

Looking at the real reason for the backlog



Peter Champagnie

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The Observer



There seems to be a penchant for some of us to pontificate about matters of which we know precious little. Time is hardly ever taken to obtain first-hand knowledge about that which we speak. Against this background, reference can be made to recent statements attributed to

Deputy Commissioner of Police Glenmore Hinds in the media about court backlog causing prosecution of cases under the Criminal Justice (Suppression of Criminal Organisation) Act, popularly referred to as the anti-gang legislation, to languish.

While it is a fact that hundreds of people have been arrested under this legislation, and their cases are yet to be tried, the reason is not simply as a result of cases in the system. The fact of the matter is that the legislation, as drafted, invariably requires a self-confessed gang member to give a written statement to the police against another gang member who is then arrested and charged by the police.

This self-confessed gang member, who is now transformed into a prosecution witness, as custom would dictate, does not attend court to give evidence against his/her own when called upon. Indeed, oftentimes the statements are given by such individuals to avoid prosecution or attention being focused upon them by the police.

It is within this context that cases that are brought under the anti-gang legislation have not seen any successful prosecution whilst their numbers continue to add to the already large number of cases to be tried. Deputy Commissioner Hinds' statement, therefore, does not accord with the reality of the situation and represents a simplistic view of the real problem. He has failed to focus on the real issue.

Indeed, his failings are not too dissimilar from that of the newly appointed justice minister under the Jamaica Labour Party (JLP) Administration Delroy Chuck, QC. One will recall that the minister's own party campaigned under the theme and slogan "prosperity". Having an efficient justice system is a condition precedent to achieving economic prosperity. It was therefore refreshing that one of the first issues placed on the table after the JLP won the general election was a concern by its justice minister about the backlog of cases in the justice system. Financiers both local and international are not likely to invest in an economic climate where industrial and commercial disputes which become the subject of litigation have no reasonable prospect of being resolved because of a backlog of cases. However, in an article published by *The Gleaner* on the April 3, 2016, the minister sought to lay blame squarely at the feet of the judges. He asserted that they perpetuated a culture of delay. Such an assertion is unfortunate and unfounded.

Save and except for illness, judges — limited as their numbers are — are always present in court for cases to be tried. Cases are not adjourned because of their absence or unpreparedness.

Quite frankly the reasons for the backlog of cases are as follows:

1. Absence and/or unpreparedness of lawyers;

2. Absence of prosecution witnesses, not the least of which includes witnesses who are members of the Jamaica Constabulary Force.

3. Inordinate delay in the presentation of forensic, ballistic and Cybercrime Forensic Unit reports that are integral to the prosecution of some matters before the court. Cases are sometimes held up for more than five months awaiting such reports. One must also bear in mind that presently there is only one forensic laboratory that serves the entire island. The expectation is that this one laboratory is to produce forensic reports for cases in the courts across the island in a timely manner. This expectation is clearly unrealistic.

4. A shortage of judges and prosecutors. In respect of judges, for example, one only has to examine the fact that presently there are only seven judges that serve the Court of Appeal and this number has been the same since Jamaica's Independence in 1962. For this number of Court of Appeal judges to be adequate in 2016, the crime rate would have to be at the level as it was in 1962.

5. A shortage of courtrooms. The total number of courtrooms allotted at the Supreme Court building for the trial of criminal matters is seven. This is against the background that, on any given week, there are a total of approximately 30-50 cases ready to be tried. It is obvious, therefore, with this imbalance of numbers — that is to say, the number of courtrooms vis-a-vis the number of cases to be tried — there is likely to be a backlog.

The solutions to the ills of the justice system are clear and can be summarised as follows:

1. An increase in the number of criminal courts. The Government itself is owner of unoccupied buildings in the Corporate Area and certainly can compulsorily acquire land to facilitate the building of new courthouses.

