

TABLE OF CONTENTS

| | Page |
|--|------|
| Editorial | 2 |
| Message for the Young Attorney | 4 |
| FEATURES | |
| Bahamas Attorney General calls for New Law to Police and Discipline Legal Profession | 6 |
| Bahamas Law Update | 7 |
| The Successful Lawyer | |
| A Layman's Perspective | 22 |
| A Lawyer's Perspective | 22 |
| Spotlight on Pamela Benka-Coker | 29 |
| Through the eyes of an Advocate | 46 |
| The Lawyers' Christian Fellowship | 48 |
| Criminal Law Digest of Unreported Cases | 50 |
| ESSAYS | |
| Sexual Harassment and Gender Discriminations — Wrong without Remedies? | 8 |
| Is the Mixed Statement of Any Evidential Value? | 12 |
| Directors' and Officers' Liability | 15 |
| The G.C.T. And the Increasing Cost of Litigation Practice | 20 |
| Recent Developments in the Law of Landlord and Tenant | 25 |
| Deposits | 34 |
| The Strata Title System | 34 |
| Human Rights and Treatment of Haitians in the Bahamas | 63 |
| PHOTOS | |
| Events 1989-90 | 23 |
| Graduates — 1990 | 36 |
| Staff | 39 |
| Graduates, Awards & Prizes 1989 | 43 |
| Graduates, Awards & Prizes 1990 | 44 |
| REPORTS | |
| Moot Committee Report | 59 |
| President's Report 1989-90 | 60 |

Editorial Committee

Editor in Chief: Dianne Daley
 Assistant Editors: Benito Palomino
 Tracey Hamilton
 Gina Morley

Chief Assistants: Sonia Bertran
 Shane Miller

Assistants: Sharon Service
 Paulette Warren
 Avlana Johnson
 Andrea Walters

Special Acknowledgements:

Cover Design
 and Cartoons: Melody Cousley

Portraits and
 Group Photos: John Findlay

Group Graduation
 Photos: Bryan's Photo Studio

Special Thanks

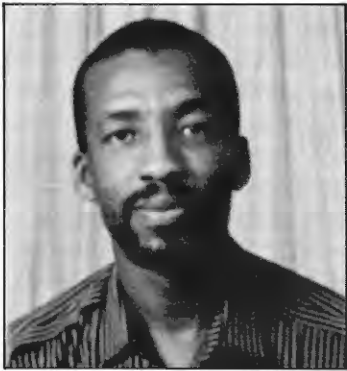
To the Principal, William A. Roper, for his invaluable support
 to the Editorial Committee 1990.

Please Send All Correspondence to:

THE EDITOR
 "THE YOUNG ATTORNEY"
 P.O. BOX 231
 MONA CAMPUS
 U.W.I.
 KINGSTON 7
 JAMAICA, W.I.

**HUMAN RIGHTS AND THE TREATMENT OF HAITIANS IN THE BAHAMAS:
INTERNATIONAL AND CONSTITUTIONAL LAW PERSPECTIVES**

ALFRED M. SEARS
LECTURER
BLACK AND PUERTO RICAN STUDIES DEPARTMENT
HUNTER COLLEGE
CITY UNIVERSITY OF NEW YORK



Attorney-at-law admitted to the Bar of states New York, New Jersey and Washington D.C. – currently a student at the Norman Manley Law School.

CONTENTS

DELIMITATION OF THE PROBLEM

TRENDS IN THE TREATMENT OF HAITIAN ILLEGAL IMMIGRANTS
IN THE BAHAMAS

APPRAISAL

RECOMMENDATIONS

BIBLIOGRAPHY

- A. *International Human Rights Law and Aliens*
- B. *Regional Prescriptions*
- C. *Commonwealth Caribbean Constitution Prescriptions*

DELIMITATION OF THE PROBLEM

Since 1957 the Bahamas Government has been trying to solve the problem of the influx of illegal immigrants from Haiti.¹ Dawn Marshall argues that because of the Bahamas geographic location, between Haiti and the United States, many Haitian migrants, fleeing dictatorship and the economic and social effects of underdevelopment, use the Bahamas as a transit point on their way to the United States.²

In 1980 there were 11,000 Haitian nationals officially recorded as living in the Bahamas.³ Because the vast number of Haitians are illegal immigrants and therefore suspicious of dealing with Bahamian officials, census figures constitute merely a minimum estimate. More reliable estimates have placed the Haitian presence in the Bahamas around 40,000.⁴ The total population of the Bahamas is 240,000;⁵ therefore, the Haitian community constitutes about 16-20% of the total population of the Bahamas.

