

**Address by the Chief Justice of Barbados,
Hon. David A.C. Simmons K.A., B.C.H., to the
Association of Caribbean Commissioners of Police
4 December 2007**

Current Challenges of Crime and Security in the Caribbean

1. I wish to thank the Association of Caribbean Commissioners of Police (ACCP) for this invitation to share some thoughts with you on the challenges for the police and security agencies posed by contemporary crime in the Commonwealth Caribbean. I can speak only of the Commonwealth Caribbean because I am unfamiliar with the Dutch and French islands.

The Crime Problem

2. Many years ago, I lent a former Commissioner of Police, the late Aviston Prescod, a book "The Growth of Crime, The International Experience", by Professor Leon Radzinowicz and Joan King. The publication was 1979. The authors made this very pertinent observation of the international criminal scene at that time:

"The incidence of crime seems to be going up in all parts of the world, whatever the stage of development and among all segments of society; the previously law-abiding as well as the previously criminal. New forms of crime are emerging and old forms are assuming new dimensions."

3. The topic which you set for me is a vast, important and interesting one. There are challenges for us in this region in the very nature of some types of criminality which we are experiencing. I shall try to identify some of these new forms of crime. Equally however, I shall suggest some responses. Inherent in those responses are also challenges.

4. Organised international crime has reached the Commonwealth Caribbean. It has given rise to the new forms of criminality being experienced in our region. There is no doubt, in my mind, that these new forms of criminality are rooted in the proliferation of illegal narcotic drugs. The drug trade has spawned its own crime and conducted to the commission of other offences. For example, the systematic and organised traffic in illegal firearms and the rise in violent offences against the person and offences against property are directly linked to the illegal drug trade. I think especially of the spectre of wanton murder, kidnapping and burglaries which haunts some of our countries. In many of our countries, crime and the fear of crime are seriously undermining the quality of life of our people.

5. Having said that, I am conscious that, whereas some of our countries are reporting a reduction in the overall incidence of crime, the disturbing feature of criminal statistics is that drug crimes and crimes of violence are showing a relentless upward spiral. This disquieting phenomenon is contrary to our traditional values and culture. It has created social disequilibrium as it chips away at the social fabric of our countries, threatening our much-treasured peace, tranquillity and stability.

6. The crime problem in any society is not the product of any one single factor. There is no single explanation for crime. The best international criminological evidence still explains criminality on the basis of multi-factor theories. A miscellany of factors predispose to crime. However, I am satisfied from my own observations of Barbadian society in the past 37 years and from available research data, that the dominant emotions driving many of the crimes which we see today are greed and a desire for easy money. These emotions are at the heart of the drug trade.

7. I am also conscious that I am addressing a regional forum and my address should focus on the region rather than be too subjectively centred on

Barbados. But I am so frequently asked what is the secret to Barbados' relative success in controlling crime that you must pardon me if I share a few insights with you into what we have been doing. There may be some lessons to be learnt. A short excursion into history is required.

8. Between 1987 and 1993 the incidence of reported crime moved from 8 715 reported cases (1987) to 13 047 (1993). 1993 was our worst year for reported crime. Ever since then, there has been a steady decline in the incidence of reported crime. But there were some serious phenomena at work in Barbados particularly between 1991 and 1994. In those years we experienced the worst fiscal and economic recession in our history. It was a period of harsh structural adjustment of the economy, imposed, implemented and supervised under the authority of the International Monetary Fund (IMF). Structural adjustment carried with it grave social dislocation. Thus, the socio-economic profile in those years was one of no economic growth, extremely high rates of unemployment, the gradual disintegration of the social fabric and a decline in traditional social values. I think that all of this resulted in widespread indiscipline and poor socialisation among the youth. All the while, a supervening and expanding drug culture was threatening national development and gradually breaking down family and community structures.

