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Historical Reflections on the Evolution of the Bahamian Judiciary

By: Sean McWeeney, KC

When the Loyalist William Wylly (1757-1828) arrived in The Bahamas in 1787 and began to practice at the bar here, he was appalled by what he found. We know this because he wrote about it in his monograph, A Short Account of The Bahama Islands, published in London in 1789.

The high court judges here, he said, were not even lawyers, and by long tradition had never been lawyers. In fact, for the busiest and most economically consequential court of all, the Court of Vice-Admiralty, the presiding judge, according to Wylly was *"a most ignorant quack doctor"* who had fetched up in The Bahamas after plying a slaveship off the west coast of Africa.

But their *"unpardonable ignorance was not..... the most dangerous disqualification"* of these judges, Wylly remarked. *"A want of common honesty and the most beastly drunkenness"* were common vices as well. So too was the extortion racket the judges were running: they were charging litigants *"exorbitant fees"* before they would agree to list their cases for hearing.

The lack of court records going back more than four years was another of Wylly's complaints. The absence of rules of practice was yet another. In fact, there were no rules of practice at all, he said, for any of the several courts except for the General Court. Even then, according to Wylly, there were only, *"four very stupid (rules) made by a late Chief Justice who, when he was pressed to establish a regular Code of Rules, declined the matter, saying 'things had better remain in the old way.' "*

As for the lawyers at the bar, Wylly pointed out that there were actually "not less than eight or ten". However, it might have helped matters, he said, if the titular leader of the bar had been included in that number but alas he was not, for, just like the judges, Her Majesty's Attorney-General was not a lawyer either. To make matters worse, he did not, according to Wylly, possess even *"some small, some smattering, knowledge of his profession."*

And just in case you might think that it was only the judges and the Attorney-General that Wylly had a problem with, his scorn for the MPs here was no less eviscerating. The House of Assembly, he said, was *"composed of destitute, bankrupt, and habitual drunkards of the lowest description".*

For historical context, Wylly's criticisms came early in a period of immensely transformative, even convulsive, change for The Bahamas. The arrival of the Loyalists not only trebled the population of The Bahamas in five short years, it also introduced a great many other things as well, some good, some bad. Among the good though was a cadre of lawyers of outstanding ability and learning, with impressive experience in the application of the English common law in the former American colonies and also, it needs be said, in the operation of the political system of *"representative government"* which The Bahamas, Barbados and Bermuda alone enjoyed among all the British colonies of the Caribbean.

Quite apart from pre-eminence in the elective branch of the legislature they would soon command, these lawyers were to be instrumental in raising the standards of lawyering and, in short order, judging as well.

Indeed, the practice of appointing non-lawyers as high court judges would soon stop. This was no doubt due, if only in part, to the embarrassment of the Colonial Office in London over Wylly's very public exposé. Either way, the Colonial Office would thenceforth ensure the appointment of only properly qualified lawyers as judges; and the same would be true for the chief law officer of the crown as well.

Aiding this effort was the increased availability for judicial service of highly qualified and experienced lawyers who had come over to The Bahamas in the Loyalist influx from America, making it unnecessary to draft non- lawyers for that purpose any longer. And so it was, for example, that Wylly himself would be appointed Attorney-General in 1799 and go on to hold that office for more than two decades.

Similarly, the Chief Justice and other judges would soon all be qualified lawyers of ability, experience and, it needs be said also, of more robust integrity than before.

However, it should be noted that it was not from among the Loyalist refugees alone that these lawyers would come forth. Others would arrive here too by

different paths, most notably, Wylly's great nemesis, the Irishman, Lewis Kerr. He would come here in 1808, fresh from his conspiracies in what is now New Orleans; conspiracies of a treasonable
nature for which he had been twice indicted and twice acquitted. He had been a close confederate of Aaron Burr, the former American Vice-President who infamously took Alexander Hamilton's life in a duel and had been plotting to dismember the United States to create an empire of his own.

After immigrating to The Bahamas, Kerr would go on to become a long- time Speaker of the House of Assembly here and one of the principal luminaries at the bar. He would also for a time, well after Wylly 's day was done, serve as Attorney-General too.