Between 1956 and 1967 the Colonial Government in the Bahamas responded to the growing presence of illegal Haitian immigrants with periodic raids by the immigration, customs and police officers; vigilance at sea; harsh criminal penalties and deportation.⁶

In 1967 the first black mass-based nationalist party, the Progressive Liberal Party, came to power in the Bahamas. One commentator has described the transition from the white minority United Bahamian Party Government to the Progressive Liberal Party Government as "the replacement of the political, social and economic hegemony of a white bourgeoisie by a hegemony of a black bourgeoisie that is complete in the political sector, largely complete in the social sector, but still incomplete in the economic sector, where the white bourgeoisie retains a predominant share".⁷ The new P.L.P. Government's announcement in 1967 that it preferred diplomatic means in solving the problem of illegal Haitian immigration to the Bahamas created optimism that a more humane and realistic immigration policy was forthcoming.⁸ However, even while this new public emphasis

on diplomacy was being announced in 1967, immigration and police officials were conducting extensive raids within the Haitian and Jamaican communities, eliciting charges of human rights abuse in respect to the manner in which the raids were conducted.⁹

The first attempt by the P.L.P. Government to achieve a diplomatic settlement with the Haitian Government in July, 1967 failed to produce any agreement. In 1970 a second diplomatic effort was launched for a treaty regarding illegal Haitian immigrants, estimated at that time to be about 10,000. This effort also proved to be a failure. Throughout this period there were continuing raids by Bahamian Government officials in the Haitian community coupled with marked indifference by the Haitian Government. There were also allegations by the Bahamas Government that the Haitian Consul in Nassau, Bahamas, refused to issue visas to Haitian nationals whom the Bahamian Government wished to repatriate.¹⁰

However, in early 1985 the two Governments again attempted to negotiate another treaty to address the problem of illegal Haitian immigrants in the Bahamas, estimated at that time to be around 40,000.

TREATY

A treaty was ratified in September 1985. The treaty provided for an amnesty period from September, 1985 to February, 1986, asking all illegal immigrants to register with the Immigration Department.¹¹ About 10,000 illegal Haitian immigrants registered. The treaty also provided that Haitian immigrants illegally resident in the Bahamas and who arrived before December 31, 1980 shall be accorded legal status as soon as possible, provided they meet certain qualifications.¹² All those arriving after December 31, 1980 will be repatriated, unless they are required for employment or are married to Bahamian citizens.¹³

His Excellency Serge Charles, the Haitian Permanent Representative to the United Nations and Ambassador

to the Bahamas, stated that there is a perception in Haiti that the treaty lacks reciprocity and merely provides a mechanism of exclusion and deportation of Haitians from the Bahamas, in spite of their ties to the Bahamas. While he conceded that this perception is partly true, he recognized that Haiti had no leverage during the negotiation of the treaty, because the Haitians in the Bahamas are at the mercy of the Government; therefore, it was the desire of the Haitian Government to have the Haitians return to Haiti with dignity.¹⁴ However, Ambassador Charles conceded that, in the final analysis, Haiti must create more opportunities for Haitians in Haiti, so that people would not risk their lives to go where there may be no improvement.¹⁵

The treaty also came under attack from the Catholic Church in the Bahamas. The Rt. Rev. Laurence Burke, Roman Catholic Bishop of the Diocese of the Bahamas, characterized the treaty as being "ambiguous". Specifically, Bishop Burke pointed out that the treaty stated that it would give legal status as soon as possible to illegal Haitian immigrants who were living in the Bahamas prior to December 31, 1980, provided the persons were married to Bahamians or working at the time of the signing of the treaty. The treaty does not say whether they must be working with a work permit or illegally. However, the raids since the signing of the treaty have been focused on all Haitians who did not have a work permit, inclusive of Haitians who have been living for over 20 years with Bahamian born children. This over inclusive round-up practice seems to violate the letter and spirit of the treaty.

