

JUDICIAL TECHNIQUES TO ENHANCE EFFICIENCY
IN THE DELIVERY OF JUSTICE IN THE MAGISTRATES' COURT

“Chaos in the world brings uneasiness but it allows the opportunity for creativity and growth.”

Tom Barrett, US Politician.

I have always held the view that there is but one technique to enhancing efficiency in the delivery of justice in the Magistrate’s Court, or any court for that matter – organization. Sounds simple, maybe trivial but its proven true. In a Court setting when we speak of efficiency we’re actually referring to an improved access to justice intended to increase the public’s confidence in the justice system. It involves simplifying and shortening procedures, and legal proceedings, reducing case backlog, improving statistical reporting and increasing transparency, while maintaining the rule of law and justice for all.

It seems today that whenever an issue of efficiency arises the only solution proffered is technology. I agree that we are living in the technology age and its incorporation will have a far reaching, perhaps limitless impact on the Courts. Consider an e-court complete with case management software, PCs with LCD monitors, video conferencing, audio and video recording, multi-media presentation of evidence, electronic document and exhibit handling all integrated into a centrally controlled network with a shared database of judgments and research material. All high on my wish list but from where I stand I cannot imagine all of our courts being retrofitted tomorrow. In fact, many of my own court buildings do not have electricity moreover internet access and a computer for that matter. So while the courts face increased demands and fewer resources can I say to my staff and to court users that until such time as we are able to afford these necessary enhancements, our courts will remain inefficient. That’s impractical and unacceptable by any standard. I propose that what we urgently need is a fresh look at the design of the Court procedures to create a more user friendly Court, one which encourages court users to participate in service delivery. This strategy goes beyond the purchase of technology enhancing systems or hiring more staff. It demands fundamental changes not only to court processes but also to the mindset of court personnel, including Magistrates, how they view their own responsibilities and court users. In the OECS the ECSC embarked on an overall reform process.

The need to improve court efficiency has always been at the forefront. The Magistrate's Court are however miles behind the High Court and are struggling to play catch up amidst the financial crisis but consider St. Vincent and the Grenadines – no backlog of appeal matters, no backlog in the Coroner's Court, a negligible backlog in the outer districts and a steadily increasing backlog in the Kingstown district mainly because it has been without a second magistrate for about eight months. Not bad right, especially since our results have been accomplished with very limited use of our JEMS case management software, old, slow and outdated computers, no new rules affecting procedure, no significant raise in our budget over the past five years and increase of one staff member. Allow me therefore to introduce you to efficiency on a budget – maximum impact with minimum cost.

My first day as a magistrate with my noisy almost uncontrollable courtroom, my many new arrests and my trial list of forty matters was most instructive. Chaos reigned and I felt there was an obvious and chronic failure of the system to serve any of the persons present that day. It seemed to me to be crying out for intelligent case management. So I began a process as I had seen work as a Registrar in the OECS High Courts – a judicially lead initiative designed to more effectively manage matters – the streamlining of the untamed processes to reduce cycle time and improve workflow and worker productivity. Each proposed change was discussed with the group of staff affected. I considered their feedback, revamping and revising when necessary. These ongoing changes demand that the Magistrate take and maintain control of the court and the users, using well trained staff to help maintain this control while empowering the users themselves to self help.

Because of time constraints I will confine myself to the Criminal Court – the Serious Offences Court in particular.

MAINTAINING CONTROL OVER COURT AND USERS

ORIENTATION:

The ECSC as part of the New Criminal Procedure rules introduced the concept of orientation for defendants. In St. Vincent and the Grenadines where the Rules are not yet in force we began with

an orientation document read to all new defendants. We went into the prisons and did orientation sessions there. Subsequently we progressed to our own video using the ECSC's as a template. It is now shown repeatedly in the holding cell daily. There is also a specially trained clerk who is available to fill the orientation questionnaire, answer any questions, hand out brochures and explain procedures in simple language. We realized that the orientation was having a positive impact on defendants, they asked more questions about their rights, were respectful to the court and could explain what they needed for eg legal counsel, medical assistance or help reporting alleged incidents of police brutality without fear. They became less aggressive and more cooperative. Consequently, the Court became quieter and more manageable. It seemed sensible to us therefore to extend our orientation to virtual complainants, but we had no physical facility for this. We therefore prepared another brochure and again the staff member stood ready and waiting to answer any questions. These brochures are printed free of cost by the National Printery. Then there's the orientation for the Coroner's jury. A simple document read to the jury, a question and answer segment and amazingly you now have a competent and confident jury.

SCHEDULING:

If the defendant pleads not guilty, the New Criminal Procedure Rules prescribe that you do a scheduling order. But without the rules what's precluding any Magistrate from making an order which would assist both parties and ensure justice in a timely manner. Absolutely nothing. So a scheduling order is made it gives timelines for disclosure, defence notices, pretrial hearing or omnibus conference and a trial date. Therefore last minute applications for adjournment are not tolerated as they result in gaps in court time that could be reallocated to other cases. I am still fighting with this issue. Surprisingly, however, most Attorneys come to the Serious Offences Court prepared, it is the prosecution who often asks for the adjournments.

We also keep a running list referred to as the master list. I am able to look quickly at it and see my entire schedule. My efficient clerk updates it frequently and I am aware that if I had a computer in the courtroom, JEMS would give me this information at the touch of a button. I try as much as possible to list no more than three trials or PI matters per day. This is because I am not listing to adjourn I am listing to bring to final disposition. The Court users appreciate this.

We need to maximize the time we spend on meaningful events, partly by reducing the number of appearances per case and limiting the time spent giving adjournments or dealing with administrative matters in court.

Therefore, when the scheduling orders are not complied with I am not afraid to strike out and I will lay blame exactly where it belongs. My decision to strike out must always be well considered and measured against the need for overall fairness and the Chief Justice's guidelines.