A glimpse into Kerr's stature as a lawyer in The Bahamas is to be gained from a diarist who visited Nassau in 1824 and described him as *"a man of elegant and powerful talents" who is "very distinguished at the bar".* His eloquence was such, she said, that the courtroom would be *"packed to suffocation"* whenever it became known that he was about to address a judge or jury.

I should perhaps also mention that Kerr is an iconic figure in the annals of Louisiana jurisprudence for his pioneering work in explaining and making sense of how the newly adopted common law of England would work in place of the Spanish and French-based criminal law that applied before the Louisiana Purchase. His widely circulated and still much applauded book, The Exposition of the Criminal Law of Louisiana, is regarded as absolutely foundational since the English common law was virtually unknown in
Louisiana at the time. He was, by any standard, a brilliant and accomplished lawyer, legislator and legal scholar, if a bit of a political demagogue as well.

But the larger point for present purposes is that lawyers of outstanding ability and wide experience, like Wylly and Kerr, were settling in The Bahamas in the late 1700s/early 1800s, and bringing about a major improvement in the operation of our legal and judicial systems.

Indeed, so impressive would this become that later in the 19th century The Bahamas would emerge as an exporter of native judicial talent to other jurisdictions in the British colonial Caribbean and farther afield to more distant outposts of the British empire in Europe and Asia as well. Before proceeding to

that topic though, this may be a convenient juncture to state, especially for the benefit of our students here this evening, just a little something about the basic structure of our legal and judicial systems.

This need not detain us for long. Suffice it to say that as part-and-parcel of being settled by the English in the mid-1600s, the English common law became the bedrock of our legal system and has remained so ever since. It is, as you know, a core-principle of colonial law that when a territory is settled by Englishmen they are deemed to bring with them - just as they would an extra trunk of clothing or box of tools - the English common law and a goodly number of English statutes as well, or at least so much of this legal matrix as may be suitable for adaptation to their new circumstances. Here in The Bahamas, we have a Declaratory Act of 1799 to that effect but this Act only confirms what was the legal reality going back almost a century-and-a-half before when English settlement took place. There is, incidentally, a very lucid exposition of this by a former Chief Justice of ours, Harvey Da Costa, when he sat on our Court of Appeal in 1983. The case is Attorney-General v Royal Trust Company Ltd. on appeal from a decision of Vivian Blake, another Jamaican lawyer and jurist of famous memory, during his time as Chief Justice here; a decision that would, incidentally, be affirmed by both the Court of Appeal and the Privy Council.

As far as our local judicial system is concerned, until our higher local courts were consolidated into a single Supreme Court by the Supreme Court Act of 1896, there were numerous courts here. In truth though, they utilized the same judges such that the overall number of judges remained quite small.

Of course, all this was intended as a scaled-down microcosm of what the mother-country had. Re-invention and innovation were never the strong suit of the English as a colonizing power.

Many of these old courts, it bears noting, were actually presided over by the head of the Executive, namely the royal Governor. These included the Court of Ordinary, the ancestor of today's probate side of the Supreme Court; the Court of Chancery, also presided over by the Governor as a kind of stripped-down skeletal reincarnation of the Lord Chancellor in England; and the Court of Error in which the Governor-in-Council acted as a rudimentary sort of appellate court, with jurisdiction to correct egregious errors of law or fact in the judgments of other courts.

For tonight's purposes though, the court that is of primary interest to us from an historical perspective is the General Court which became known as the Supreme Court under the Supreme Court Act of 1896. It was and remains a superior court of record of essentially unlimited jurisdiction; a court that is now established under the Constitution. Above that, of course, we have a Court of Appeal, and above that, at the apex, the Judicial Committee of the Privy Council as the ultimate appellate court under our Constitution.

There is also, as we know, a vast and sprawling magistracy at the lower end of the judicial spectrum but this is a subject all its own and outside the scope of my address this evening.

Against that background, I turn now to what I referred a moment ago as the historical phenomenon of judicial exporting from The Bahamas; a phenomenon that is all the more noteworthy in that it played out at a time when the number of high court judges in The Bahamas was never more than three and the number of lawyers at the bar eligible for judicial appointment was always fewer than ten.