Bishop Burke therefore called on the Bahamian Government to enunciate a clear and consistent policy, beyond raids and amnesties.¹⁶

Since the signing of this Treaty there have been mounting charges of human rights abuse against the Bahamian Government surrounding the periodic raids and detention of Haitian and Jamaican aliens in the Bahamas. It has been alleged that entire Haitian families, including Bahamian born

children, have been detained and deported; that Haitians have been subjected to mass arrangements and deposition of their cases before the Bahamian courts¹⁷ and, that Haitians have been imprisoned while awaiting trial or deportation in degrading and sub-human prison conditions.¹⁸

On July 15th, 1986, the Haitian Consul in the Bahamas, Mr. Evans Francois, apparently after having identified himself as a diplomat, was himself arrested and briefly detained by Bahamian police officers, while seated in his car waiting for his wife who was in the Nassau airport arranging the repatriation of a group of Haitians back to Haiti.¹⁹ This incident triggered criticism against the Bahamian Government both in Haiti and in the Bahamas.

Minister of National Security, Loftus Roker, stated that the police officer "acted properly" when he arrested Haitian Consul Evans Francois for "parking" in a no parking area at the airport. Mr. Roker stated that "this is not the first diplomat who has been arrested for breach of the laws of the country in which he was residing . . . In other words, Mr. Francois' continued breach of traffic regulation by not moving when the officer told him to move is not covered by any diplomatic immunity, and therefore the police officer was acting properly."²⁰

The Haitian Government sent a Diplomatic Note to the Bahamas Government protesting the arrest of Mr. Francois, noting that the Bahamas Government was not without responsibility for the anti-Haitian sentiment within the country which could have serious repercussions for the future of the Bahamas.²¹ On July 23, 1986, the Bahamas Government sent the Haitian Government a Diplomatic Note expressing regrets about the arrest of Mr. Francois, with a promise

to investigate the matter and punish those responsible.²² On October 27, 1986, Mr. Evans Francois was recalled from the Bahamas at the request of the Bahamas Government, with the excuse that Mr. Francois' continued presence in the Bahamas would not serve any useful purpose, as he was at the center of controversy. Under customary diplomatic practice,²³ the Haitian Government had no choice but to comply with the Bahamian request or have Mr. Francois declared *persona non grata*.³³

On July 17th, 1986, one day after the arrest of Mr. Francois, about 30 Jamaican nationals, upon arrival in the Bahamas aboard British Airways, were arrested and detained at the Central Police Station for allegedly violating Bahamas Immigration Regulations.²⁴ Prior to July 17th, Jamaican nationals were required to have a minimum of U.S.\$500.00 cash on them upon arrival in the Bahamas. However, this requirement was changed to U.S.\$700.00 while the British Airways flight was en route from Kingston to Nassau. Ms. Sue Lawrence, British Airways manager in Nassau, said she was informed of the new regulations at 10:45 p.m. The British Airways flight landed in Nassau at 10:28 p.m. She stated that "I was advised of the change of entry requirement after the flight had arrived in Nassau."²⁵ It would appear that neither the airlines nor the Jamaican passengers were given sufficient notice of this change in the required amount. It was reported that one of the detained Jamaicans was the wife of a Bahamian citizen. The Jamaicans were held in detention for two days and flown back to Jamaica on July 19th, despite offers by Bahamians to stand as sureties or to supply the required amount. Although the Government maintained that the Jamaicans were not "under arrest", the incident sparked significant protest and charges of human rights abuse by community and human

rights organizations both in the Bahamas and in Jamaica as well as by the Jamaican Government.²⁶

The prison conditions under which Haitians have been detained in the Bahamas have not escaped international comment. . . Amnesty International expressed its belief to Minister of National Security Loftus Roker that prison conditions under which Haitians were detained constitute cruel, inhuman and degrading treatment in contravention of Article 5 of the Universal Declaration of Human Rights, and are in gross violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Amnesty International urged that a thorough and impartial inquiry be instituted without delay into conditions under which Haitians have been, and continue to be, imprisoned at Fox Hill Prison and requested information about those currently in detention.²⁷

Although most of the criticisms of the current immigration policies of the Bahamas Government have been directed at the current Minister of National Security, Mr. Loftus Roker, Mr. Roker claimed that more Haitians have been given Bahamian status under his administration than at any other time since independence in 1973.²⁸ Mr. Roker disclosed that the following Haitians were given permanent residency with the right to work: 2 in 1976, 14 in 1980, 19 in 1981, 8 in 1982, 5 in 1983, 56 in 1984, 32 in 1985, and 20 for the first four months of 1986. He revealed further that the following number of Haitians received Bahamian citizenship: 1 in 1983, 7 in 1984, and in 1985 (Mr. Roker's first full year as National Security Minister) 88, from January to May of 1986 18 Haitians had received citizenship. Thus, from independence in 1973 to June 1986, according to Mr. Roker, 315 Haitians were given Bahamian citizenship.