2. Serious consideration must be given to an increase in the budgetary allotment with a view to having additional judges and prosecutors. I make bold to say that this is more important than the fulfilment of any election promise in so far as the taxation system is concerned. To do otherwise is to add more credence to the statement of the one-time politician and the late president of the

Court of Appeal, Carl Rattary, who observed that seeking to improve the justice system did not translate into politicians getting more votes from the electorate.

3. Follow through on new legislation that cannot be implemented because of the failure to formulate regulations to these items of legislation which would bring them into actual operation. A classic example of this is the recent amendment to the Evidence Act, which now allows for the testimony of witnesses who have migrated to be received into evidence via video link. Witnesses beyond the shores of Jamaica, or being unable to attend court here for whatever reason, is no longer an impediment to matters being tried because of their absence here.

There is, however, one small problem with this legislation. The regulations and/or protocol that should address where that witness overseas is to give his or her evidence by video link, and who should be in attendance and administer the oath to that witness, has not been addressed at all. The result of this is that cases are still being adjourned where witnesses are overseas because of the lack of these regulations.

The amendments to the Dangerous Drug Act and its full operation is also somewhat similarly affected. Although the legislation provides for those found in possession of a small quantity of ganja to be ticketed and not charged or summoned to court, the police are yet to receive any ticket books. It is now approximately one year since these amendments have been made to the Dangerous Drug Act and the police are still without ticket books. The lack of ticket books creates an injustice for individuals so found in possession of small quantities of ganja since they have no alternative but to attend court, and in some cases wait for hours for their cases to be called up and disposed of.

4. Remodelling of the existing operation of the night court is long overdue. At present, the night court sittings are from 5:00 pm on weekdays to 9:00 pm. In respect of the Half-Way-Tree Criminal Court, there are at least eight courtrooms that are available for such sittings. However, what really obtains is that the night court operates with only one magistrate hearing cases in which many accused do not have attorneys. These cases often involve offences that are domestic in nature or are not so serious. The idea of inviting private practitioners with the requisite

number of years and experience at the Bar to volunteer their time to sit as night court in the remaining vacant courtrooms at Half-Way-Tree, for example, as is practised in other jurisdictions, is not something that is unrealistic and could be canvassed.

Until we are serious about accepting what the real problems are in the justice system, there will always be backlog and case overload. Until then, the blame game must stop, and certainly should not be laid at the feet of the judges, who now appear to be easy targets in light of the convention where they are not permitted to publicly respond to criticisms made against them.

Peter Champagne is an attorney-at-law. Send comments to the Observer or Peter.champagne@gmail.com.

Immigration Corner: How Can I Extend My Stay?

The Gleaner

Dear Mr Bassie,

I am in the United Kingdom with my partner who is settled and I would like to apply for an extension to stay. How do I go about this?

- JM

Dear JM,

Persons may apply for an extension of stay if their partners are British citizens in the United Kingdom, present and settled in the United Kingdom, or in the United Kingdom with refugee leave or humanitarian protection. Adults and any children under 18 years of age applying with

them must be in the United Kingdom to apply. Persons applying for an extension of stay in the above-mentioned categories must apply on form FLR(M) for a biometric immigration document, otherwise known as a Biometric Residence Permit (BRP).

Persons must not use this form to make an application for an extension of stay in the following categories: as the partner of a serving member of HM Armed Forces under Appendix Armed Forces of the Immigration Rules. Those persons must complete their application using form FLR(AF); those on the 10-year Partner route under Appendix FM of the Immigration Rules. They must complete form FLR(FP); as the partner of a person granted indefinite leave to remain in a work route; or if a person is currently in the United Kingdom as their dependent.

To qualify for an extension of stay in the categories of the Immigration Rules for which form FLR(M) must be used, persons must meet the relevant requirements in the following parts of the Rules: Part 8 Family members - Transitional provisions for spouses and partners; or Appendix FM - Family life as a partner - five-year route. The full Immigration Rules are on gov.uk at: Immigration Rules.