PRETRIAL OR PREHEARING ACTIVITIES:

Does anyone know of any law which precludes a Magistrate or a judge from asking the prosecution and the defence lawyer to get together, agree on exhibits, mark them and at the beginning of trial submit a list of all exhibits, indicating those which would be objected to. I could find none. So in the really heavy cases eg money laundering, or fraud matters I ask them to do this and they comply. It saves so much time. St. Vincent and the Grenadines has also introduced electronic interview of defendants charged with serious crimes. It's in its early stages yet, so some are unnecessarily lengthy. For PI's only I ask that prior to the court date counsel for the defence and the prosecution agree on the parts I need to see – saving valuable time and energy. I stress that a PI is not a trial.

TRIAL:

All our notes are still handwritten and my left hand is human. I have therefore devised a small solution. I no longer take oral submissions. I give a scheduling order for the filing of written submissions and the delivery of decision. At first they complained but now they are happy to do them as they realized it limits the time they spend within the confines of a courtroom. It also allows them to focus their arguments and limit repetition.

PAPER COMMITTALS:

I have been doing paper committals and encouraging prosecutor and counsel to avail themselves of this procedure. Why does the sufficiency hearing have to be done by a judge, would it create efficiency problems later on. Let me have your view.

CALL OVER:

Special problem with drug matters and having the substance tested in SVG or Barbados. All are adjourned to one particular date when they are called up. If tested they're given a trial date if not adjourned to the next call over date three months hence. Matters are allowed no more than two listings for call over except in very rare circumstances. It works.

PROSECUTORS:

The Court also noticed that the prosecutor's time was not being used effectively, as there was effort being invested by multiple officers in the police force to review the same files and so the files were being delayed in what we refer to as the channel. Most times on the trial date the prosecutor would be seeing that file for the first time or the file was simply not in his possession, hence his application for an adjournment.

I am pleased to state that St. Vincent and the Grenadines is at present undertaking the creation of a National Prosecution Service where all the police prosecutors and prosecutors from the DPP's Chambers would be housed under one roof and under the management of the DPP. A trained police prosecutor would be assigned to each Magistrate. Prosecutors would now have ownership of a file from start to finish, be responsible and accountable and be guided by the DPP. Could you imagine the efficiency of such a streamlined service once it is properly managed.

PRISONERS:

How many of us can attest to the problem of prisoners being brought to court late. This is yet another issue having a direct impact on how efficient our courts could be. It demands our full attention. The DPP drew to my attention recently an article in the Barbados newspaper where the judiciary had expressed their dissatisfaction with the same issue here. I would be grateful for some assistance in this regard.

STAFF HELPING TO MAINTAIN CONTROL**GIVING OWNERSHIP:**

Unlike the High Court, the Magistrate's Court staff have always been trained to assist prose litigants to navigate the court process.

Why not expand this – devolve many of the tasks ordinarily associated with the Magistrate to senior officers thereby giving them ownership for each area of the process. To that end there is a Senior Bailiff – responsibility for bailiffs and efficient service of court documents, a Senior Court Clerk an upgraded old post who is also the Chief Magistrate’s Clerk with responsibility for the training of the court clerks and a Case Manager (only new post). It was amazing to see how quickly these senior persons accepted their roles as trainers and compliance officers. Further streamlining was done where each typist (3) who were given responsibility for a particular district which in effect translates to a particular magistrate. This was really to ensure that there was someone managing the appeals and they were not left simply to the magistrate’s whim. The typists are given a two month timeline by which the record including the Magistrate’s reasons are to be completed or the matter is to be reported to the Chief Magistrate for action.

USERS HELPING THEMSELVES

MEDIATION:

Can anyone tell me whether we need a practice direction, rules or legislation to use ADR in the Magistrate’s Court? Why haven’t we availed ourselves of this resource. Why hasn’t mediation been extended in a meaningful and real way the Magistrate’s Court where in my humble estimation it can be of incredible value.

COUNSELLING:

The Family Court has on staff its own counselors who are available for use by the other Magistrates Courts. Many simple civil matters could be settled with a little counseling. Why don’t we use this avenue more.

COMMUNITY SERVICE:

What about adult literacy programs or in service training within the business community – but maintain control. To that end we prepared a report form which is served on the business place, person or organization with the court order. That form and defendant are returned to the court on the date stated in the order. That way we are able to evaluate performance and make a final order after consideration. I must tell you that we have no specific legislation allowing for community

service we may well be overstepping our jurisdiction but it is an alternative sentence which has yielded such positive results that the SVG courts (High Court included) continue to make the orders. How many of the jurisdictions present here actually have a proper legislated, regulated, community service regime. Not many I'm sure.

CONCLUSION

Some may say that perhaps SVG is in a unique position. It has specialized courts eg the Serious Offences Court where most defendants are legally represented and able to assist the system and comply. The Chief Magistrate was High Court trained during the period of that courts evolution under the New Civil Procedure rules and the introduction of case management and mediation. The Court staff is loyal and hard working, dedicated to the process, malleable and easily trained – therefore willing to accept their role in the case management process, making it an ordinary everyday occurrence. A DPP's chambers that recognizes the benefits of case management and the need for case management within their own organization. Magistrates who are young enough in the system not to be jaded by inefficiencies, and silently accepting of same but mature enough to embrace change and make the best use of what we do have – our human resource. A Chief Justice who is progressive and inclusive, who recognizes the limitations of each individual jurisdiction but none the less provides for them all whether through bailiff training for example or the introduction of technology – such as JEMS and the video conferencing capability. Whatever you may think the secret to our growth is know that I told you fifteen minutes ago, its organization – for the courts we call it case management.

Thank You!