SUNSGLO

Training in The Rule of Law

LEGAL TRAINING SEMINAR

10th - 12th December, 2001
British Colonial Hilton
Nassau, Bahamas

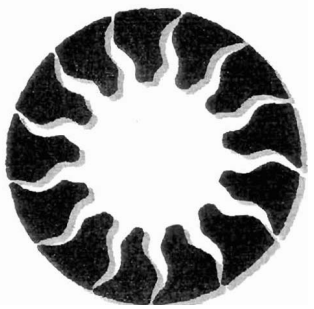
Co-Sponsored by

THE BAHAMAS BAR ASSOCIATION

(with the assistance of the Supreme Court)

and

THE BAHAMAS CHAMBER OF COMMERCE



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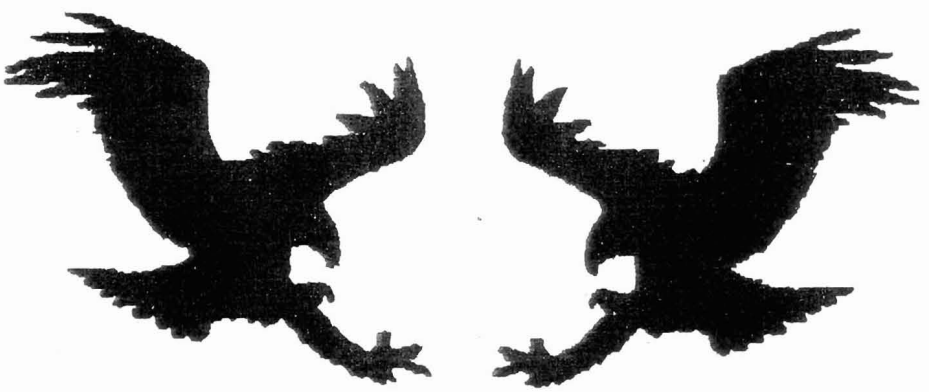
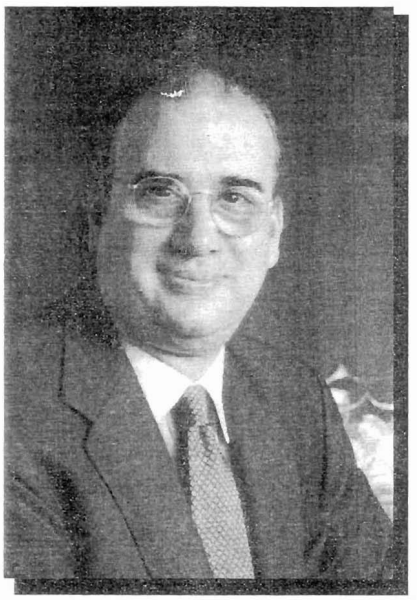


THE TURNING FOUNDATION LTD

Peter John Goulandris,
a graduate of Harvard University, serves as Special Advisor for Maritime Affairs to The Commonwealth of The Bahamas, Consul-Maritime Affairs, and in July of 1995 was appointed Deputy Chairman of the newly formed Bahamas Maritime Authority.

Mr. Goulandris also serves as a Member of The Council of the American Bureau of Shipping, Deputy Chairman of The London Steam-ship Owners' Mutual Insurance Association Limited, a Director of the Hellenic Mutual War Risks Insurance S.A. of Greece, and a Director of the International Tankers Owners Pollution Federation Limited (ITOPF), of which he served as Chairman for some 15 years.

Among other responsibilities, he is also non-executive Chairman of Josiah Wedgwood & Sons, Ltd. and Deputy Chairman of Waterford Wedgwood plc. Mr. Goulandris has lived and worked in The Bahamas for some 40 years.



Peter J. Goulandris

SUNSGLO

Center for the Study of the United Nations System and the Global Legal Order

Training for Legal and Judicial Reform, Respect for Human Rights and the Enhancement of Good Governance Across National Borders and Language Barriers.

SUNSGLO was founded in 1999 at the NOVA LAW CENTER, Fort Lauderdale, Florida, by Dr. Yassin El-Ayouty, a professor of law and a retired Principal Officer of the U.N., with the assistance of an international Board of Directors, which included His Excellency Ambassador Maurice E. Moore, former Permanent Representative of the Bahamas and to the U.N. At its founding, U.N. Secretary-General Mr. Kofi Annan hailed SUNSGLO, saying "At this crucial time in world affairs... the U.N. is your partner and looks forward to working with you."

SUNSGLO OFFICERS

Dr. Yassin El-Ayouty, Founder & Executive Director
Hon. Gregory W. Carman, President
Mr. Leonard H. Yablon, Vice President, Finance
Paula Jeld Sharf, Vice President, Administration
Mr. Carl E. Hanes, Jr. Secretary/Treasurer

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Vittoria Fariello, Cardozo School of Law
Mary Greenberg, St. Francis School of Law
Jeffrey Fisher, Esq.
Judge Aly Mokhtar, Eqypt

SUNSGLO has come to The Bahamas. It has come on the wings of collaboration with The Bahamas Supreme Court, The Bahamas Bar Association and The Bahamas Chamber of Commerce. This partnership, though for only three days (December 10th - 12th) will, undoubtedly, leave its indelible marks. These include: exchange of experience in well-selected fields of law and business; establishment of a SUNSGLO Regional Center for the Caribbean region in Nassau; and a happily anticipated on-going enrichment of the SUNSGLO experiences in its global mission in training in the rule of law.