If persons are applying for an extension of stay under the part eight transitional provisions, rather than indefinite leave to remain, even though persons may have completed or are about to complete two years permitted stay as the partner of the same person, must give the reason in section two of the application form and explain in more detail in a letter if necessary. Possible reasons are that the applicant may have not yet obtained a relevant qualification demonstrating knowledge of the English language and life in the United Kingdom (KoLL); or that persons prefer to apply for an extension of stay because of personal circumstances to do with their relationship with the partner.

Persons eligible to apply are the applicants and their children under 18 years of age if they are applying as dependents. It should be noted that dependent children aged 18 or over may not be included unless they were initially granted leave in the category at a time when they were under 18. If there is some reason preventing dependent children from applying with the applicant, they must each apply individually and pay the specified fee.

If persons do not pay the specified fee, the application will be invalid and will be returned to the applicant. However, the authorities will not refund the fee if the application is refused or if the applicant withdraws it.

Just for completeness, please note that the applicant and any children under 18 years of age applying with the applicant should apply before the end of their permitted stay in the United Kingdom.

- John S. Bassie is a barrister/attorney-at-law who practises law in Jamaica. He is a justice of the peace, a Supreme Court-appointed mediator, a fellow of the Chartered Institute of Arbitrators, a chartered arbitrator and a member of the Immigration Law Practitioners Association (UK).

Email:lawbassie@yahoo.com

Horace Levy: Murder ... Where Do We Go From Here?

The Gleaner

Horace Levy

We are all appalled at the continued high level of murders, and various solutions are put forward, especially putting more police on the streets and bringing in the guns.

But the murders keep on happening. So let us note the following facts and analysis.

1. Up to 1962, the murder rate in Jamaica was more or less in line with murder rates in most countries worldwide - about one per week.

2. Murders began to be more numerous in the 1960s and reached a peak in the near civil war of 1980, about three-quarters of the 889 attributed to political conflict between the two main parties. In the 1980s, they fell back to pre-1980 four hundreds level as conflict between the two major political parties fell off.

3. Murders began again to climb in the 1990s, reached another peak in 2009 at 63 per 100,000 of the population, or five per day. Street gangs associated with the two main political parties were responsible for a large part of those killings. Police paramilitary tactics, blessed by the political directorate, contributed for many years by example to the climate of violence.

Murders fell back, however, after the Tivoli Gardens security forces operation, which the two political parties supported, to about 40 per 100,000 of the population, or three per day, where it has more or less stayed since. Even though the violence of the security forces, especially of the police, was murderously excessive, there was a positive side to the operation in its assertion of the central authority of the State. This had been lacking for years and was greatly needed.

4. The political parties won the support of deprived youth to their quest for political power not just by distributing guns, but by promises of a better life. and working from the ground up, not top down, is the way.

TACKLING THE PROBLEM

First, as mosquitoes must be eliminated to prevent ZIKV, immediately remove from the constabulary a major stimulant, the 150 killers in its midst, and begin a thorough reform of the JCF and the Police Services Commission. INDECOM is doing its best but needs further support, e.g., by having its own forensic laboratory. And almost double the budget allocation to the Ministry of Justice. Until the impunity to killers guaranteed by the present slow pace of justice is ended, the murders will continue.

Second, conduct a nationwide sustained education campaign, carried into every community by the Social Development Commission and the Restorative Justice Unit of the Ministry of Justice, on how to peacefully resolve conflict.

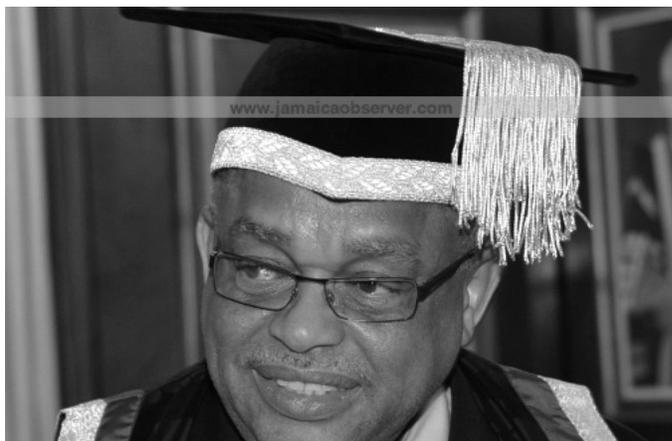
Third, and most important, begin a multibillion-dollar campaign of development in low-income communities to end the exclusion and the dising of the two-fifths of our population below or just barely above the poverty line. This has to be conducted in continuous dialogue with the communities and along with their leaders.