TRENDS IN THE TREATMENT OF HAITIAN ILLEGAL IMMIGRANTS IN THE BAHAMAS

The Bahamian response to the "Haitian Problem" has manifested a dangerous trend in the administration of justice, the enforcement machinery of the state and the popular society which raises serious concerns about constitutional rights, the effectiveness of immigration and development policies, and the current political direction of the country.

The frequent raids directed at Haitians primarily, and other illegal aliens normally result in the wholesale detention of large groups of persons, with disposition of their cases following an irregular pattern, thus raising issues of due process and fairness. Such a case occurred on May 30, 1986, when the Bahamas immigration authorities, working along with police and defense force officers, conducted an alien round-up on the authority of general warrants in Pinders Point, Lewis Yard and the Hunters area in Grand Bahama. According to the *Freeport News*, about 80 Haitians nationals were arrested.²⁹ The arrests were limited exclusively to males. It was reported that some of those arrested had been in the Bahamas for a long period of time, had accumulated property and had children born in the Bahamas.³⁰ It was further reported that the immigration authorities executed their task professionally and made attempts to have the Haitians secure their possessions before taking them into custody.³¹ After having been processed, the detainees were bused to the Eight Mile Rock magistrates court before Magistrate Meerabux. The court proceedings began at 6:45 p.m.

Right To Counsel, Bail And Individual Adjudication

The detainees were arraigned 10 at a time, some were not represented by legal counsel. Those who pled guilty of illegal entry into, or overstaying their legal stay in, the Bahamas were fined \$150.00 or two months imprisonment and early deportation. Sentence was apparently done without consideration of mitigating circumstances.

It was pointed out to the court that many of the detainees had been in the Bahamas from 6 to 30 years, with deep roots in the Grand Bahama community. For those who pled not guilty to the charges, the magistrate refused to entertain the bail applications made on their behalf. This episode and the often prolonged detention, which is typical of the aftermath of raids in the Haitian community in the Bahamas, raises serious constitutional issues about the right to counsel before answering a criminal charge, the right to bail while awaiting trial and the procedural due process right to individual adjudication.

As Justice Georges held and was affirmed by the Privy Council, in *Re Thornhill*, the right to counsel is a right which "arises immediately after arrest and that right should be afforded without delay." This is a right which the Bahamas Constitution, Article 19 (2), extends to all persons in the country and identifies as being an important aspect of the liberty interest of all persons to be free from arbitrary arrest and detention. Therefore, the failure to allow the detainees in the instant case adequate legal counsel before pleading to the charges raises a serious constitutional concern.

The second concern was the refusal of the magistrate to either entertain the presentation of mitigating circumstances on behalf of those who pled guilty or to entertain the bail applications of those who pled not guilty. Since an immigration offense in the Bahamas is a criminal offense, unlike in the United States where it is, with some exceptions, a civil offense, it has to be dealt with in accordance with the Bahamas Criminal Procedure Code Act, 1968, which in Section 69 (1) states:

Where any person, other than a person accused of murder or treason, appears or is brought before a court, at any time or at any stage in the proceedings before such a court to give bail, such a person may be admitted to bail with or without a surety or sureties.

Therefore, all criminal offenses, with the exception of murder and treason, are bailable offenses. Whether bail is granted in a particular case is, of

course, within the discretion of the court. The magistrate in Eight Mile Rock was therefore incorrect to refuse to at least consider the facts of each case in determining whether any of the detainees merited bail pending trial of their cases. Indeed, this was the view taken by Bahamas Supreme Court Justice Gonsalves-Sabola, who on June 15th in reference to the same detainees, on the issue of bail, held that:

Bail will be granted those applicants who have established long and continuous or otherwise substantial periods of residence and/or were ever granted work permits in the past, or have significant family ties or may be entitled to Bahamian citizenship as claimed.³²

Justice Gonsalves-Sabola commented that an illegal immigrant, independent of the constitution, has locus standi equally with a Bahamian citizen or a permanent resident to apply for bail. In light of this apparently clear principle, it unclear why the magistrate in Eight Mile Rock refused to entertain bail application for the detainees who may have been able to qualify under the indicia of anchorage in the community. Needless to say, the unnecessary incarceration of these detainees for two weeks disrupted their family and employment relations as well as those of the wider Grand Bahama community.