Given the membership of the Council of Legal Education and its shared Anglo-colonial heritage, I thought that this might be a topic of particular interest. After dealing with that, however, I will share a few other historical reflections on the growth and evolution of our judiciary over the years, including biographical details of some of the more interesting personalities that helped to shape it, especially in the 19th century.

As to the phenomenon of judicial exporting itself, William Wylly is perhaps the earliest example of it.

By way of background, Wylly was a lawyer from the former British colony of Georgia. He had been educated for the bar in England but had returned home to fight on the side of King George III in the American War of Independence. After that, he had immigrated to Canada where he served as the King's Counsel in New Brunswick and in Nova Scotia. It was after that spell that he settled in The Bahamas, practicing law while attending to his several plantations in New Providence, among them Clifton, the ruins of which have become quite an attraction for visitors and residents alike and a focal point of serious archeological study as well.

Wylly became Solicitor-General of The Bahamas, then Chief Justice, a post he soon gave up, however, because the pay was too low. Then, in an unusual front-to-back move, he became Attorney-General. Although the pay was lower than the CJ's salary, it actually worked out to be a more prosperous arrangement for Wylly because in those days – indeed up until the early years of the 20th century - the Attorney-General was free to simultaneously engage in private practice as well and invariably did so; something that judges could not do.

At any rate, in 1821, having by then lived some 33 years in The Bahamas, the Colonial Office offered Wylly the post of Chief Justice of St. Vincent. He was pretty much a spent force here by that time anyway because of his massively disruptive confrontations with the dominant clique in the Assembly who suspected him of conspiring against them with the abolitionists in England. So, he accepted the appointment with alacrity. As fate would have it, he would spend the remaining seven years of his working life in St. Vincent before passing away in 1828, as one newspaper put it, at the *"advanced age"* of 71.

But other Bahamians would follow in Wylly's wake, giving high judicial service abroad as well.

These would include Wylly's own nephew, Sir George Campbell Anderson (1804-1884), a born-Bahamian, who trained locally under articles of clerkship. His legal opinions reveal that he was a lawyer of great intellect and superb judgment. He is still, by far, the longest-serving Attorney-General in Bahamian history – a period spanning an incredible 36 years. He also happens to be the longest-serving Speaker of the House of Assembly too, serving for some 37 years. I should add that up until the late 1940s, if you wanted to know who the most politically powerful man in the country was, you had to look no further than the occupant of the Speaker's chair.

In any case, after Anderson's mostly parallel careers as Speaker and Attorney-General had run their course, he was appointed Chief Justice of The Bahamas in 1875. Not long thereafter though, he was appointed acting Chief Justice of Ceylon (today's Sri Lanka), and then, Chief Justice of the British Leeward Islands - a federated jurisdiction encompassing Antigua, Barbuda, Dominica, St. Kitts, Nevis, Anguilla, Montserrat and the British Virgin Islands. Anderson would die in Jamaica in 1884 at the age of 80.

However, the Wylly/Anderson Bahamian dynasty would continue in judicial service abroad, with Sir George's son, Sir William John Anderson, serving as Chief Justice of the Turks & Caicos Islands; then as Chief Justice of British Honduras (Belize); and finally, as Chief Justice of Trinidad & Tobago from 1900 to 1903.

Two other important Bahamian judicial exports of the 19th century Bahamas should be mentioned in this non-exhaustive list.

Sir William Doyle (1823 – 1879) is one of them. The first native Bahamian ever to be made knighted and appointed Chief Justice, he was called to both the English and Bahamian bars, following which he became a member of the House of Assembly for some ten years. He was subsequently appointed Chief Justice of The Bahamas in 1865 at the tender age of 42, making him, I believe, the youngest ever Chief Justice in Bahamian history.

Ten years later, he was appointed Chief Justice of the British Leeward Islands and then, two years after that, Chief Justice of Gibraltar. He would pass away in England in 1879 at the comparatively young age of 56, his death attributed by the Nassau Guardian rather indelicately to *"too close an attention to his official duties, which seriously affected his mental faculties"*.

