



Address to Graduates of Eugene Dupuch Law School

The Honourable Mme Justice Dèsirée
Bernard, Judge of the Caribbean Court of
Justice

The Graduation Ceremony of Eugene Dupuch Law School

Nassau
The Bahamas
19 September 2009

Located at City Corporate Centre, Rosetta Street, Nassau, Bahamas, the **Eugene Dupuch Law School (EDLS)** combines rigorous academics and enriching practical experiences, with a supportive learning environment. We offer our students two dynamic programmes, with small class sizes, clinical components and an excellent success rate. Named for the eminent lawyer and politician, the late Hon. Eugene Dupuch CBE, Q.C., the Law School provides 'Excellence in legal Education and Commitment to Social Service'. Eugene Dupuch Law School is committed to the development of legal practitioners with steadfast integrity and an unwavering commitment to the Rule of Law and adherence to the ethical obligations of the profession.

Remarks

By

The Honourable Mme Justice Dèsirèe Bernard, Judge of the Caribbean Court of Justice,

on the occasion of

The Graduation Ceremony of Eugene Dupuch Law School

19 September 2009

I have always regarded an invitation to deliver an address to the graduating class of any law school as a signal honour, and one which I am always delighted to accept. Hence when asked by the Chairman to address this august gathering my affirmative answer was inevitable. However, there was an added reason for the alacrity with which I accepted the invitation. I was informed that the year 2011 will mark the 40th anniversary of the establishment of the Council of Legal Education, and I recall with nostalgia the heady days of meetings of the Council in which I participated as a young representative of the Bar of Guyana in the 1970's. The anticipation of being on the verge of embarking on the training and shaping of legal minds within our Caribbean Region leading inexorably to the development of our own indigenous jurisprudence was exciting and exhilarating. Many had mixed feelings about the future and longevity of the Council, particularly, in light of the fact that our track record with regard to regional institutions had not been good, for example, the failure of the Federation and other aborted attempts at Caribbean unity; the only lasting edifices were the University of the West Indies and our cricket team which also now seems to be in tatters. History has proved the Council to be one of the more enduring of our institutions which in the near forty years of its existence has been responsible for launching the legal careers of hundreds of young men and women, and a few older ones too. A significant number has emerged as Prime

Ministers, Ministers of Government, Attorneys General as well as Chief Justices, Heads of Judiciary, and Judges in both lower and appellate courts, including the Caribbean Court of Justice; similarly in the field of academia as principals of the law schools and heads of universities. All of this is overwhelming testimony to the continuing excellence of the Council of Legal Education and its dedicated members and staff. My sole wish is that, God willing, I shall be around to participate in the Council's 50th year of contributing to the development of the law in the English-speaking Caribbean.

Now, for the main reason for my being here. Today, Graduates, marks the culmination of years of study leading up to your being entitled to be referred to as an attorney-at-law. I am sure it represents for some of you the fulfilment of a life's dream, for others a career choice which you were persuaded to embark upon. Whatever the reason, you are about to enter a profession of venerable antiquity characterised by such virtues as dignity, honour and integrity. These are enduring legacies and bequests which you have inherited as lawyers of the future, and which you are expected to preserve and nurture as members of this noble profession. I think it incumbent on me to offer some advice and guidance as you carry out the mandate entrusted to you.

In some of our Caribbean jurisdictions codes of professional conduct have been formulated by Bar Associations as guides as to what are acceptable behavioural norms in the day-to-day interaction of lawyers with their clients, colleagues and the judiciary. As young prospective attorneys-at-law, it is important for you to know what will be expected of you.

INTEGRITY

The bedrock of one's professional life is and always should be the virtue of integrity defined as the quality of being honest and possessing strong moral principles. It is fundamental to the discharge of a lawyer's duty to his/her clients, to the court and fellow members of the profession. Without this quality, regardless of your competence, it avails you nothing; its absence can lead to a tarnished reputation for dishonesty and unreliability resulting invariably in disciplinary action and possible disbarment. The lawyer-client relationship is based primarily on trust. A client places his life and property in your hands, and confides in you his innermost fears and weaknesses expecting solutions to his problems.