9. From a high of 13 047 reported crimes in 1993, by 1995 that number had fallen to 10 541. At the end of 2006, it had been further reduced to 9 237. But the drug problem has not abated. In 2006 (January to October) the total number of cases brought involving cannabis was 524. For the equivalent period this year that number was 902. Cocaine showed a similar trend: 101 cases in 2006 (January to October); 173 in 2007 (January to October). Admittedly, these figures may indicate more efficient and effective intelligence leading to greater detection. But I suspect that the substantial increase in cases reflects both better intelligence and increased activity in illegal drugs. When the National Task Force on Crime Prevention studied the

criminal risk factors among prisoners in 1995/1996, it found that 52% of the prison population had been involved in illegal activities including illegal narcotics.

10. Some of the other findings of the Task Force were equally illuminating and may be of interest to you. Over 70% of male prisoners had no membership in any social organisation; 26% of them attended church in the two year period prior to incarceration; 79% left school un-certificated; 50% were unemployed at the time of conviction and 88% had previously been arrested or attracted the attention of the criminal justice system.

11. The importance of those findings lay in the fact that, for the first time in our history, it was possible to develop a profile of our criminals or, at least, identify the criminal risk factors at work in Barbados. I pause to underscore the value to police forces of evidence-based research to underpin police and governmental strategies in responding to crime. There must be continuous evaluation and analysis of behaviour to inform strategies against crime.

Responses

12. Since crime is the product of a variety of factors or influences, it is logical that the responses to crime must be multi-dimensional. In Barbados, we approached the problem on many fronts. As we all know, public response to crime is usually emotional. That is understandable. Discussion of crime is seldom dispassionate. It is difficult to persuade most people to examine and analyse statistical evidence. It is as though crime cannot be scientifically measured. People don't want to hear. Yet they will listen to statistics on almost any other social or economic matter. But not crime. However, for those charged with the responsibility of responding to crime and protecting our societies, the response must be rational and supported by evidence.

Effective responses require a mix of governmental policies and police strategies.

13. A study of the Barbados response over the last decade will reveal that the crime problem was under constant scientific study like any other social problem. Then there was an amalgam of economic and social policies introduced to target the economic and social criminal risk factors. Operationally, the law enforcement agencies were strengthened. In April 2001, during my tenure as Attorney General, the then government took the bold initiative in publishing a Green Paper on its proposals for crime reduction. I say it was a bold step because it was the first time in the history of Barbados that anti-crime strategies and policies were actually written down in permanent form for public information and discussion.

14. A word about the Green Paper. It drew upon the famous Lawrence Sherman Report in the U.S.A. (1997), a U.K. Home Office Report "Reducing Offending" (1998), and other international criminological research. It identified and explained 10 core strategies for reducing offending in Barbados. These were:

1. Early intervention among children and families at risk.
2. The development of informal social controls and the promotion of community cohesion.
3. Strengthening the resources of law enforcement agencies.
4. Diversification of police strategies.
5. Assisting the public in situational crime prevention through public education.
6. Increased direct intervention with drug users.
7. Modernisation of the justice and penal systems.
8. Promoting consistency in sentencing practice.
9. Reducing recidivism.

10. Continuing research, evaluation and analysis to inform strategies against crime.

15. I emphasise that the responses to the challenge of crime must always be rational and never "knee-jerk". Many popularly-held beliefs simply do not work; in fact, they have been shown *not to work*. The international evidence is compelling that only a limited number of initiatives or strategies actually *work* in reducing crime. That is why 10 core strategies were identified. Those 10 have been proven *to work*.

16. This morning I shall discuss 4 of those strategies which have been proven to work and I commend them to you all for your consideration. They are relevant to you as police officers.

(A) Strengthening Law Enforcement Agencies

17. The resources of law enforcement agencies must be strengthened in a variety of ways. The criminal elements are organised and sophisticated in their *modus operandi*. Law enforcement agencies cannot afford to lag behind. Technological resources must be state of the art; there must be adequate mechanical resources to facilitate swift response to crime. Having regard to the nature and modalities of the crime problem, marine sections of police forces must be strengthened; police accommodation must be improved. It is a personal view, but one which I have held for a long time, that criminals must have little respect for police officers who operate out of dilapidated, run-down stations! That may be a psychological matter but I hope that you get the point.

