

**Presentation at Seminar for Judges of the
Court of Appeal and the Supreme Court
Braco Village Resort 19th - 21st March 1999**

The Image and Role of the Judiciary

Constitutionally the Judiciary represents the third arm of Government, the other two being the Parliament and the Executive. It is the arm most looked to by the people for probity, for balance and for erudition. It is in this context that within the minds of the people an image is developed of the Judiciary and its role subjected to microscopic scrutiny.

For whilst the people are afforded the periodic opportunity of determining who shall constitute the Parliament of the land, and the Executive as servants of the people are openly subjected to public scrutiny and debate in terms of how they perform their functions, the Judiciary remains a sort of icon above the public fray representing wisdom and balance in the determination of the disputes between citizen and citizen and between citizen and the State.

The public expectation therefore, in respect to how the Judges perform their functions is of the highest, and our individual personal conduct in respect of public as well as private behaviour whether we are aware of it or not is constantly under the microscope.

When we speak of fitness or unfitness for judicial office it is not only the intellectual capacity of the Judge that is under assessment but also the moral fabric in terms of public and private behaviour that is the subject of that public testing.

In our own dispensation we are bound by well established criteria in terms of the determination of guilt that is, beyond reasonable doubt or in terms of civil liability that is, on a balance of probabilities. The judgment of us by the public rests not on such sophisticated reading of the scales but rather on a public instinct of whether what the judge has done in a public or a private capacity is right or wrong. Do not ask the public

to define right or wrong. It is for them, one of these indefinable imponderables in the realm of instinct. As someone is alleged once to have said "I may not be able to define obscenity, but I know it when I see it." It is that sort of judgment that is brought to bear in that definitive exercise.

We are as judges constantly under public judgment. What is more, as unfair as it may seem a slippage by one of us taints all of us. We are publicly weighed together in one scale. As one of us falters the public comment is - "you see dem judge deh!"

Our role is to do justice to all manner of persons without preference or bias and without prejudice or illwill. All manner of persons encompasses rich and poor and in between, black and white and all the shadings of our rainbow population, the well dressed and the ragged, the intellectual and the unlearned. Our position must not be used or appear to be used as an instrument of oppression.

Mandatory qualities required are patience, sensitivity, civility, a good listening ear, erudition and compassion.

The public sees Judges as people of power and authority, and the Court House to most people as a strange and unaccustomed place with a judge bewigged in the panoply of power and awesome in his or her importance.

In this context we need all of us:

- 1) to learn to put people at ease;
- 2) to deaccentuate the appearance and indeed the reality of our power;
- 3) to impose sentence when we have to and indeed particularly the harsher kinds of sentence when the circumstances demand with a sense of sadness (even if we do not expose it) rather than gloating.

You will see from that that I am not a disciple of the Judge Dread School.

Judges in my view cannot afford the luxury of exposing anger, tempting as it may be in the many irritating situations that emerge as we perform our judicial functions. I do not recommend or endorse the berating of jurors however exasperating their decisions may be. If there is reliable information during the trial that they have been tampered with, you dismiss them and restart the trial with a new panel. There is room for a carefully crafted comment as to the strangeness of the verdict, but always in my view to be followed by an acknowledgment that, as was stressed in the summing-up, the law is for the judge but the determination of the facts is the prerogative of the jury. For me there is something distasteful in the chastisement of a jury because of the Judge's dissatisfaction with a verdict. There are other ways of ensuring without public fanfare that the particular jurors are not called on for some period to serve. In this way the integrity of the system is better ensured.

R. Carl Rattray, O.J.
President
Court of Appeal