The final 19th century judicial export from The Bahamas I'd like to mention is Sir Bruce Lockhart Burnside QC (1833 – 1909). After his call to the English and then Bahamian bar, he followed the well-worn path that saw him successively become a member of the House of Assembly, Solicitor-General, and then Attorney-General. He was subsequently appointed Chief Justice of Ceylon, serving in that important and populous British colony in South Asia for some six years.

Burnside's son, Robert Bruce Burnside (1862-1929), incidentally, would later serve as a judge of the Supreme Court of Western Australia.

Significantly, all of the Bahamian judicial exports I have mentioned were white. With the possible exception of Bermuda which was much smaller, The Bahamas had the highest proportion of local whites of any of the colonies in the British Caribbean. So, this may partially explain the disproportionately large number of native judges appointed from The Bahamas to high judicial office in other colonies in the latter part of the 19th century.

By contrast, the substantive appointment of non-whites to the judiciary was an exceedingly rare occurrence in the 19th century Caribbean and for The Bahamas quite unknown. Indeed this would continue to be the case for much of the 20th century as well.

The most notable exception to this monochromatic paradigm within the Caribbean was the native black Barbadian, Sir William Conrad Reeves (1821-1902) who was, incidentally, an uncle of our distinguished Bahamian educator, the late C.H. Reeves, after whom one of our public schools is named. Sir William served as Chief Justice of Barbados for some 16 years,
from 1886 to his death in 1902.

Here in The Bahamas though, Thomas William Henry ("T.W.H.") Dillet (1824-1885), the only openly self-acknowledged non-white at the Bahamas bar in the mid 19th century, was not so lucky. The eldest son of Stephen Dillet, the Haitian émigré and first non-white ever to be elected to the Bahamian legislature, T.W.H regularly sought substantive judicial appointment both here and abroad, only to be rebuffed by colonial officialdom each and every time. Lacking subtlety, references in official dispatches to Dillet's outstanding attributes would sometimes be accompanied in the very same breath by gratuitous comments pointing out, in a wink-wink sort of way, that he was *"A Man of Colour"*. Indeed on one such occasion, those very words were quite conspicuously underlined for emphasis in the Governor's dispatch lest the officials in London miss the point.

Even after he had been enticed away from his lucrative litigation practice to serve as a much-needed Acting Assistant Justice in 1864 during the American Civil War gun-running boom, TWH was not confirmed in the post as he had hoped he would be when his acting appointment came to an end two years later. In the result, he found that he had lost his standing at the bar when he returned to private practice.

To make matters worse, his application to be appointed a QC, while deemed meritorious in all respects, was also turned down, mainly, it seems - reading between the lines - because of the disequilibrium his elevation to the very small and highly prestigious inner bar might have introduced into the wider bar and social order. Hierarchies in this period were glaringly reflective of white supremacist values. Indeed, it bears noting that Dillet's application for silk

had come forward not long after The Bahamas had been enthusiastically engaged, via the gun-running trade, in propping up the Secessionist South where most of the Loyalists and their slaves had come from in the first place.

As C.R. Nesbitt, one of the leading public servants and legislators had explained, albeit rather euphemistically but certainly prophetically, in 1847 not long after TWH's call to the bar: *"Peculiar difficulties may possibly impede the professional and social advancement of Mr. T.W.H. Dillet in this, his native country, which would probably not be encountered elsewhere."*

"Peculiar difficulties" indeed.

Sadly, in 1869, exhausted by his repeated failures over the years to secure a job worthy of his talents, Dillet was offered and accepted the comparatively lowly job of Clerk of Court and Keeper of Records in Belize.

And there he would languish, this immensely talented Bahamian lawyer, legislator, man of letters, and staunchest defender of the Anglican church during the tumultuous Disendowment controversy of the 1860s. He died in Belize in 1885 on his 61st birthday.

Incidentally, TWH Dillet was the father of Abraham Mallory Dillet, also a native Bahamian and a lawyer as well, who practiced law in Belize and then Jamaica and whose name has been immortalized by the Privy Council case of Re Dillet (1887) 12 AC 459, a seminal authority on the principles to be applied for the grant of special leave to appeal to the Privy Council.