18. Clearly, the human resources of police forces must be maintained at an adequate level to ensure satisfactory coverage of our islands. And police officers must be remunerated at a level to ensure their retention and

minimise poaching or recruitment by foreign forces; and, of course, to make policing an attractive career. Training must be continuous and strategic.

19. While I am on the matter of human resources, I have to say that I am somewhat disconcerted by a trend which I am seeing in police forces across the region. There seems to be no stability at the highest levels of some forces. Commissioners are retiring and changing with disquieting rapidity. I have the impression that there is a lack of security of tenure. No Force can be expected to function optimally in an environment of constant disequilibrium. I do not know if this is a matter which you might profitably discuss at this forum. But I do know that a rapid turnover in leadership of police forces militates against internal stability, inhibits the development of consistent strategies and weakens management structures.

20. It seems to me, too, that in strengthening our law enforcement agencies to combat contemporary crime in the Commonwealth Caribbean, some of our traditions may require re-examination. Let me explain. The establishment of Defence forces in the region had their *raison d'être* in seeking to protect our islands from external attack by superpowers and as a bulwark against the threat and infiltration of communism. Having regard to the death of communism and the nature of today's threats, it seems to me that there is no longer any good and overwhelming reason to persist in a rigid separation of operational activities as between Defence Forces and Police Forces. The financial resources of most of our countries are limited and scarce. We must maximise the use of all security forces. In Barbados, we have reaped great results from the joint operations of Police and Defence Forces and I am in no doubt that this collaboration and operational cooperation have contributed to our relative success and stability. Legislative action and the creation of appropriate protocols may be necessary but action is necessary.

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21. Finally, on this matter, regional security agencies need to cooperate constantly. This involves a greater sharing of information and intelligence. I understand that, during Cricket World Cup 2007, a paradigm for such cooperation was actually put in place. The need now is to make it a permanent feature of regional policing. CSME is now a reality of Caribbean existence. That reality of oneness must also be seen to exist in matters pertaining to the security of our countries.

(B) Diversification of Police Strategies

22. I shall be brief on this. I merely say that police forces must not exist and operate outside of their communities. They must interact, meaningfully, with the communities. Community policing and problem-oriented policing are two contemporary police strategies being pursued with success in some countries outside of this region. Our Forces need to examine and evaluate their relevance to our societies as a means of diversifying strategies.

(C) Modernisation of the Justice System

23. Criminal justice systems across this region are bedevilled and "bogged down" by the problem of delay; delay in the time between arrest and final disposal of a case. Criminal justice should be swift, efficient and effective. My own view, after 47 years' association with the law, is that excessive delay in the criminal justice process is itself criminogenic. I need not dilate upon the consequences of delay for the administration of justice and the delivery of justice itself. As Commissioners of Police you are only too well aware of the injustice which occurs when key witnesses cannot be traced or are kidnapped or killed and a prosecution is thwarted. From the point of view of the criminal, his constitutional right to a fair trial within a reasonable time may well be triggered. So, excessive delay affects both sides.

24. I can tell you that all of the Chief Justices of the region are taking the matter of delay in the criminal justice system very seriously indeed. At our last meeting in July, we gave special attention to this phenomenon. We resolved to pursue various initiatives in our jurisdictions to reduce the incidence of delay. At the recent Retreat of the Barbados judiciary, we spent a whole day examining and analysing the problem in this jurisdiction. Ours was not a limited judicial discussion. We brought together all stakeholders – the police, the office of the Director of Public Prosecution, the magistrates, the legal profession and the judiciary. The Report with our conclusions will shortly be distributed to all participants. But I can give you a little glimpse into some of the recommendations.

25. *Inter alia*, we thought that meaningful progress could be made to alleviate the problem if -

- judicial officers were less generous in granting adjournments;
- preliminary inquiries were abolished;
- accused's statements were recorded electronically;
- case management techniques were introduced in criminal cases;
- police processes were restructured to cut out some of the hierarchical and bureaucratic procedures that inhere in police administration;
- prosecution services were professionalised;
- magisterial time were not taken up with other types of business, such as hearing liquor licence applications;
- more traffic cases were dealt with by a ticket system and use of a procedure that allowed pleading guilty by post.