It is an awesome responsibility even though you may be adequately compensated financially. The honesty to which I have alluded is not confined to monetary matters only; it includes being candid when proffering advice and giving opinions based on an assessment of the facts and applicable legal principles. The advice must reflect what you honestly consider to be the positive or negative aspects and probable result of any contemplated litigation, and not what you think the client may wish to hear. The advice and opinion should reflect both sides of an argument so that the client can weigh the pros and cons.

You will also be the repository of confidences revealed to you as a client's legal representative concerning, perhaps, that client's business affairs or maybe the commission of a criminal offence, information which remains confidential for the duration of the lawyer-client relationship. Such confidential information should not be divulged except expressly or impliedly authorised by the client, or exceptionally, in the interest of public safety.

RESPECT AND COURTESY

The practice of law can be and invariably is fascinating and mentally stimulating. The cut and thrust between lawyer and judge or magistrate should be cordial and courteous, never acrimonious. In spite of differences of opinion one golden thread which knits together the relationship between Bench and Bar is respect. This flows in both directions. The same respect that is expected from the Bar is also expected from the Bench. With regard to the Bar, a lawyer as an advocate has a responsibility to represent his/her client resolutely and vigorously; the disputative nature of litigation requires this. It is regarded as being “no tea party.” However, the argumentation must be conducted without rancour and ill-will with Counsel displaying respect and courtesy to the Bench and each other at all times. I concede that this sometimes may be difficult to sustain when Counsel regards a judge’s interruptions or questions as being irritating or against his client’s interest, but which oft times may be necessary either to protect a witness or elucidate facts. Avoid being overly aggressive or antagonistic in your presentations; they are never traits which are conducive to effective advocacy.

In their interactions with the judiciary lawyers must always be mindful of the fact that judges have an important weapon in their arsenal – the weapon of contempt of court – which in fact is used very sparingly, but which when used can have a devastating effect on the career of a lawyer. It should be utilised only in extreme cases of unbearably rude and insulting behaviour to the Bench. No lawyer should ever have to be at the receiving end of a judge’s resort to this procedure.

In preparing this address I gained much assistance from the Code of Professional Conduct of the Canadian Bar Association. The Preamble to the heading “Principles of Civility for Advocates” is applicable to lawyers in all jurisdictions. It indicates that “civility amongst those entrusted with the administration of justice is central to its effectiveness and to the public’s confidence in that

system. Civility ensures matters before the Court are resolved in an orderly way and helps preserve the role of Counsel in the justice system as an honourable one.”

The actions of lawyers and judges within a courtroom can dictate the public’s attitude towards the judicial system in which both members of the legal profession and the judiciary are involved. Disrespect within the courtroom breeds disrespect outside in the court of public opinion. Judicial institutions cannot perform their primary objective to dispense justice unless they command the respect of the public, and the burden of achieving this objective rests on the shoulders of both Bench and Bar. Oft times the Bar is usually in a better position to gauge the reactions of the public to decisions emanating from the Bench and to defects in the judicial system. In this regard lawyers must assume the role of advocates for change wherever they consider this necessary. Bar Associations must be active and militant in ensuring that the administration of justice remains unpolluted by threats to its integrity.

They must be forever watchful.

COMPETENCE

From an individual perspective self-development should be foremost on your agenda for future advancement. Do not rest on your laurels and conclude that the certificate which you received tonight represents the end of the road as far as preparation and long hours of reading are concerned. On the contrary, the certificate only verifies that you are now entitled to advise an unsuspecting public on the intricacies of the law. The practice of law in any area is a continuous learning experience; it never ends until you cease that practice or retire. The law is not static, but is in a constant state of change particularly in times in which we live when technology is moving at a frenetic pace; what is new and exciting today may be out of date months later. Lawyers now have

to grapple with such new legal issues as crimes committed via the internet, environmental law, entertainment law, and the complications which may arise in family litigation through surrogate parenting. Crimes are solved by DNA evidence which can vindicate convicted persons sometimes years later. When I embarked on my legal career years ago these issues never arose and were never envisaged. In this environment lawyers who fail to keep abreast of developments in the law do a great disservice not only to their clients but also to themselves and to the profession as a whole. A lawyer who fails to prepare, prepares to fail.