This is the essence of positive globalization in a turbulent world where efforts aiding civil society have to involve a broad coalition of governments, international organizations, non-governmental organizations, and individual initiatives. Our program in Nassau richly reflects this broad coalition for both peace and progress anchored in the rule of law.

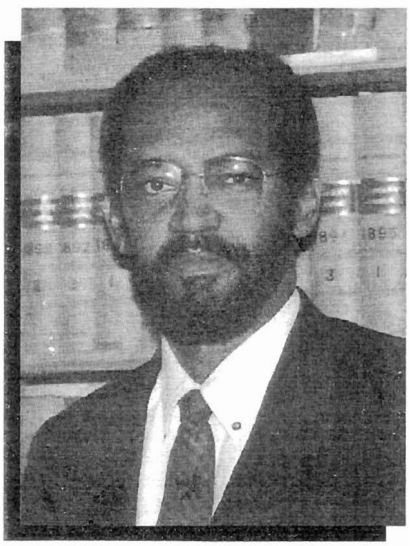
SUNSGLO is grateful for the energy and goodwill which have been generously invested by the government and people of The Bahamas, and by our cosponsors and collaborators which ensure the success of this program. We look forward to many returns to this historic capital, Nassau, The Bahamas.

Yassin El-Ayouty

Message from

Dr. Yassin El-Ayouty, Esq.

FOUNDER & EXECUTIVE DIRECTOR - SUNSGLO



Message from **Dr. Peter Maynard**

PRESIDENT, BAHAMAS BAR ASSOCIATION
PRESIDENT, ORGANIZATION OF COMMONWEALTH CARIBBEAN BAR ASSOCIATIONS

It is a pleasure to welcome you to SUNSGLO Seminar, I extend a warm Bahamian welcome to the participants and especially those who have come from overseas.

The topics are very valuable and timely. The speakers are of the highest calibre. I have no doubt that the Seminar will be a most rewarding experience.

I express my profound thanks to all the persons who have worked so hard to bring this project to fruition, including Dr. Yassin EL-Ayouty, Registrar Stephen Isaacs, Rachel Culmer, Jeanine Weech-Gomez, other Bar Council Members, Dwight Glinton, Thelma Deal, Annette McDonald, Zonica Wallace, the Speakers, hotel staff, and all other persons who helped in any way.

Yours faithfully,
Peter D. Maynard

Message from

Stephen Isaacs

REGISTRAR, SUPREME COURT

On behalf of the Judiciary, Registrars, Magistrates and all their support staff that liaise with lawyers and litigants alike, I wish to say welcome to all the international and local participants in this Legal Training Seminar, the brainchild of SUNSGLO.

I also wish to express my personal opinion that an event of this nature is timely and appropriate, not only because of the legal aspects to recent global events, but also because continuing education is an imperative for the legal profession generally. It is my wish that all the participants in the seminar take away with them relevant, valuable and current information in the various topics addressed; but perhaps even more importantly and certainly more lasting is the contact made between like minded men and women who have as a common goal of living in a safe and ordered global community.

Welcome one and all.

Stephen G. Isaacs

Message from

Raymond Winder

PRESIDENT,
BAHAMAS CHAMBER OF COMMERCE

As we approach a new year and reflect on the events of the past, our attention draws to the legislative changes that occurred; e.g. the new Banking Laws, the revised Employment Laws, the Inheritance Act 2001, Wills Act 2001 and the Administration of Estates Act. As we continue to explore the possibility of entering the Free Trade Agreement new legislation is bound to result from this endeavor. It is important that we realize as a people, and as a country, that the Bahamas is embarking upon a new era in terms of how we conduct business, particularly banking business. These changes will indeed affect the very quality of life that we will enjoy.

The Chamber of Commerce as the voice of the business community in the country, is mandated to make sure that its business partners gain the best understanding of the issues and concerns likely to result from new legislations, The Free Trade Areas of the Americans (FTAA) and the World Trade Organization (WTO) Agreements. Doing so not only increase our appreciation for the changes these issues impose on us, but it better equip us to legally negotiate, from a position of strength, our posture relative to issues like antimoney laundering and the likes.

It gives me great pleasure as President of the Chamber to be a part of this ever changing process and share in this collaboration with our legal profession "The Bahamas Bar Association. This effort provides the Chamber with yet another opportunity to assist in educating our business professionals and we are happy to be a part of this training seminar.

SEMINAR WORKING GROUP

Paula Held Sharf

Professional Experience
Jewish Board of Family and Children's Services, New York City, Director, Pride of Judea Division (July, 1997 - present)

Pride of Judea Mental Health Center, New York City, Chief Administrative Officer and CEO (April, 1980 - June, 1997)

Community Service
Center for the Study of the UN System and the Global Legal Order (SUNSGLO), New York City, Vice President for Administration, Executive Committee (February, 2000 - present)
Temple Emanuel, Great Neck, NY, Vice President (1979 - present), Executive Committee, Refurbishing Committee Chairperson (1994 - present), Public Relations Committee
Great Neck New York Board of Education, Vice President (1978 - 1981)
Great Neck Student Aid Fund
Great Neck Adult Education Advisory Committee
Great Neck United Community Fund, Executive Committee
American Jewish Committee, Executive Committee, Long Island, NY
Community Education Resource Center (CERC), Little Neck, Queens, Founder and Vice President
Queensboro Community College, Queens, NY, Business Advisory Committee
Honors
New York State Citizen Review Panel on Child Abuse and Maltreatment, Appointed by the New York State Senate (February, 2001 - present)
New York State Woman of Distinction (2000)
Distinguished Leadership Award, Pride of Judea (1996)
Woman of the Year, Pride of Judea (1987)
Woman of the Year, Little Neck/Douglaston Community, Queens, NY (1986)