26. I wish to reiterate something that I said at the Retreat. Delay occurs at every stage of the criminal justice process. No one institution, person or

department is to blame. All the players/stakeholders have to work cooperatively to tackle the problem.

(D) Consistency in Sentencing Practice

27. Sentencing is the most difficult aspect of judging. It is not a science. It is an art but because it involves the exercise of a discretion, there is always the possibility of getting a sentence wrong. The public's general perception of sentences is that they are too lenient. This perception has been shown in many studies to be misplaced. In 1998 *Hough and Roberts* examined public attitudes to sentencing. The public felt that sentencers were out of touch and were too lenient. However, when presented with examples from real cases, along with sentencing options, the interviewees themselves opted for sentences less lenient than those imposed in the actual cases. Last year in England, a popular newspaper published the photograph of 6 judges and called for their dismissal from office on the ground that they had imposed too lenient sentences. The Lord Chief Justice was forced to respond in the media to point out that the judges were acting within the law because the relevant legislation itself set light maximum penalties. The newspaper had not bothered to check the laws before condemning the judges unfairly.

28. But it is important to aim for *consistency in the approach to sentencing* because public confidence in the administration of justice must be maintained. Inconsistency in sentencing undermines public confidence in the administration of justice and is, in itself, a form of injustice.

29. There is evidence that a consistent approach to sentencing does have a positive effect on crime reduction. I have tried, since becoming Chief Justice, to deliver sentencing guideline judgments in appropriate cases. There were two reasons why I introduced sentencing guidelines. First, to promote consistency of approach by sentencers to similar cases. We are not

aiming at uniformity of sentence. That would be impossible. We are aiming at uniformity of approach. Secondly, to let offenders and the general public know what will happen if they are found guilty of particular offences. I see this as important both to maximise the deterrent effect of sentences and to ensure fairness of treatment between offenders of similar culpability, background, criminal record and circumstances generally.

30. Let me give you a few examples. One of my first guideline judgments was the case of ***Jerome Bovell v. R. (23 April 2002)***. I set out the range of penalties for offences committed under various sections of the ***Firearms Act 1998***, bearing in mind the principles under the ***Penal System Reform Act 1998***. So I said at para.[80]:

“The range of sentences for offences involving possession should be between 8 and 10 years. Where a firearm has been used, the range should be between 12 and 15 years. Armed robbery of a bank, commercial business or government agency such as a Post Office should attract a minimum sentence of 15 years.”

31. Then I went on to point out that a plea of guilty could be a strong mitigating factor and should be taken into account by way of a discount on the sentence. I also allowed for the possible imposition of a fine in an appropriate case but said that it should be substantial and payable within such short enough time “as would bring home to the offender the gravity of the offence and the efficacy of the criminal justice process.” There is no rigid formula.

32. I ended the judgment in these words at para.[84]:

“The guidelines in this case are designed to establish a sentencing pattern for firearm offences. They aim at setting the general tariff without unduly fettering individual judicial discretion.”

33. Commissioner Dottin told me sometime after that the ***Bovell*** guidelines were having a positive effect. And I can also say that, several times since 2002, appellants have withdrawn appeals or indicated that their sentences were within the guidelines and had little chance of success.

34. On 10 March 2006, I issued guidelines for drug convictions in the High Court – see ***Walter Prescod v. R.*** These are at para.[22]:

- (i) In a contested case of importation of 100 lbs or less of cannabis, the starting point for a sentence should be 10 years.
- (ii) Where in contested case the quantity of cannabis imported exceeds 100 lbs, the starting point should be 12 years with increases reflecting the weight of the drugs.
- (iii) For trafficking in amounts not exceeding 100 lbs, the starting point should be 10 years. Larger amounts will attract sentences starting at 12 years.

35. Provision was made for an early guilty plea and differences in sentence where the convicted persons played different roles. The judgment also set out the factors which might aggravate or mitigate the sentence.