In any case, the appointment of Bahamians to foreign benches stopped completely by the end of the 19th century. The reasons for this, however, are not hard to find. Most Bahamian lawyers of ability were being drawn even more irresistibly to politics, thereby precluding the possibility of a parallel judicial career.

There was, however, another even more compelling reason why there were no more Bahamian judges being produced: the Colonial Office in London had become adamantly opposed to the appointment of local lawyers as judges, considering it undesirable, as a matter of policy, especially for small colonies, and even more especially for small colonies like The Bahamas with its endemic indifference to conflicts of interest and other abuses that had contaminated the local pool of possible judicial recruits.

In any case, from 1880 when Sir George Anderson demitted office as Chief Justice, up until the end of the colonial era in 1973 - except for the period early in the 20th century when Sir Ormond Malcolm was Chief Justice - every one of the other 14 successive Chief Justices in the 1880-1973 period was an English import except for the odd Canadian or Irishman.

In the roughly twenty year period (1973-1994) period commencing with Independence, when the power of judicial appointment had shifted from London to Nassau, the first Chief Justice was actually a white Bahamian (Sir Leonard Knowles), followed briefly by a Welshman who had been a holdover from the colonial period. After that, however, the next five Chief Justices were all black West Indians. Clearly, The Bahamas had by this time undergone a major shift in its sense of regional and ethnic identity. It was a far cry from the time in 1814 when William Wylly had written that *"The people of this place do not regard themselves as West Indian".*

Why no indigenous Bahamians were appointed as Chief Justice in the period between Sir Leonard demitting office in 1978 and the appointment of Sir Cyril Fountain n 1995 is no great mystery. Apart from Sir Cyril who had joined the bench as a puisne judge with a view to early promotion to the post of Chief Justice, there were simply no credible Bahamian candidates from the private bar interested in the job and eligible for it (many of them having already given themselves over to politics). Not only was the pay ludicrously low in comparison to the earning levels for lawyers in private practice, there were other deterrent factors as well, including an insultingly paltry pension, and a raft of other generally unsatisfactory conditions of service that former Chief Justice Knowles had not been at all slow in revealing to the public after demitting office in 1978.

Indeed in his autobiography, My Life, Sir Leonard wrote that when he retired in 1978, after having served for only five years, his pension was so appallingly low, he had been obliged to return to private practice to make ends meet. Giving a granular account of his predicament, Sir Leonard disclosed that his pension was precisely $237 a month when he retired.

So, not surprisingly, there was no Bahamian Chief Justice after Sir Leonard demitted office in 1978 until 1995 when Sir Cyril Fountain was appointed.

However, in the 30 years that have since followed, that is to say, from 1995 to 2025, of the eight Chief Justices we have had (inclusive of Sir Cyril), every one of them has been a Bahamian and, with one tenuous exception, a black Bahamian at that.

One major reason for this new-found confidence among Bahamian lawyers in the viability of a career in high judicial office is easily identified. Over the past quarter century, the salaries, allowances, pensions and other terms and conditions of service for judges at both the Supreme Court and Court of Appeal levels have been incrementally improved upon as a result of the recommendations of successive Judicial Remuneration Review Commissions. Cumulatively, the effect has been to make a judicial career an increasingly attractive option for members of the private bar, both in financial terms and also, I should add, in terms of the conspicuously more exalted status that high court judges now enjoy in official and wider society, based in no small part on the perks and trappings of high office that formerly were accorded only members of the Executive in the post- colonial period.

That said, we should not discount the fact that a goodly number of our judges have been drawn to judicial service not because of the money – indeed they could be making a lot more money in private practice - but rather because it represents the fulfilment of a keenly-felt personal ambition to crown one's legal career by taking the elevator to a higher, more rarefied, level. And, let me say, and I do so with unfeigned gratitude, we are all the richer for their having done so.

A recent amendment to the Supreme Court Act has increased the maximum number of Supreme Court judges to 25, and we are nearing that limit already.