Mrs. Rachel Culmer
Honorary Secretary,
Bahamas Bar Association

Mrs. Tanya Wright
In-House Counsel, Bank of The Bahamas
Member, Bahamas Chamber of Commerce

Mrs. thelma Deal
Administrator
Bahamas Bar Association

COMMITTEE MEMBERS

Mrs. Jeanine Weech-Gomez
BBA Council

Mr. Dwight Glinton, Attorney
Peter D. Maynard & Co.

Miss Annette McDonald
Bahamas Bar Association Secretary

Miss Zonica Wallace
Secretary to the Registrar

OFFICIAL OPENING CEREMONY

Master of Ceremony ..... Dr. Peter Maynard

SEATING OF DIGNITARIES

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National Anthem
Ms. Elizabeth Thompson, Legal Counsel
Financial Intelligence Unit

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Prayer
Rev. Gilbert Arthur Thompson
Suffragan Bishop, Anglican Diocese

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Welcome Remarks
Dr. Yassin El-Ayouty
Founder, Executive Director, SUNSGLO

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OFFICIAL OPENING
Senator The Hon. J. Henry Bostwick, Q.C.
President of the Senate

Vote of Thanks
Dr. Peter Maynard
President, Bahamas Bar Association
President, Organization of Commonwealth Caribbean Bar Associations (OCCBA)

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Reception
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SUNSGLO - TRAINING SESSIONS

Day 1 - 10th December, 2001

8 a.m. Registration

9 a.m. Official Opening & Reception

9:45-10:45 **Legal Negotiation**.....Dean Joseph Harbaugh,
Nova Law Center, Nova Southeastern University

11:00-12:30 **Litigation & Evidence.**.....Joel Spector, Esq.
Senior Partner, Spector & Feldman, Lecturer & Author

12:30- 2:30 **LUNCH (SPEAKER)**.....Bernard Turner, DPP
Topic: Human Rights with reference to the rights of Prisoners
(In Commemoration of UN Human Rights Day)

2:30 - 4:00 **Arbitration**.....Dr. Catherine Tinker
Professor of International Law & Administrative Law Judge, New York

Day 2 - 11th December, 2001

8 a.m. Registration/ Coffee Hour

9:00-10:30 **Anti-Money Laundering**.....Neil Getnick, Esq.
Managing Partner of Getnick & Getnick & President, International Association of Independent Private Sector Inspectors General

11:00-12:30 **Doing Deals - Workshop**.....Dean Joseph Harbaugh

12:30 - 2:30 **LUNCH (SPEAKER)**.....Hon. Gregory W. Carman,
Chief Judge, US Court of International Trade
Topic: World Trade Organization: Dispute Resolution Mechanism
Commentator: Mr. Peter Goulandris

2:30-4:00 **International Organized Crime**.....Neil Getnick, Esq.

SUNSGLO - TRAINING SESSIONS

Day 3 - 12th December, 2001

8 a.m.	Registration / Coffee Hour
9:00-10:30	**Court Administration:** **Calender Management** .....District Judge Fedrerick Block *Eastern District of New York*
11:00-12:30	**Product Liability:** **Assessment of Damages**.....Professor Paul R. Joseph *Associate Dean, Nova Law Center*
12:30 - 2:30	**LUNCH (SPEAKER)**.....Dr. Peter Maynard *President, Bahamas Bar Association* *Topic: Access to Justice*
	Presentations.....Dr. Yassin El-Ayouty *SUNSGLO Executive Director*

SUNSGLO - TRAINING SESSIONS

Training for Legal and Judicial Reform, Respect for Human Righs and the Enhancement of Good Governance Across National Borders and Language Barriers

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9 a.m. Official Opening & Reception

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Topic: World Trade Organization: Dispute Resolution Mechanism US Court of International Trade
Commentator - Mr. Peter Goulandris

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Day 3 - 12th December, 2001
8 a.m. Registration

9:00 - 10:30 Court Administration: Calendar Management . . . . . District Judge Frederick Block

11:00 - 12.30 Product Liability: Assessment of Damages . . . . . Professor Paul R. Joseph
Associate Dean, Nova Law Center

12:30 - 2:30 LUNCH (SPEAKER) . . . . . Dr. Peter Maynard
Topic: Access to Justice President, Bahamas Bar Association

Presentations

Dr. Yassin El-Ayouty - Sunsglo Executive Director

Access to Justice
By Dr. Peter D. Maynard

Outline
1. The need for reform
2. Bar clinic
3. Proposal to the Bahamas government
4. International Initiatives - OCCBA IT proposal and ILAC
5. Transformation 2002 – implementation of OCCBA model, financing, pro bono, association of clinics, database

Access to Justice: Some Views on Legal Aid in the Commonwealth Caribbean

By Dr. Peter D. Maynard[1]

Legal aid is perhaps the most important, practical expression to the principle of access to justice. Some countries of the world take this subject matter for granted; access to the courts and representation are provided as a matter of course. Many cannot take access or representation for granted. In this article, the topic of access to justice is discussed in a very practical way. Reference is made here primarily to the experience of The Bahamas, which is used as a case study. However, the ideas are of somewhat general application to other parts of the world, especially most of the common law countries in the Caribbean.[2]

The article is divided into the following parts: the need for reform, the bar association clinics, the proposal to the Bahamas government, international initiatives, and plans for transformation in the future.