The Community Renewal Programme, drafted with much consultation by the Planning Institute of Jamaica at Bruce Golding's direction, is there to be implemented. And the Peace Management Initiative has shown it can be done, as done last year in nine communities around Spanish Town. It won't be done in a year or two, but it must be started, obviously right away, if the endemic violence at the root of the murders is to be brought to an end.

- Horace Levy is a human-rights advocate. Email feedback to columns@gleanerjm.com.

Holness Government urged to be bold and legalise ganja

BY ANIKA RICHARDS richardsai@jamaicaobserver.com Online/Health co-ordinator



MCDONALD... I believe that we are being too tentative, and the reason we are being tentative is fear of our brothers from the north

CHAIRMAN of the University Diabetes Outreach Programme (UDOP), Professor

Errol Morrison, last Wednesday called on the new administration to legalise marijuana.

Professor Morrison, who is also the director general of the National Commission on Science and Technology, said that while the decriminalisation of marijuana is a good move, it is not enough.

Last February, the Dangerous Drugs Act was amended under the People's National Party Administration to give tickets for possession of less than two ounces of marijuana instead of making it a felony offence, to legalise the sacramental use of the drug by Rastafarians, and to establish provisions for the medical, scientific and therapeutic uses of the plant.

While insisting that he is not criticising the Government, principal of the University of the West Indies Professor Archibald McDonald joined Morrison in urging the Andrew Holness-led Jamaica Labour Party Administration to be bolder than the last administration and legalise marijuana in Jamaica.

Both professors were speaking at a UDOP press briefing at the Petroleum Corporation of Jamaica, for UDOP's 22nd annual International Diabetes Conference, which is set for April 28-30 at the Hyatt Ziva and Zilara Resort in Rose Hall, Montego Bay, St James. The conference, which will be held under the theme 'Diabetes and the Nervous System: Is there a role for cannabis compounds?' will explore the role of marijuana or ganja in the prevention, treatment and management of diabetes.

Professor Morrison explained that, over the years, the UDOP has targeted the main problems in diabetes by combining local and foreign expertise to focus on specific topics. He said this year's focus on cannabinoids is timely, because the debate on ganja, which has intensified over the last few decades, is of interest.

He admitted that the debate has not undergone much change, with some researchers identifying beneficial effects of the drug and others highlighting potential problems associated with its use, but said UDOP decided to focus on marijuana's benefits since there is no question about some of the benefits of ganja use in diabetes.

"... We are saying: 'look, if there are benefits the debate has not changed, the research is now more and more showing that there is support. We feel that decriminalisation, whilst a good move, is not enough'.

“We need to be able to afford the population, who can benefit, the chance to access this more readily and we don’t think that there is enough being done to advance what has started,” Professor Morrison asserted.

“We need to see a legalisation of nutraceutical ganja, in the first instance,” he urged, adding that, from the international perspective, there would be a lot of “raindrops” to walk through, but said that locally, Jamaica could be a mecca for health tourism.

While supporting Professor Morrison’s call, Professor McDonald asserted that the legislations and restrictions surrounding ganja and its use are all about economics, and not about protecting people from the evils of the drug.

He said that if one were to look at the fact that the Federal Government of the United States is the greatest funder of cannabis research in the world, or that they fund the largest research programme in the world out of Israel and have their own research programmes in the United States as they block researchers from doing the research, one would realise that a plan is afoot. He pointed out that the United States recently exported ganja to Barbados, plus they have four patents on ganja and probably the largest ganja fields in the world, insisting that within this context the Jamaican Government needs to be bold.