The law develops through precedent. The success or failure of a client's case may rest on a precedent where judgment was rendered recently on similar or identical facts and circumstances. The law reports must become your constant companion and source of information. Knowledge of recent developments in the law may make a big difference between your being an outstanding competent lawyer or a mediocre practitioner only interested in receiving fees rather than earning them. Do not depend on theatrics or court craft to achieve success. Invariably it requires much more than that.

In similar circumstances when addressing the graduating class at Hugh Wooding Law School in 2001 I made reference to an excerpt from the book "Reversal of Fortune" by Alan Dershowitz, a well-known American jurist and defence appellate attorney; it bears repeating. He related how his son, a professional magician, regarded his father's exploits in Court as being akin to his by concluding "You and I both do the same thing – sleight of hand – making things appear to be what they're not." The popular belief is that lawyers are masters in the art of obfuscation resulting in witnesses becoming confused or entertaining doubts about the veracity of what they saw or did. This can be an asset, but must be accompanied with a sound knowledge of legal principles.

THE LAWYER IN PUBLIC OFFICE

So far my remarks have been directed mainly to those of you who intend to embark on a career at the private Bar. Most of what I mentioned applies in equal measure to those of you who intend to pursue employment in the public legal service. Your clients will not be private individuals, but the Government as public prosecutors or State Counsel in the Attorney General's chambers. The basic tenets of courtesy, dignity and respect never change regardless of the clientele which you serve.

A lawyer who holds public office may in the execution of his duties, encounter situations where a conflict of interest arises – your public duty may clash with your personal or private interests or relationships. This can sometimes present you with a dilemma. As a public prosecutor you may be called upon to tender advice or institute proceedings against friends and acquaintances. Ultimately, such a conflict of interest can be resolved only by you weighing your obligations to the public and the State against personal considerations. If you conclude that you cannot resolve the conflict, the best course may be to request that you be relieved of that particular matter and recuse yourself.

INDEPENDENCE OF THE BAR

The legal profession is one institution which is regarded as being independent of government control and is self-governing. This is true at least of the profession in democratic western societies. The Canadian Bar Association Code of Professional Conduct in discussing this aspect of the Code made reference to a passage from a unanimous judgment of the Supreme Court of Canada in the

case of **Canada (Attorney General) v Law Society (British Columbia)** [1982] 2 S.C.R. 307, and because of its relevance to our society, I make reference to it:

“The independence of the bar from the State in all its pervasive manifestations is one of the hallmarks of a free society. Consequently, regulation of these members of the law profession by the State must, so far as by human ingenuity it can be so designed, be free from State interference, in the political sense, with the delivery of services to the individual citizens of the State, particularly in fields of public and criminal law. The public interest in a free society knows no area more sensitive than the independence, impartiality and availability to the general public of the members of the bar and through those members, legal advice and services generally.”

If lawyers are to protect the rights of their clients particularly rights involving alleged violations by the State, independence of the Bar must be preserved. A lawyer’s primary responsibility is to vindicate and protect the interests of his client, and this he must do fearlessly and honestly. Independence of thought particularly must always be protected whether that of the Bench or the Bar. We must all strive to preserve it.

CONCLUSION

The ordeal of sitting through a graduation address is not relished by any graduating class suffering from lecture fatigue. Your ordeal is about to come to an end except for one last bit of advice. You

may regard yourselves as being hitherto overworked and deprived, but soon to be among the privileged. Indeed you are privileged having joined the professional class of citizens. Because of this much is expected of you. An old adage states that to whom much is given, much is expected. Membership of the privileged class which you are about to join carries with it responsibilities, one of which is to make your services available to those less fortunate without expectation of financial reward. In other words, to be involved in giving aid to the indigent and those in need of legal assistance. I am not suggesting that this be done as soon as you embark on your practice, but it is something which in the course of your legal career must be foremost in your mind. The acquisition of wealth must not be your sole objective. That wealth must be shared with those less fortunate.

Violations of the rights of the poor invariably go unredressed because of inability to brief lawyers to vindicate these rights in a court of law. Bear this in mind as you climb the ladder of success. A final bit of advice which I have always given when speaking to graduates. Let excellence be the mantra which guides you throughout your life. Never settle for mediocrity. Best wishes for the future.

May God bless you in all of your undertakings.

Heartiest congratulations!