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[1] This is the text of the address given at Sunsglo Legal Training Seminar, British Colonial Hilton, December 12th, 2001. Counsel and Attorney at Law, specializing in commercial law, company law, trusts, banking, and civil and criminal litigation. President of the Bahamas Bar Association, President of the Organization of Commonwealth Caribbean Bar Associations, Deputy Secretary General for the Caribbean of the International Bar Association, and National President of World Jurists Association. Admitted to practice law in 1979 in England, Wales and The Bahamas; and in 1986 in St. Lucia, St. Vincent and the Grenadines, Antigua and Barbuda and Trinidad and Tobago, in 1996, pro hac vice in the Turks and Caicos Islands. Education: McGill University (B.A., Hons.); Johns Hopkins University (M.A., Ph.D.); Cambridge University (LL.M.); Sorbonne (1966); Cornell University (1968). Member of the Hon. Society of Gray's Inn, London. Former posts: Legal Adviser, Bahamas Ministry of Foreign Affairs; Economics Affairs Officer, United Nations; and Acting Stipendiary and Circuit Magistrate. Contributing Editor, *Journal of Financial Crime, Journal of Money Laundering Control, Amicus Curiae, International Journal of Banking Regulation, Company Lawyer* and *Caribbean Law and Business.* PETER D. MAYNARD & CO., Chambers, Jehovah Jireh House, Bay & Deveaux Streets, P.O. Box N-1000, Nassau, Bahamas, telephone: (242) 325-5335, fax: (242) 325-5411, email:pmaynard@bahamas.net.bs Disclaimer: The views expressed here are personal views and do not necessarily represent the views of any organization with which the author is associated.

[2] See Appendix A prepared by John Epp and Derek O'Brien, in their paper "The Best System of Legal Aid and the Developments in England and the Cayman Islands" presented at Law Forum 2001: The 4th Conference of the Organization of Commonwealth Caribbean Bar Associations, Nassau, Bahamas, May 24, 2001.

1. Justice, not "Just us": the need for reform

a. Caribbean

Civil society today in Commonwealth Caribbean countries is largely characterized by poverty and unequal distribution of wealth and income. The poor cannot compete in a market for available goods and services, including professional services. They do not have the purchasing power. A more equitable structure needs to be created.

One could also address other causes of alienation from the justice system. In addition to the cost barrier, large segments of the poor are effectively deprived of entry to or use of the legal system because of psychological barriers, the trappings and formalities of the courts, the language used, the highly formalized procedures and proceedings. All these factors contribute to the intimidating face of the legal system.

The Rule of Law is fundamental to any democratic state; and when these barriers serve to alienate a large portion of the population, denying them access to justice in the form of representation, this not only offends the democratic aspirations of society but jeopardizes the Rule of Law in those societies. The legislators and lawyers who have established and who preserve this system must realize that it is crucial to its continuance that legal services be available for all sections of society. Legal aid programmes provide access to legal representation and advice for a fee related principally to the ability of the individual to pay and, where necessary, without cost at all.

In March 1972, Sir Allan Lewis, former Chief Justice of the West Indies Associated States, speaking at the Organization of Commonwealth Caribbean Bar Associations (OCCBA) meeting in Dominica, encouraged the Caribbean legal profession to promote urgently the development of legal aid facilities. He envisaged a programme of subsidized legal assistance where the poor could receive all manner of legal advice, representation, and assistance at rates related principally to the ability of each to pay and, where necessary, without cost at all.

The second meeting of the Ministries responsible for legal affairs of Caribbean Communities (CARICOM) Counties, held in July, 1981, in St. Lucia unanimously passed the following resolution by which the meeting:

"RECOGNIZED

I. The need to provide adequate access to the law for everyone in the region irrespective of his inability to provide for himself.
II. The important role being played in this respect by those Governments of member states, and private organizations engaged in the provision of Legal Services to disadvantaged persons.

AGREED TO RECOMMEND: -

(1) The governments of member states not already engaged in providing or assisting in the provision of such services consider the possibility of doing so;

(2) Steps to be taken to consider ways in which the provision of legal services to disadvantaged persons might be enhanced regionally."[3]

The spirit of the St. Lucia resolution in alive, but unfulfilled, in most of the Commonwealth Caribbean countries.

b. The World

The right to representation is set out very clearly in Art. 14(3)(d) of the International Covenant on Civil and Political Rights as follows:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

The Canadian Charter, a central document in their constitutional development, provides for the right to representation. They recognize how important this right is. When a man faces not only loss of his life but loss of his liberty, it is vital that he have representation if he so chooses. Now, he may choose to represent himself. But, he must have the choice. That is a feature of every modern society.

c. The Bahamas

On a visit to the Magistrates' Courts and the Supreme Court of the Bahamas almost any weekday, it is quite evident that, for economic reasons, an extremely large number of persons appear unrepresented before the courts, even though they are charged with the most serious offenses, have the most serious civil matters, or are unable adequately to express themselves or present their cases. The same scenario is repeated daily in many other countries of the Caribbean.

