one matter for whatever reasons fall out or finishes early there is another matter scheduled. If the main trial proceeds, then additional dates for those back up matters have to be found. We have case management on criminal trials throughout the year to adjudicate on issues that may arise at the actual trial, so as to essen delays when the trial starts. Bail applications involve

the liberty of the person and are therefore given priority. There are six justices in New Providence and one in Grand Bahama presiding over criminal trials. Each of them adjudicate on bail applications. Those bail applications on average number no less than 50 per week.

I am aware of the criticism that justices have received on their decisions to grant or to refuse bail. We are aware that the suggestion has been made at the highest levels to further curtail the discretion of Justices to grant bail. This is healthy. We are not immune from criticism. But I believe it is important to remind persons of the principles relating to bail and to the fact that justices do not arbitrarily or capriciously grant bail without regard to these principles. They have been set out in numerous decisions by the courts including the Privy Council by which decisions the judges of the Supreme Court

are obliged to follow. They have been summarized more recently by the Court of Appeal of Jamaica in a decision delivered in 2011. I quote some relevant paragraphs:

> *"that the suspect's remaining at large is the rule: his detention on the ground of suspicion is the exception and, even then, if he is not put on his trial within a reasonable time he has to be released"*
>
> *"the principles [are]:*
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> 1. *An arrested or detained person has a right to be released on bail as a result of the right of liberty and the presumption of innocence.*

2. *This right must be balanced against the interest of the state that the person does not frustrate the course of justice by flight, interfering with witnesses or committing other crimes.*

3. *The balancing of these rights must be done by the court, as each situation may have unique factors.*

And finally:

"the principles distilled from these cases are that:

1. *an independent judiciary free from interference by the legislature and the executive is an essential characteristic of democracy and an underlying aspect of the …. Constitution*

2. *the fundamental rights of individuals under the … Constitution are protected not only by the fact that they are entrenched in the Constitution but also by those rights being safeguarded by the judiciary*

3. *the legislature ought not to attempt to determine the way the judiciary should deal with individual offenders*

4. *any legislative action that diminishes the independence of the judiciary or impedes the judiciary in its function of safeguarding the constitutional right of the individual will be struck down unless such legislation is enacted in accordance with the rules for constitutional amendments*

It is with these well established principles in mind, that judges are obliged to approach any application for bail.

You should be aware that in the grant of bail, if requested by the prosecution judges impose conditions on accused, restricting their movement by imposing curfew conditions restricting accused to a specific location during certain periods of the night and restricting them from certain areas at any time. If it is reported to the courts that an accused has violated such conditions bail will be revoked.

As we seek to find solutions to this vexing problem of crime we cannot compromise on our national commitment to “an abiding respect for Christian values and the Rule of Law”

The judges and magistrates will resist emphatically any attempt to curtail our ability to give effect to the rights guaranteed by our constitution.

Where there is a reasonable apprehension that a particular individual is likely to interfere with the course of justice, interfere with witnesses or commit a crime whilst on bail, then justices will undoubtedly act on that information properly presented to the court. Judges act on evidence or information adduced in a proper manner.

The Executive Branch of Government has indicated that facilities will be provided that will enable up to 10 courts to preside over criminal matters at any one time. This is laudable and welcomed having regard to what I have already mentioned about matters being scheduled into 2015 and 2016. The actual deployment of judicial resources is of course a

matter exclusively within the province of the Chief Justice and the judiciary. I urge members of the Executive that in their language they must not appear to be dictating to the courts how they ought to be run. Whilst I am satisfied that this is not their intent, it is imperative that they do not undermine public confidence in the judiciary by language and statements that leave this impression. The fight to protect the community from the scourge of crime is a collective effort. We must work together! The police, the Crown, the defence counsel, the public as well as the courts.

Any increase in the number of criminal courts will require more persons to serve as jurors and potential jurors will find that justices will be less inclined to excuse persons from jury duty than they have been in the past. In this regard we look forward

to the propose amendments to the Juries Act which will increase the jury pool.

In allocating judicial resources we cannot be unmindful of the need that family matters are also heard expeditiously. Trial dates for civil matters in Grand Bahama are now being fixed into 2016 and this must also be addressed.

The challenges that face the administration of justice have no quick fix. They require cooperation and realism from all parties involved.

Ladies and Gentlemen, the year 2014 require of us much work. I rest on my own work ethic and pledge to do my part.

Happy New Year and in the words of Ed Shultz of MSNBC “Lets get to work”