



Title of Session: Equality for all in the Administration of Justice: Lessons for Enhancing Judicial Integrity

Session Panellists

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Ms. Tracy Robinson - Lecturer in the Faculty of Law at the University of the West Indies, Mona, Jamaica

Mr. Westmin James - Lecturer in the Faculty of Law at the University of the West Indies, Cavehill, Barbados

Objectives of Session:

The objectives of the session are:

1. To increase the level of awareness of judicial integrity as an independent norm and to discuss the many respects in which its subjective and objective elements can arise in the administration of justice; and
2. To strengthen the understanding of the legal concept of equality and its relationship to judicial integrity

Key points from presentations:

Ms. Tracy Robinson

1. Tracy Robinson asked the question, ‘What, if any, issues related to judicial integrity and equality does Prince Buster’s “Judge Dread” 1967 raise?’ (*Song clip played*). In response the audience mentioned:
 - a. Stereotyping – references of “black boy” “male and female” – gender and racial stereotyping raises equality
 - b. No opportunity to be heard – raises issues of integrity
 - c. Equal fairness

Dr. Jewel Amoah– Bangalore Principles

1. Elements related to judicial integrity and equality (Bangalore Principles 2002)

Focuses on two of the Bangalore principles namely:

a. Judicial Integrity

Principle – integrity is essential to the proper discharge of judicial office

Application – a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

b. Equality

Principle – ensuring equality of treatment of all before the courts is essential to the due performance of the judicial office.

Application – a judge shall not in the performance of judicial duties by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

Dr. Celia Blake - Language and Access of Justice

- 1. A clip from the film Black and White based on the Max Stuart case - Stuart v. R 1959 HCA 27 (citation for judgment on application for leave to appeal from South Australia Court of Criminal Appeal) was shown.**

The policy regarding the provision of interpreters in St. Lucia

“Say for example you want to interview a doctor and the client is French. You would need a translator, you would need to get an independent translator which would be sanctioned by both parties, by both the defence and prosecution. If it is just a simple case of say, for example, a Creole speaker, the clerk of the courts would interpret.” S Evans, Language Rights and Legal Wrongs, Sargasso (2012-59)

Bilinguals under-estimate the language plight faced by vernacular-dominant speakers

Case Study: R v. Kirk Williams (Jamaica) Info 454/12; appealed as Williams v. R [2013] JMCA 51. Case based on the language related defence: ambiguity regarding

the word “iPad” in Jamaican; accused denying he had seen an iPad. Confusion surrounding “Ipad” in this case due to the pronunciation by Jamaicans of the English word “Ipad”/ “Ipod” sounding similarly.

2. Enhancing fairness for vernacular dominant speakers: Some proposals from Caribbean judicial officers (Caribbean Judicial Dialogue, Trinidad and Tobago, 2017)
 - a. For Creole speaking defendants – have the criminal case file and in so far as possible read to the Defendant in Creole.
 - b. Confirm with the court user that he/she does not understand English and in this case an interpreter should be arranged and available.
 - c. Speak the language they understand.
 - d. Finding tactful ways of ascertaining language status
 - e. Introduce as part of case management proceedings, a direction for parties to alert the court in advance of any difficulty (of witnesses & clients) with communication in Standard English (speaking/reading). Where necessary ensure a translator is present.

Mr. Westmin James

1. Judicial Integrity as an independent norm:

What the Caribbean judges are saying is that there are objective and subjective elements to judicial integrity which includes norms on what should be allowed and what should not be allowed.

In Freeport, judges’ salaries were being paid by the Port Authority. Lyons J in Bahamian Outdoor Adventurer Tours Ltd. V. R BS 2000 SC 13 said this was “with the consequential risk of damage to the integrity of the justice system in the Bahamas” (this case went to the integrity of the entire justice system if the court is paying the judges).

2. Judicial bias is the antithesis of judicial integrity - Parris v. Barbados Advocate Publishers (2000) Incorporated, Griffith (t/a Barbados Labour Party) and Nation Publishing Company Ltd BB2013 HC 45, Kentish J (this case was a challenge by

- the lawyer that the judge should recuse themselves because the judge was sued by a client of the lawyer in a personal capacity and otherwise. The Court said that the test for determining apparent bias is clear. The court was attaching judicial integrity to the aspect of bias)
3. Judicial integrity ensures public trust – Kokoram J in Panday et Al v. Espinet and Director of Public Prosecution TT 2009 HC 260.

All Panelists

1. Subjective judicial integrity (professional character) – “personal or subjective judicial accountability, that quality that enables her or him to recognize the ‘right’ thing to do in her or his decision and the predisposition to do that right thing.” (Pimental)
2. When judges fail to exercise personal integrity, it leaves other branches of government or public to intervene.
3. Objective judicial integrity (Rules of the office) – objective integrity demands good rules and processes for the appointment of judges.
4. Great rules of appointing judges – judges who lack judicial integrity are unreachable. Very robust rules necessary for who you appoint as a judge. There is very little power to do anything in the discipline of a judge other than instituting proceedings for their removal.
5. Judicial integrity connected to the Rule of law (legal framework) and democratic legitimacy (factual context)
 - a. Rule of law (legal framework)
 - b. Democratic legitimacy (factual context)
6. Without trust there is no legitimacy.