It is extremely disturbing to visit the courts and see so many persons who appear unrepresented, not by choice, but because they cannot afford representation, even though charged with the most serious offences involving the loss of their freedom.

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[3] I owe a debt of gratitude to Nancy Anderson, Executive Director, Legal Aid Council, Jamaica, and also to John Epp, Derek O'Brien, op.cit., and to Donald Saunders, for this quote and for other information. The errors are mine. The following additional articles, speeches and act are particularly noteworthy. "Legal Services for the poor in the Commonwealth Caribbean", Jamaica, 1987; "Legal Aid, Its full implications", WILJ, October 1977, 31; "Salaried Defenders and the Access to Justice Act 1999", 63 MLR 394; "Legal Aid Ontario", Law Forum 2001, Nassau, Bahamas, May 24th, 2001; "Legal Advice and Legal Aid Clinics", Jamaica, 1977;

Section 191 of the Criminal Procedure Code (Chapter 84) states, "In any case in which it appears to the Supreme Court that an accused person committed for trial has not money herewith to retain counsel (a) if the accused is charged with an offence for which the punishment is death, the court shall assign counsel for the defence at public expense; and (b) in any case, the court, in its discretion may assign counsel for the defence at public expense."

Frequently, defendants appear on their own although they desire but cannot afford the representation of lawyers. The present arrangements for court-appointed lawyers are much too restricted and limited.

The Supreme Court is encouraged to exercise more and more the discretion referred to in the second limb of section 191, and to require higher budgetary allocations for this purpose. If more and more resources are in fact requested and directed for this purpose, the legislature may have no choice but to respond to this real need by allocating higher levels of resources as a matter of course.

The legislation requires a court appointed lawyer only in capital offences and, even then, only at a late stage after the preliminary inquiry has taken place. Everything else is discretionary. That is much too restricted. Legal counsel and representation should be made available to poor people or people without adequate means, in criminal cases and also in civil cases.

The Court of Appeal gave a directive to require lawyers to be appointed for all offences carrying a fixed term of imprisonment, such as armed robbery and sexual offences.[4] But, this cannot be a permanent solution. This approach is undermined by sentencing guidelines, which remove fixed terms of imprisonment as the only sentencing option. Also, the legislature should make the necessary resources available not only for serious criminal cases, but also for civil cases; family and child support cases account for the largest volume of requests to the Bahamas Bar Association clinic. Moreover, in criminal cases, legal aid should be available from the time or arrest.

I should like to suggest that access to justice is in grave danger in this country today. I should also encourage you to do your part to remedy this situation as a matter of urgency.

What is at stake here in the very fundamental principle of access to justice. "Justice" should never be seen by any group as "just us". Access to justice should not be only for the privileged or the wealthy. Access to justice in the Bahamas has a price tag, and that destroys the very essence of justice. Remember justice is supposed to be blind and impartial, regardless of your economic means. Therefore, if we are serious, we should establish a modern legal aid system as a matter of critical importance. That imperative applies equally in many other countries of the Commonwealth Caribbean.

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[4] The Bahamas Court of Appeal issued the directive on 22 April, 1998, that thereafter all matters of a serious nature were to be defended by counsel, to be appointed by the Supreme Court Registrar. This was and since that time all such cases, encompassing all those with a mandatory minimum prison sentence have had defence counsel. Also, the Privy Council also endorsed that recently in the case of ***Marvin Murphy.***

A fundamental characteristic of any system of true justice is that there must be equal access, by all persons, irrespective of race, creed, religion, gender, or social or economic standing, to the courts and to competent representation. This creates a responsibility upon lawyers and all other citizens and participants in government and in the justice system, to make sure that principle becomes reality.

2. Bar clinics

Since 1997, the Bahamas Bar Association greatly increased the scope of its then existing legal aid clinic. The hours were extended to 9 a.m. to 5 p.m. for the full week. It was previously open until noon only. A publicity campaign was also undertaken. As a result, the clinic dealt with as many as 50 applications a week in the first months of renewal of the clinic.

Since then, the numbers have fluctuated; sometimes very heavy, and other times quite low. For the first five months of 2001, 31 persons applied to the Association for legal aid. Each person was assigned an attorney. It is a referral system. Service is not free, but is offered at a fraction of the market rate. Those lawyers who readily responded are to be congratulated on their willingness to render this type of service to the public ensuring that justice is given to all despite financial circumstances.

Discussions were held with the Eugene Dupuch Law School with a view to assisting them with their legal aid clinic and to expanding significantly the public's access to legal aid with their help. We have also assisted other outlying clinics such as that at the Roman Catholic Cathedral in Nassau, and are seeking premises for clinics in Freeport, and Eight Mile Rock, Grand Bahama.

The Bar Association has been the major provider of legal aid in this country to date. The legal aid clinic has done a lot of good for many people. We are aware of its imperfections. We shall continue to do the best we can to assist those in need. We shall expand our referral system and continue to improve the legal aid clinic.

We cooperate with the legal aid clinic of the Eugene Dupuch Law School. We have invested much energy in this project. We have gone so far as to offer to merge our legal aid clinic with that of the Law School to the benefit of the public and to our mutual benefit. I encourage the Law School to take full advantage of this offer, in order to improve its curriculum and training and the delivery of legal aid.