Taking an historical perspective on the growth of the judiciary over the years, however, what I find so very mystifying is how numerically small the high court judiciary remained for so very long despite the upwardly spiralling population growth; despite the expansion of the Bahamian economy; despite the attendant proliferation of increasingly more complex commercial and private wealth and land disputes requiring adjudication; despite the massive increase in indictable crime necessitating Supreme Court jury trials; and despite the exponential growth in the number of lawyers, which has been nothing short of jaw-dropping.

Despite all that, it is only in comparatively quite recent times that the number of judges has been increasing significantly.

To demonstrate the exceedingly slow growth in the number of high court judges over the years, take 1876, for example. That was roughly the mid- point between the transformative influx of the Loyalists in the 1780s and the attainment of national Independence close to two centuries later. In 1876, the high court judiciary consisted only of a Chief Justice and one other judge.

Fast forwarding from 1876 to 1960, when a new economic boom was underway as the result of a vigourously ascendant tourism industry in the wake of the Cuban Revolution the year before, combined with a rapidly expanding offshore banking sector, and the creation of a new city in Grand Bahama - despite all that, the number of judges was still only two.

Ten years later, in 1970, the number was only three. Ten years after that, in 1980, the number had climbed only modestly to five. Ten years later, in 1990, when I was the Attorney-General, the number had only marginally increased to 7. Ten years after that, in 2000, the number had climbed to 9. Ten years later, in 2010, the number stood at 11. Now, fifteen years after that, in 2025, the number stands at 22. Based on an estimated population of 400,000, that works out, incidentally, to one Supreme Court Justice for every 18,200 persons.

I know that not much can be reliably deduced from intra-regional comparisons in matters of this kind. It is nonetheless interesting that according to its official website, Jamaica's Supreme Court now has 42 puisne judges. With an estimated national population of 3 million, that works out to one Supreme Court Justice for every 71,400 persons (approximately).

Trinidad & Tobago meanwhile is shown with 44 Supreme Court justices. Based on an estimated population of 1.5 million, that works out to one judge for approximately every 34,000 persons.

Finally, Barbados is shown with 22 Supreme Court justices – the same number we now have too. With an approximate population of 280,000, that works out to one Supreme Court judge for every 12,200 persons (approximately).

And while I'm citing statistics, I should mention on a related front that at Independence 52 years ago, there were only 67 members of the Bahamas bar – they are all listed by name and date of call in the Bahamas Handbook for that year (1973). Contrasting that with today, we now have a staggering 1,450 members of the bar or thereabouts, making us one of the most lawyer-heavy nations on the planet, with one member of the bar for every 275 persons. When one adds in non-admitted lawyers such as registered associates and lawyers who skipped the bar and went straight into industry instead, the ratio becomes even more dramatic.

But I go back to my question, how was such a very small complement of high court judges with a much leaner supporting infrastructure able to get by for so long.

I pose that question without answering it but I do say that it may possibly prove instructive for an in-depth study of it to be undertaken by our scholars at UB and the Law School, supported by the judiciary and bar.

My final reflections this evening grow out of our unhappy experience with a pair of failed constitutional referenda, the first one taking place in 2002 near the end of the second Ingraham term in office and the second one taking place some 14 years later in 2016, near the end of the second Christie administration. In fact, more than 50 years after Independence, these are still the only constitutional referenda we have ever had and in both instances the Government was unsuccessful in persuading the electorate to vote YES.

It will be recalled that the 2002 referendum proposed among other unrelated things, modest increases in the retirement age for judges. Inoffensive though this proposal was, it was shot down in flames just like all the other constitutional reform proposals on the ballot.

As frequently happens in The Bahamas, bad timing, populist bandwagoning, and packing too many disparate issues onto the menu can easily derail the best-laid plans of mice and men.

One takeaway from that is this: the next government to stage a referendum should do so very early in its term, say, within the first 12 to 18 months when

its popularity is likely to still be riding comparatively high. Historical experience demonstrates that if instead you go deeper into the five-year term, the risk of referendum-defeat increases in symmetrical alignment with the government's increasing unpopularity in the country. In the result, proposed constitutional changes, however inoffensive they may be, become conflated in the electorate's mind with, and become a casualty of, completely unrelated grievances against the government. So, the name of the game next time around would be to strike early.