Three examples of judicial integrity –

 - a. Subjective and Objective Judicial Integrity Lord Hoffman, Amnesty International and the Pinochet Case – House of Lords finds a failure of subjective judicial integrity (1999)

- b. Trust and Judicial Integrity – trust is characterized by asymmetry because the fair-minded observer does not know the true motives of the judge and many are unable to check the legal correctness of the decision.
 - c. A person who speaks proper English is more likely to receive favourable treatment than a person who speaks with a heavy dialect
 - Public 66.6%
 - Staff 44.9%
 - Attorneys 60.3%
 - Judicial Officers 40.9%
 - d. Are noisy courts, wiling to show disagreement, harmful or helpful to judicial integrity in the Caribbean? – a ‘noise is a signal of a more open process and a court making the most of its capabilities, working hard to ‘the development of mature legal doctrine’.
7. The rule of law unites notions of judicial integrity and equality.
- Legal equality
 - Fairness
 - Protection of the law
 - Access to justice

Gary v. AG case was briefly mentioned in relation to jurisprudence.

Joseph and Boyce, paragraph 20, Wit JCCJ:

What is equality? McEwan v. AG, Saunders P on substantive equality

- Delegalizing
- Legalizing
- Objectification
- Humiliation
- Rites of domination

8. Dr. Blake - Language problems can affect credibility and fairness and impact on public trust to judicial system. There are difficulties with the vernacular and there is a need for someone to interpret this. The question is, should we start thinking about recording all trials because this would make every difference in capturing the nuances of the vernacular in a way that would not be reflected in a written transcript. Perhaps this needs greater consideration in our written practice and procedure.

Questions and Responses:

This session was very interactive in nature and the members of the audience participated throughout the conversation.

- They indicated that there is a need for an interpreter.
- In response to the Judge Dread clip they mentioned that it raises issues of language and literacy of the unsworn statement. Persons not proficient in English can have difficulties understanding and this can have impact on trial fairness. English is the official language in the various territories of the Anglophone Caribbean. Several creole languages are natively spoken.
- Examples of misunderstanding of English by speaker of Jamaican in pretrial interview with UK customs officer was given and the source cited as C Brown – Blake & P Chambers (2007) ‘The Jamaican Creole speaker in the UK criminal justice system.’ International
- Examples from the Magistrate Court in St. Lucia was also given with the reference provided as S Evans (2012) An examination of the language use patterns and practices of the Legal system in St. Lucia, PhD thesis, St. Augustine, p. 202
- **Question posed by presenter:** Is it a system safe guarded in public trust or if public trust being diminished? Two-thirds of the public in Trinidad believes that someone who speaks proper English would receive favorable treatment by the Judiciary.
- **Hon. Chief Justice Archie, Trinidad and Tobago** – murder case where the jurors were asked whether they arrive at unanimous verdict one juror and said yes we do

- and the accused was found guilty. Later Counsel met the juror and the juror stated that he only found out the definition of “unanimous” after the trial. A suggested alternative to ask the jury can be “Have you reached a verdict in which each and everyone of you has agreed?”
- **Comment: Justice Ramsumair –Hinds, Guyana**– the vernacular is present in several jurisdictions especially in summary courts – provided examples of Jamaica and Guyana patois.
 - **Question: Ms. Roberta Clarke** – what do you think the motivation is for the Privy Council to engage more or create noise on death penalty cases vs the non-death penalty cases?
 - **Response: Ms Tracy Robinson** – JCPC has more investment in death penalty and now since 2004 death penalty cases ended it feels like a lack of interest in the Caribbean, which raises questions of integrity in which they are meaningfully thinking through.
 - **Dr. Amoah** – What are the key themes that you are leaving with?
Ms.Tracy Robinson - Patience, Empathy were mentioned earlier.
Hon. Justice Jamadar – introspection and reflection on how and why we do what we do. Invites us into a conscious and structure approach to introspection and reflection and part of that is the humility to critical feedback to polling, surveys, research only way to become aware systemically and collectively.
Jamaican Judge – Communication - take the time to communicate.
 - **Comments: The Hon. Mrs. Justice Almarie Sinclair-Haynes, Court of Appeal, Jamaica** – since independence the volume of cases is too high so each judge is assigned to write. She was assigned to write criminal decisions and other two judges did not agree and her decision was not published. Another judge wrote and hers was published. She believes that whether others agree or not its public interest to know reasons taking to judiciary. Reasons decisions not written are due to the volume. With the increase in judges should see improvements.