We have also encouraged lawyers to expand the level of their **pro bono** work. Typically, many senior lawyers carry a high proportion of cases at no or nominal charge.

The governments of England and Canada, which have both recently, experienced reforms in their legal aid system, both sought to obtain better value for money spent in their various systems. Further, both jurisdictions has chosen a mixed delivery model, and each determined that one measure to be implemented in attempting to achieve better value for

money was to reduces the level of influence exerted by the legal profession over the governance of the system. For example, in England's legal aid reform, the effects of the ***Access to Justice Act 1999*** represented a significant shift away from the judicare[4] model towards a mixed delivery model of legal aid. The crucial point is to obtain the right mix of delivery models.

The statistical data on the clinics and on government expenditure is limited. The bulk of the government's expenditure on legal aid is for capital offence cases, as section 191 CPC makes legal aid mandatory for capital offences (all else is discretionary).

Unfortunately, if we compare the Bahamas government's response to the continual growing need for legal aid, to other Caribbean jurisdictions such as the Cayman Islands, we would have to conclude that there is indeed a need to pay special attention to this issue and its importance to the Bahamian community.

In the Cayman Islands[5], with a population of about 34,000, the government provides the primary funding for Legal Aid. The expenditure for 2001 increased to $750,000 (US $900,000) from $560,000 (US $672,000) for 2000. In 1999 there was a total expenditure of $556,800 (US $668,160), in 1998 it was $429,700 (US $515,640), and for 1997, $424, 299 (US $509,159).

If we compare these figures to the Bahamas, with a population of about 300,000 people, we recognize that the Bahamas spends much less per capita on legal aid. The Bahamas' figures (representing total figure from the Office of the Attorney General and Ministry of Justice, the Judicial Department and the Court of Appeal) show that the Provisional Actual Expenditure for the period 1998-1999 was $290,593 and for the period 1999-2000, $319,824, compared to the Cayman's $515,640 and $668,160 respectively for the same period as indicated above.

The Approved Estimates for the period 2000-2001 were $475,000 and the Estimates for the period 2001-2002 is $475,000. In comparison, The Cayman's budget for 2000 was $672,000, and in 2001, the budget was increased to $900,000.

While the actual expenditure for the period between 1998/1999 and 1999/2000 showed an increase of over $320,000, one may nonetheless suggest that the Approved Estimates for the following years may not be adequate for the Bahamians continued growing need for legal assistance.[6]

A few organizations have come to grasp with the fact that the limited expenditure and access to legal aid in the Bahamas must be addressed. To date, three legal aid clinics are

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[4] In the judicare model of legal aid, the court will issue a certificate to a private attorney that guarantees payment in accordance with the legal aid tariff from the legal aid fund in return for providing advice or representation of the applicant.

[5] This information and data are found in the article/presentation by John Arnold Epp and Derek O'Brien, op. cit.

[6] I should like to acknowledge the helpful assistance of Donald Saunders in developing this data and information on government expenditure.

operational, though only in New Providence. There are legal clinics at the Eugene Dupuch Law School, St. Francis Xavier's Cathedral, and the Bahamas Bar Association and all have helped dozens of Bahamians with legal problems.

3. Proposal to the Bahamas government

In a proposal of March 7, 2001 the Bahamas Bar Association offered to conduct legal aid for the entire Bahamas on a budget of $1,018,000.00. There are highly developed systems of legal aid in Jamaica and Trinidad and Tobago. We also examined the arrangements in the UK and the Legal Services Act of Ontario, Canada.

A thorough review has been taken on behalf of both the Bahamas Bar Association (BBA) and the Organization of Commonwealth Caribbean Bar Associations (OCCBA) of the legal aid systems of Jamaica, and Trinidad and Tobago, and also of Ontario, Canada. The mandate was to draw out the best features of each system, as a basis for a proposal for early implementation by the Bahamas, and for an OCCBA model for the Caribbean.

The legislation of these countries was extensively researched and discussed at Law Forum 2001: the 4th OCCBA Conference, May 24, 2001, in Nassau Bahamas. After much study of the three Acts (Canada, Trinidad and Tobago, and Jamaica), the Legal Aid Act, 1997 of Jamaica was preferred.[5] A detailed study was also done of the cost effectiveness of each system. The proposal drew upon the experience of other countries to ensure that full value is obtained for money invested in the legal aid system.

a. Administration

It is the plan of the Bahamas Bar Association to administer the legal aid system throughout the Bahamas, incorporating the budget presently held by the Supreme Court. The Supreme Court is responsible for providing legal aid to persons charged with indictable offenses. During the fiscal year July 1999 to June 2000, the government funded legal aid to the sum of $284,000.00.

The plan included:

(1) Legal Aid Clinics (one in New Providence and one in Freeport) staffed by full-time salaried persons paid by the Legal Aid Organization funded by Government. A clinic was also envisaged for Eight Mile Rock, Grand Bahama. Also, there would be visits from time to time to other Family Islands, as resources permit.

(2) Certificate System – the legal aid applicant may take the authorized certificate to a lawyer of his choice who would in turn submit a bill to the Clinic. There would be Tariff Guidelines put in place, which would reflect the existing tariffs for capital offences.