As to the actual changes that should be put forward in connection with the judiciary, the Constitutional Commission that I chaired 12 years ago recommended that the existing age of retirement for Supreme Court Judges, namely 65 years, be maintained but that it be re configured as an optional age of retirement, such that if a judge did not exercise his retirement option at age 65, his term would automatically continue to age 70 (up from 67 which at present is the maximum age to which a judge can be extended albeit only if the political directorate so ordains).

Similarly, at the Court of Appeal level, the age of retirement would be changed such that 68 would become the optional age of retirement, with automatic continuation to age 72 if the option is not exercised (although perhaps even age 75 as the outside marker might now meet with favour).

In either case, under this re-configuration, the whole concept of an *"extension"* would fall away and consequently the intervention of the political directorate in having to say aye or nay to applications for extension would be done away with, thereby enhancing the independence of the judiciary.

However, I hasten to add this : as unobjectionable as such a reform proposal may be, I fear that the electorate will only countenance it in the future if it is broadened to achieve some greater accountability of the judiciary. This may conceivably involve reform of the security-of-judicial- tenure provisions of the Constitution, not generally but only in specific relation to the possible deferment of pension for judges appointed in the future who may retire with outstanding or unfinished judgments. Given the possible financial exposure of the state to aggrieved litigants as a result of such judicial failures, it would not seem an unreasonable expectation on the part of the Bahamian taxpayer that the enjoyment of a judicial pension should be deferred until the unfinished work of

a retiring judge is, in fact, fully finished and independently certified to be so. This would incentivize judges to ensure that all their work is completed before they retire. If that is achieved, the financial exposure of the state and, by extension, that of the taxpayer is eliminated, or at least mitigated. Even more importantly, public confidence in the administration of justice would gain greater traction as well.

If we are going to amend the Constitution, there are two other changes affecting the judiciary that I would like to see addressed in the same referendum.

The first is the constitutional provision that requires every member of the Court of Appeal to hold or have held *"high judicial office"*. Whilst that may be generally desirable, I don't think it should necessarily be universally applicable as a qualification for appointment, especially now that the complement of appellate justices is sure to be increased as time goes on. Instead, I think the Constitution should allow (but not require) at least one- third of appointments to the Court of Appeal to be made up of lawyers who have not previously held *"high judicial office"*.

This would increase the eligibility-pool in two positive respects: firstly, it would allow for the appointment of distinguished academics from the law schools who have not previously held high judicial office and, secondly, it would allow for the appointment of outstanding practitioners at the bar who may still have been practicing when the constitutional clock for appointment to the Supreme Court bench ran out, thereby preventing them from acquiring the qualification of prior high judicial service necessary for appointment to the Court of Appeal.

The other change affecting the judiciary that I would like to see in the next referendum – although this one was not considered by the Constitutional Commission – is the re introduction of a provision that actually appeared in our pre-Independence constitutions of 1964 and 1969.

I refer to the provision that allowed for the appointment of interim or acting justices of the Supreme Court – as indeed our present 1973 Constitution does as well – but the earlier constitutions did so on the basis that *"a person may be so appointed notwithstanding that he has attained the age of sixty-five years"* (proviso to art. 89 (2) of 1964 Constitution). This proviso was not replicated in our present 1973 Constitution.

I think there may be merit, however, in putting it in. It would enable the appointment of acting Supreme Court judges for limited periods from among members of the bar who may have already passed the age of retirement but whose services pro tem may nonetheless be of great assistance to the administration of justice.

It should go without saying, of course, that judges who have already retired, or are about to retire, should not be able to misappropriate such an amendment as a means of securing re-appointment to the bench as acting justices.

I would start with those proposals and perhaps one, maybe two, other unrelated proposals that do not involve earth-shaking heresies such as we had the last time round when the proposal that men and women be treated equally was firmly rejected. Rather than chasing such novelties, we must first accustom the electorate to constitutional changes in small doses, not with a 2 by 4 upside their head!