He said that decriminalisation is a small step and Jamaica is taking a long time to move forward. “I believe that the cannabis industry needs to be developed very rapidly. I believe that we are being too tentative, and the reason we are being tentative is fear of our brothers from the north,” Professor McDonald said.

“Let me assure you that where we are now... the truth is the United States will not interfere with us, and this is why they are not interfering with their states,” he said. “They realise that the word is out, they have the information on cannabis, they realise they can no longer protect that information.

“There are too many countries in the world, not just Jamaica, who now are doing research on ganja and have that information,” he continued, adding that the Federal Government of the United States is not stupid and know that they can no longer continue ‘this deception’.

“So, if a country like Jamaica were to move forward, nothing will happen to us,” he insisted. He emphasised, however, that in moving towards legalisation, Jamaica needs to regulate the industry.

“We need to ensure that it is properly regulated, that is what is important,” he said. “But we need to move now to legalisation, some aspects of legalisation, because as professor Morrison pointed out, another benefit to Jamaica (is it) could bring tremendous revenue...”

Meanwhile, Professor Morrison reiterated that UDOP hopes that the discussions at the International Diabetes Conference will help to demonstrate the potential benefits of ganja to move the industry forward.

Chinese Man Cries In Court While Recounting How He Found His Dead Brother

Livern Barrett, Senior Gleaner Writer

A Chinese man fought back tears this morning as he recounted how he discovered the bloody and near lifeless body of his brother inside their Norbrook, St Andrew home in 2010.

Edward Wong Chew-Onn, a Chinese businessman, was giving evidence as the murder trial of Garfield Roper began in the Home Circuit Court.

Roper is accused of killing Raymond Wong Chew-Onn inside his Upper St Andrew home on September 24, 2010.

It is one of the more than 120 murder cases that have been on the court list for a minimum of five years.

Edward Wong Chew-Onn told the court that he entered a room in the house and saw a blanket thrown over a chair.

"As I looked closer I saw two legs hanging from the bottom of the blanket," he continued.

The witness said he walked over and lifted the blanket and saw his brother with the right side of his face swollen, a bloody eye and "some spongy blood material coming from his nostrils."

"He was still in a sitting position with his head tilted back," Chew-Onn recalled.

"I opened his eyes to see if he could look at me and I shouted 'Ray wake up'," he continued.

The witness said shortly after his brother was pronounced dead at the University Hospital of the West Indies.

He said when he returned home he noticed that a laptop and two cellphones were missing and pointed this out to police investigators.

Chew-Onn testified that in December 2010 he visited the offices of the police Flying Squad where he saw Roper and the laptop.

Stiffer Penalties For Improper Disposal Of Garbage

The Gleaner

Minister of Local Government and Community Development Desmond McKenzie is warning persons who improperly dispose of their garbage in public places that legislation is coming which will bring more stringent sanctions against offenders.

Minister McKenzie said the present penalty of \$2,000 was not a deterrent to lawbreakers, particularly to those dumping commercial waste.

"The present fine for littering is being reviewed, and the legal team in the ministry has made a submission as to an increase, and as to what amount they are proposing, because I believe that the fines should hurt where it matters most, and that is in the pocket," McKenzie said.

The local government minister, who was speaking at a town hall meeting at the Montego Bay Cultural Centre last week, said in addition to imposing severe fines, the Government will be strengthening the enforcement arm of parish councils, by increasing the number of municipal police officers islandwide.

At the town hall, the minister also launched the first leg of the National Clean-up Campaign.

"I want to urge you to support this initiative; it is in the best interest of Jamaica. Investors don't want to come to a dirty country," McKenzie said.

The clean-up campaign in St James is the pilot, which will determine how the programme is rolled out in other parishes.