We envisage a programme of subsidized legal assistance where the poor would receive

[5] The proposal was expanded in a letter of April 5, 2001to the Bahamas Attorney General. Up to the time of writing in December 2001, no written reply has been received.

all manner of legal advice, representation, and assistance at rates related principally to the ability of each to pay and where necessary, without cost at all.

b. Method of Recovery

Recipients of legal aid would probably have to repay some or all costs of their legal aid if they received money as a result of settlement or judgment.

c. Excepted Offences

Legal Aid would not be granted in respect of the following offences: money laundering and dangerous drugs. This is subject to change at a later stage.

d. Establishment

The establishment of the legal aid system would consist of:

(a) Legal Aid Council ("the Council")
(b) Duty Counsel and Duty Officers
(c) Executive Director
(d) Secretary
(e) Office Assistant/Manager

The Council shall consist of a retired judge, a lay person and the President of the Bar Association and such other persons as the Bar Council may appoint. The Executive Director shall act as secretary to the Council.

(1) Provide and administer legal aid in accordance with the related Act;
(2) Organize the establishment and operation of clinics;
(3) Keep under review the policies and laws relating of legal aid;
(4) Receive and administer
(5) Keep proper accounts and other records in relation to the business of the Council and have accounts audited annually.

e. Duty and Certificated Counsel

The Duty Counsel scheme provides for legal aid to person from the time of detention or arrest by the police at the police station, lock-up or correctional institution up to the first appearance in Court and bail application as duty counsel, an attorney may be called to attend and assist a person at a police station at anytime of day or night.

The importance of the services of a duty counsel at this critical first stage of the criminal justice process cannot be overemphasized. Prevention of abuses early on can stop most wrongful conviction from happening in the first place.

The Legal Aid Council shall establish a roster of duty counsel containing contact

information, to be posted in each court and each police station in the island.

A litigant shall complete an application for legal aid. The Executive Director shall conduct a means test to determine whether or to what extent the individual is able to pay for legal services. Upon approval the applicant is issued a certificate which was presented to the lawyer of his choice. The certificate counsel should present the completed certificate for payment.

f. Executive Director of Legal Aid

The Council should appoint and employ at such remuneration and on such terms and conditions as it thinks fit, an Executive Director of Legal Aid, a secretary, and such other offences, agents and employees as it thinks necessary for the proper performance of its functions.

The Executive Director should be responsible to Council for the day to day administration of the business of Council; and where the Executive Director is absent or unable to act and no acting appointment has been made by the Council, the Council may authorized an officer in its service to perform temporarily the functions of the Executive Director.

At present, the Bahamas Bar Association is in the process of developing a closer relationship with the Government in order to tackle the need for greater access to legal aid and clinic and is presently making recommendations to the Government on how it can further assist this issue. The Bar's aim is make legal aid a national issue which the Government would identify and treat as an important means of promoting and achieving "equal justice" in the Bahamas.

A comprehensive, modern, government-sponsored legal aid system is required. An important first step would be the support of the Legal Aid Clinic. It is not a new idea. Lawyers are presently available to staff such an Office.

4. International Initiatives - OCCBA IT proposal and ILAC

We are also involved in a number of important international initiatives.

a. Information Technology Proposal of OCCBA for Legal Aid Clinics

At a conclave of international bar leaders, hosted by the International Bar Association (IBA) in Sweden towards the end of 2000, it was concluded that a concrete and tangible project should be pursued regarding Africa and the Caribbean to provide information technology to assist bar associations and legal aid clinics in those regions. It would spread the name of the IBA, facilitate its contact with lawyers throughout the region and improve its image. This project has since been discussed and developed in the Organization of Commonwealth Caribbean Bar Associations (OCCBA), most recently at the Special Meeting of OCCBA in Trinidad and Tobago on September 8, 2001.

From a practical perspective, this project also isolates one region of the world, mainly the Caribbean, and the English-speaking countries within that region. But, there is no reason, if this project is successful, why it ought not to be extended to all of that region and to the rest of the world.

Those countries were selected because their bar associations constitute the Organization of Commonwealth Caribbean Bar Associations (OCCBA), which has actively promoted the use of IT, in particular the Internet, to connect the far flung region from Bermuda to Guyana, and from Nevis to Belize. OCCBA has also espoused access to justice and the establishment of legal aid clinics throughout the region. This project will no doubt strengthen these areas.

The bar associations of the following 17 countries make up OCCBA: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Bermuda, Belize, the British Virgin Islands, the Cayman Islands, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, and the Turks and Caicos Islands. The objective of this project is to link legal aid clinics and bar associations in those countries.

The project is very aptly entitled "Information Technology at the Service of Access to Justice in the Developing World: an IT Proposal by the Organization of Commonwealth Caribbean Bar Associations to improve legal aid clinics and bar associations." The components of the project consist of providing computer hardware, software, training and Internet web sites to each legal aid clinic and bar association. As expected, the level of development is uneven across the region. In all of the countries, there are bar associations. But, in some countries, there are no legal aid clinics at the moment, and indigent litigants depend upon lawyers and bar associations to provide pro bono representation.

It is envisaged that dynamic web pages will improve public awareness of and access to legal aid and bar associations. Lawyers will also be able to find judgments which will be collected and searchable on the web sites. The computer equipment and training will dramatically transform the administrative capacity of clinics and bar associations.