Distinguished guests, ladies and gentlemen:
I end as I began, by recalling that there was a time when we had non- lawyers as judges. Although that time has long since passed, Ecclesiastes 1, verse 9, reminds us that what was once shall be again. If that be so, and if the advances of Artificial Intelligence continue accelerating as they are predicted to do, it may well be our destiny to arrive where we started and have non-lawyers as judges once again. Should that indeed come to pass, I wonder what William Wylly, who complained so angrily about it before, would have to say.

BIOGRAPHY:

Sean McWeeney, KC

Sean McWeeney KC first came to national prominence at the age of 17 when he was expelled from Queen's College for refusing to recant a controversial public speech he made as Head Boy, criticizing the lack of Bahamianization of the school's faculty and curriculum. He was also elected at around the same time as the President of UNICOMM, the leading left-wing radical political action group in the country. Most notably during this period, Mr. McWeeney and his colleagues burnt the Union Jack at the annual Queen's Birthday celebrations as a symbolic protest against colonialism and as a call for Independence.

Later, Mr. McWeeney would be elected to five consecutive terms as the National Chairman of the then governing Progressive Liberal Party.

Following legal studies, Mr. McWeeney was called to the Bahamas bar in 1978. In 2009, he was appointed to the Inner Bar as Queen's Counsel (now King's Counsel).

Mr. McWeeney served as the Attorney-General of The Bahamas from 1989 to 1992. He was at the time the youngest Attorney-General in the Western Hemisphere. He also served as a Senator from 1985 to 1992, and Leader of the Government in the Senate in the latter part of his parliamentary tenure.

During his tenure as Attorney-General, Mr. McWeeney was widely acclaimed across party lines for his improvements to the judicial system, including the introduction of computerized court reporting, the introduction of night courts, and the inauguration of year-round sittings of the Court of Appeal. He was also credited with introducing major legislative reforms for the financial services sector thereby helping to restore its competitive advantage over other jurisdictions.

In 1998, on the occasion of the Silver Jubilee of Bahamian Independence, Mr. McWeeney was recognized by the Ingraham Government for Outstanding Contribution to National Development in the area of Law, and awarded the Silver Jubilee Medal.

In April 2000, Mr. McWeeney was appointed by then Prime Minister Ingraham as Chairman of the first Judicial Review Commission to recommend changes in the structure of remuneration and pensions for judges of the Supreme Court and Court of Appeal. Between 1999 and 2002, Mr. McWeeney also served as Chairman of the Steering and Implementation Committees responsible for overseeing the re-structuring of the Royal Bahamas Police Force.

In May, 2002 and again in 2012, then Prime Minister Christie appointed Mr. McWeeney as the Chairman of his transition team. Mr. McWeeney would also serve as a member of the National Security Council, the Chairman of the second Judicial Review Commission in 2002, the Chairman of the Clifton Acquisition Committee, the first Chairman of the Clifton Heritage Authority, and, in 2012, the Chairman of the Constitutional Review Commission. He also conceived and drafted a series of amendments to the Stamp Act aimed at plugging up numerous loopholes that had been exploited by lawyers for years while at the same time extending stamp duty to a variety of previously untaxed transactions. These reforms resulted in vastly increased collection from this revenue source.

Mr. McWeeney also served from 2014 - 2017 as the first Ambassador from The Bahamas to the Holy See (the Vatican).

He continues to practice law with GrahamThompson, the largest law firm in The Bahamas. He also serves as an independent, non-executive director of a number of

international banks and trust companies in The Bahamas. For 25 consecutive years he has been recognized by Chambers, the legal world's leading ratings publication, as the pre-eminent trust law specialist in the country.

Mr. McWeeney is also a published historian on various aspects of 19th century Bahamian history. Notably, he is the author of the book "Breaching the Gates – the Civil Rights Struggle of the Bahamian Free People of Colour 1802-1834".

He is married to the former Cyprianna Munnings, a former Miss Bahamas and herself a former Senator. They are the parents of three children: Gillian (Jill) McWeeney Wilson, Melissa, both of them teachers, and Sean McWeeney Jr., a lawyer.

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