NATIONAL TASK FORCE

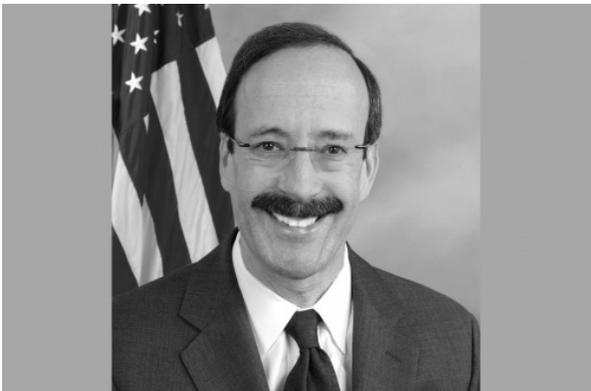
McKenzie is spearheading the inter-ministerial, multi-agency National Task Force, appointed by Prime Minister Andrew Holness to lead the assault against the Zika virus and other diseases that are posing a threat to public health at this time.

The National Clean-up Campaign is a joint effort between the ministries of Local Government and Community Development, and Health; the Social Development Commission, National Works Agency, Jamaica Constabulary Force and the Jamaica Defence, which is supervising the sensitisation and clean-up operations.

Funding for the campaign is being provided by Jamaica Emergency Employment Programme, the Tourism Enhancement Fund and the NWA. The programme will be taken to Portland next.

Legislators push to prioritise US-Caribbean relations

The Observer



WASHINGTON, USA (CMC) — Two high-ranking United States Congressmen have introduced legislation that they say would prioritise US-Caribbean relations.

New York Democratic Congressman Eliot L. Engel, ranking member on the House Foreign Affairs Committee, and Florida Republican Congresswoman Ileana Ros-Lehtinen, a former chair of the Foreign Affairs Committee, introduced the bill that would require the US Secretary of State and the administrator of the US Agency for International Development (USAID) to submit to the US Congress a multi-year

strategy focused on outreach to the countries of the Caribbean and Diaspora communities in the US.

The two legislators said the measure would also improve energy security, counter violence, and ramp up diplomacy, among other priority areas.

“While they are sometimes overlooked, the countries of the Caribbean are profoundly important to the United States, and particularly to the many Caribbean-American citizens in the United States,” Engel said.

“With so many crises around the globe that demand US attention, we can’t lose sight of our long-term interests closer to home but should instead strengthen and expand ties with our Caribbean neighbour. This legislation makes it clear that Congress will prioritise US-Caribbean relations for many years to come.”

Ros-Lehtinen said she was “pleased” to join with Engel in introducing this “important bill. “As someone who represents South Florida and a large number of individuals from the Caribbean diaspora community, I’m well aware of the unique importance of the Caribbean and a strong US-Caribbean relationship,” she said.

“Now that the Caribbean should be less dependent on a deteriorating Venezuelan economy, this bill will go a long way in improving those strategic relationships and show the region that the US is redoubling its efforts to remain engaged in the Caribbean to enhance our diplomatic and economic ties.

“It’s also more important now than ever that we increase coordination and co-operation on security-related issues, especially in conjunction with our leaders at SOUTHCOM (Miami-based US Military Command).”

According to Engel and Ros-Lehtinen, the legislation would require the US State Department and USAID to identify agency efforts to prioritise US policy towards the Caribbean, outline an

approach to broaden outreach to the Caribbean Diaspora community in the United States, and outline an approach to partner with governments of the Caribbean region to improve citizen security and reduce drug trafficking.

The bill would also establish a comprehensive, multi-year strategy to improve energy security and increase access to diverse, reliable, affordable and sustainable power; and outline an approach to improve diplomatic engagement with governments of the Caribbean region.

In addition, the congressional representatives said the legislation would also develop an approach to assisting Caribbean countries in the diversification of their economies.

The bill would require the Government Accountability Office to produce two key reports, namely an evaluation of the Caribbean Basin Security Initiative and a breakdown of CBSI assistance provided to each country, and an evaluation of US diplomatic engagement with the Eastern Caribbean.

The End