To the end of December 2001, the IBA had generously donated 5,000 pounds for the project. With the help of the IBA, other international donor agencies and foundations are being canvassed to make up the remaining resources to launch the project.[7]

b. The International Legal Assistance Consortium (ILAC)

ILAC is a consortium of NGOs, formed under the auspices of the International Bar Association (IBA), with experience in assisting with the rebuilding of justice systems following armed conflict that has come together to provide teams to make that initial

[7] The help of Hugh Stubbs and Dianna Kempe QC, IBA Assistant Treasurer and President respectively, is gratefully acknowledged.

assessment and then to follow through by helping to find individuals and entities that will take action on those aspects that require international assistance. OCCBA is compiling a database of jurists in the region available to assist in projects of this kind. It is expected that these jurists will be members of OCCBA, and sustain its programmes.

ILAC is committed to impartiality and respect for local legal traditions and culture. Wherever possible, ILAC works with the local government. ILAC is committed also to freedom from political interference.

ILAC recognises that circumstances for the rebuilding of the domestic justice system could scarcely be more challenging than those pertaining in Afghanistan. ILAC anticipates that the imperatives of providing effective assistance to the Judicial Commission will produce specific demands with regard to the experience, qualifications, linguistic abilities and nationality of those selected for the task.

Although a relatively new consortium, ILAC has recently (26 November – 1 December 2001) undertaken an exploratory mission to East Timor at the request of the United Nations. ILAC stands ready to respond to a call from the United Nations to be part of the assistance being provided to the Judicial Commission in Afghanistan and to other parts of the world.

5. Transformation 2002

Going forward, the focus is on the implementation of the above projects, and of an OCCBA legal aid model across the Caribbean. There are few differences in concept, and much support, among the regional jurisdictions that have introduced more modern legal aid.

It is expected that OCCBA's concerns will expand even further to make sustainable arrangements for the financing of cases, including test cases in human rights, constitutional law and other fields. In addition, pro bono work especially by senior lawyers is further encouraged. Ways of making pro bono services more readily available are to be further examined.

In addition, a task force of legal aid clinics is suggested. Such a committee, formed under the auspices of OCCBA (and which will in any event have their web pages in the common OCCBA web site by the above project), will strengthen and consolidate the advances that have been and will be made.

Legal aid is a vast area of opportunity for reform and improvement of the justice sector. It is often overlooked, yet could not be more important for democratic societies, nor more vital to the integrity of legal systems and the essence of the Rule of Law.

APPENDIX A

NAME OF COUNTRY (*written Constitution)	SUMMARY-LEGAL AID 1987	SUMMARY-LEGAL AID 2001	Population (date)	GDP/PER CAPITA	SPENDING ON LEGAL AID/AS % OF GDP	HOURLY AVE. PAID FOR PRIVATE CLIENT WORK
Antigua*	No established LA Scheme. LA only available in case of murder.	None. LA available in selected cases (awaiting details)	69,006 (1998)	US$175.7m (1999) /$2,745	Not known	
Bahamas*	LA for capital offences only. Proposal to establish LA clinic	s.191 CPC mandatory for capital offences. All else discretionary.	283,075 (1999)	$4.25bn (1998) /$14,492	Not known	
Barbados*	LACCA, Chap 139A provides for free legal representation for accused charged with serious criminal offence.	CLSA 1981. Covers criminal and civil matters	266,800 (1998)	(1999) $2.39 billion /$7,538 (1996)	US#500k (check if this is US of BDS?)	
Belize*	LA Centre. Legislation for LA in capital cases.	LAAA (pending) will cover both civil and criminal. Supreme Court can grant LA in capital cases. LA Center funded entirely by BA	243,390 (1999)	$6,73.5m (1999) /$2,772	$1,000 BZE for each capital case	
Bermuda (OT)		LAA 1980				
BVI (OT)	No LA services or legislation	Memorandum of Understanding between Govt. and Bar Association. Para 3 deals with scope of Memo.			$5,000 brief fee plus $300 refresher for trails on indictment.	

Cayman Islands (OT)	Poor Persons (Legal Proceedings) Law-limited	LAL 1999	33,200 (1996)	$700m /$23,000	CI$560,000	
Guyana* (need a copy of the constitution of Guyana)	No LA services. Provision for assigning counsel in capital cases.	S.22 CAA, CA may assign counsel on appeal. In HC, CJ can assign counsel in murder cases. Georgetown LA Clinic.			LA Clinic received grant of G.7.2 m through arrangement between Gov and USA	
Jamaica*	Three LA Clinics and LAA in criminal and civil matters.		2.57 m (1998)	$6.3bn /$2,468.3 (1998)		
Montserrat (OT)		No LA legislation, but LA available for charge of murder: appointed by AG and paid by Govt. 1 case in 98 and 1 in 99.				
St. Christopher and Nevis*	No LA services or legislation	No LA legislation (tho' anticipated). LA available for murder.	40,700 (1998)	$191,5m (1998) /$4,529	Not known	
St. Lucia*	No LA legislation	No LA legislation. *Pro bono.* Commitment to LA legislation.	147,000 (1996)	$569m /$3,866	None	
Trinidad and Tobago*	LAAA and LA Clinic	LAAA 1976 (amended 1999)	1.3m (1999)	$6.14 /$4,785	Not known	

Turks and Caicos (OT)	By s7 Court of Appeal Ordinance assignment of counsel for person on Appeal.	No LA legislation. LA only available in criminal matters and not in magistrates' court.			$500k	

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