Moreover, in the course of rendering his decision on the bail application, Justice Gonsalves-Sabola observed that "... the applicants appear to be afforded accommodation that provides somewhat less than ordinary amenities that a detention should have. The Prison Rules dealing with accommodation are themselves not all observed." Thus, the failure of the magistrate in Eight Mile Rock to accord the detainees their legal rights may have put unnecessary pressure on the prison facilities as well as denied the detainees their legal rights.

The third aspect of this episode involves the mass arraignment of the detainees. Such ad hoc procedures frustrate the legal counsel's ability to adequately represent his/her clients and it undermines the constitutional

due process guarantees. According to the Bahamas Constitution, Article 20 (1):

If any person is charged with a criminal offence . . . the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

The issue in reference to the instant case is whether the mass arraignment accords with the standard of "a fair hearing" and due process of law. Justice Aubrey Fraser, while on the Trinidad Court of Appeal, defined procedural due process of law as ". . . the rejection of arbitrariness in procedure or adjudication and seek to establish the invariability of fair procedure in addition to a fair hearing in accordance with the principles of natural justice."¹¹⁵ It can be argued that the Haitians, though illegally resident in the Bahamas for between 6 to 30 years, with Bahamian born children, permanent jobs, property and other attachments to the country deserve to be accorded, at the very least, due process of law.

APPRAISAL

The issue facing the Bahamas is whether most of the Haitians in the Bahamas have a moral and legal right to be in the Bahamas, given their contribution to the country and the fact that all of their children were born in the Bahamas and the fact that the Government has given work permits to these people for over 25 years. The second issue is whether these circumstances constitute prima facie the effective nationality of the host state the denial of which could create a breach of natural justice.

Since 1957 the Bahamas Government has been rounding up and deporting illegal Haitian immigrants, but the

Haitian population has been steadily increasing from 1,000 in 1957 to over 40,000 in 1986. Therefore, the current immigration policies do not serve as an effective deterrent to migration. Indeed, many of those Haitian nationals deported tend to return after a short interval to the Bahamas.³⁴ Moreover, the current policies tend to isolate and discriminate against the Haitian community. Given the size of the Haitian community in the Bahamas, about 1/5 of the total population, the Bahamas can ill afford to alienate such a large segment of the population. Such a course is not only dangerous for domestic stability, it is also fool-hardy. While the first generation of Haitians are likely to remain docile, the second and third generations, who will be native born Bahamians will not accept the denial of their rights or the discrimination perpetuated against themselves and their parents. More frightening, however, is that the continued isolation of the Haitian community will only produce a permanent underclass in Bahamian society, which will eventually be a menace to stability as it would have no stake in Bahamian domestic stability.

What is distinct about the current debate on the "Haitian Problem" within the Bahamas is the almost total lack of national discussion of the significant contribution of Haitian labor to the building of the Bahamas, especially in forestry, farming and tertiary trades, such as tailoring, barbering, gardening and domestic work, areas which most Bahamians are unwilling to undertake. This lack of appreciation is most surprising since many of the leading Bahamian citizens in Parliament and the business sectors are themselves second generation Bahamians, as many of their parents are recent immigrants to the Bahamas. Because there is no public acknowledgement of the Haitian contribution, Bahamians tend to view the Haitian community as a parasitic element.

There is also a growing Haitian phobia prevalent in the Bahamas, which could explode into violent confrontation, as Haitians are blamed for Baha-

mian unemployment and inadequate social services. Such a fear was voiced by Mr. Henry J. Bowen, former Progressive Liberal Party Parliamentarian, who in a letter to the editor stated:

As one of the founding fathers of the Bahamian nation, it is my duty to speak out on this subject. And it seems to me that we Bahamians can either support Mr. Roker [Minister of National Security] . . . or we can start learning creole . . . The Bahamas are a natural for colonization . . . The villains are those who flagrantly and knowingly violate Bahamian law. And if there is a human rights issue here, it is my right to enjoy my home, without being molested by uninvited intruders.³⁵

This Bahamian perception of the threatening Haitian presence has to a great extent conditioned official Bahamian response. In fact, such a perception seems to have influenced the Bahamas Government when in early September 1986 it was reported that the Bahamas Ministry of Education sent a circular to the principals of public schools that students of Haitian parentage were not to be registered until their parents' status was determined and that Haitian school children were sent home from the Golden Gate Primary School in the Carmichael area in Nassau.¹¹⁸ Mr. Donald Symonette, President of the Bahamas Union of Teachers, in response to this report, stated that "We have told our teachers that our job is to teach and we are not going to discriminate against anyone."