36. As a sidewind to the general discussion this morning but particularly germane to the specific problem of illegal drugs, I took the opportunity in ***Walter Prescod*** to argue against the popular police and media practice of ascribing a street value to drug seizures. This is what I wrote at paras.[19] and [20]:

“We are aware that, in announcements of drug seizures, the media often ascribe a street value to the

seizures. This Court is of opinion, however, that our courts should pay greater regard to the weight of drugs than to the nebulous and elastic estimate of street value. There are difficulties about valuing drugs according to an estimate of money likely to be realized from sales. In the first place, the law requires that there be 'evidence' of street value. We interpret that word to mean 'sworn evidence' and not an out-of-court statement of a police officer. Before a court can apply the concept in sentencing, evidence should be led from the witness stand. This was an approach that was commonly used in England and, as can be imagined, it gave rise to much conflicting expert evidence. – see, for example, ***Salim Hafiz Patel v. R. (1987) 9 Cr.App.R. (S) 319*** and ***Jose de Jesus Aranguren et al (1994) 16 Cr.App.R. (S) 211***.

Secondly, it should be remembered that narcotic drugs are an illegal commodity and as ***Lord Taylor CJ*** said in ***Jose de Jesus Aranguren et al*** at p.214

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“prices are not overtly established and anecdotal evidence obtained from witnesses by the police may not be frank. Indeed, dealers may claim to sell drugs at very low prices to reduce the court’s assessment of “benefit” liable to confiscation.”

In his discussion of street value ***Lord Taylor*** pointed out that prices may vary with quantities and “since the drugs are addictive, users may be willing to pay large sums particularly if the drug is in short supply at any particular time or place”. Thirdly, the economic laws of supply and demand are clearly very pertinent in this discussion. When drugs are readily available, the price to the consumer drops so that the street value will fluctuate according to the supply of and demand for the drugs at a particular date – per ***Watkins LJ*** in ***Salim Patel*** at p.321. For those reasons we prefer the criterion of weight to that of street value.”

37. And for the sake of completeness, I indicated that our courts must not consider themselves bound by sentences passed for drug crimes in jurisdictions outside this region. We have special problems associated with our size and human resources. At para.[21] I said:

“Our second general comment relates to the use of sentences from other jurisdictions as precedents. We do not believe that in this area of social control the sentences of courts in jurisdictions outside of the Caribbean region are particularly helpful in fixing the range of sentences applicable to drug offences. Barbados is a small society whose human resources, as is frequently said, are its most important asset. Given the capability of illicit narcotic drugs to damage social capital, the courts, as agencies of law enforcement, must do all in their power to assist in the protection of those resources. Judicial attitudes in countries where drugs are classified and where official policy may turn a blind eye to possession of small quantities of drugs, are not necessarily applicable to sentencing in our societies and our courts.”

38. In *road traffic* matters, only last week, a High Court judge imposed a 5 year sentence on a person who had caused death by dangerous driving. It made the front page of our leading newspaper and attracted a favourable editorial. The judge applied the guidelines in ***Howard v. R. (16 January 2004)***, in particular guideline (5) para.[22]:

“In cases of highest culpability, those involving the presence of 3 or more of the aggravating factors listed [at para.12], the starting point should be 5 years. Those aggravating factors (which were present in the case) include presence of high levels of alcohol, excessive speed and a prolonged course of bad driving.”

There you see the consistency of judicial approach to sentencing that is required.

Conclusion

39. No doubt as I was discussing some of the responses to the challenge of crime, you were saying that money was required to carry out some of the strategies and our countries are poor. It would not be unreasonable to think that the greatest impediment in responding to the current challenge of crime in the region is finance. Those are reasonable thoughts but the inescapable fact is that the police cannot effectively control crime without adequate resources. Crime is having such an all-pervasive negative effect throughout this region that resources have to be found. It is the number one concern in many countries.

40. Governments therefore have the overriding duty to deal with it seriously and as a priority in the interests of their citizens and, indeed, our several overseas visitors on whom many of our countries are economically dependent. It is not for me to presume to advise governments. But we have used novel ways in Barbados to secure resources to deal with the crime problem. Commissioner Dottin might explain to you how the mechanism of "Suppliers' Credit" works. We used it to the great advantage of our security forces in 2000.

41. I thank you for the privilege of this occasion and I trust that I may have said something that might resonate with you during your conference.