These reports of discrimination against Haitian school children were confirmed by the Grand Bahama Human Rights Association which stated that "from our investigation it appears that the Ministry of Education is requiring children born of any foreign non-Bahamian parent to leave the public schools at which they are already registered and/or refusing registration to any such child during this current academic year". The Association argued that this administrative action

violated the Bahamas Education Act, Chapter 23 (4), which states, inter alia, that the Minister shall "promote the education of the people of the Bahamas . . . to enable the children of the Bahamas Islands to understand the privileges and responsibilities as members of the Community, to contribute to the well being and progress of the Bahamas by the full development of their natural abilities and to earn an adequate livelihood as adults". The Association further contended that this prohibition against Haitian school children violated the Bahamas Constitutional guarantee, specifically Article 15 (b), of equal protection of the law.

Mr. Rawle Maynard, a Bahamian lawyer, argues that given the Haitian contribution to the Bahamas, it is unfair to claim that they are a burden to the Bahamas. Moreover, he observes that since Bahamians pay only indirect taxes, non Bahamians pay more taxes, in the form of stamp duty on conveyances, land tax in the Family Islands and departure and hotel taxes for tourists.³⁷

A similar discriminatory measure was adopted by the Texas Legislature in May 1975 to withhold from local school districts any state funds for the education of children who were not "legally" admitted into the United States and to deny enrolment to such children. The United States Supreme Court, in Plyer v. Doe, held that this law violated the Equal Protection Clause of the Fourteenth Amendment. Justice Brennan, speaking for the majority, status;

Section 21.031 [the Texas law] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation . . . In light of these countervailing costs, the discrimination contained in S21.031 can hardly be considered rational un-

less it furthers some substantial goal of the State . . . If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within our borders, that denial must be justified by a showing that it furthers some substantial State interest. No such showing was made here. Accordingly, the judgement of the Court of Appeals in each of these cases is affirmed.³⁸

Justice Powell, in his concurrence, stated further:

The classification at issue deprives a group of children of the opportunity for education afforded all other children simply because they have been assigned a legal status due to a violation of law by their parents. These children thus have been singled out for a lifelong penalty and stigma. A legislative classification that threatens the creation of an underclass of future citizens and residents cannot be reconciled with one of the fundamental purposes of the Fourteenth Amendment . . . But it can hardly be argued rationally that anyone benefits from the creation within our borders of a subclass of illiterate persons many of whom will remain in the State, adding to the problems and cost of both State and National Governments attendant upon unemployment, welfare and crime.³⁹

These Haitian children are not responsible for their status, to exclude them from Bahamian public schools will stigmatize them by keeping them illiterate for the rest of their lives. Needless to say, such exclusion, apart from the dubious constitutional validity, is likely to increase the already intolerable isolation of the Haitian community in the Bahamas. This continued isolation is also politically unwise, as it will result in the creation of a permanent underclass with no stake in the progress and development of Bahamian society.

Moreover, some observers have alleged that the Haitian community in the Bahamas is also used as a scapegoat for the present Government's

failure to implement an effective national development program to absorb the 5,000 plus high school students graduating annually. It has also been alleged that the timing of the raids have tended to coincide with periods of political crisis within the Bahamas.⁴⁰ If these allegations are true, it is short-sighted and will only increase the already intolerable isolation of the Haitian community. Should the current trend of more raids, irregular judicial proceedings and prolonged detentions in substandard conditions continue, the Bahamas may slide into authoritarianism and civil conflict between Bahamians and Haitians. Needless to say, such a course would have devastating implications for the rights of Bahamians as well as aliens in the Bahamas. On the other hand, the Bahamas Government must attempt to address this problem in a rational manner that balances respect for human rights and the maximization of value sharing by all persons within the Bahamas with the Government's legitimate concern with control of ingress into and egress from the country and the regularization of the status of those within the country. The current policies and administrative practices indicate possible discrimination against Haitians, in particular, and a movement towards the derogation of personal liberties and constitutional guarantees.

RECOMMENDATIONS

First, an agency should be established to implement, in an effective and nondiscriminatory manner, the regularization of the status of those aliens in the Bahamas who have acquired what Professor Ian Brownlie described as "prima facie the effective nationality of the host state".⁴¹ Using the criteria of effective nationality, as developed by the International Court of Justice in the Nottebohm case, many of the Haitians in the Bahamas may qualify by the criteria of habitual residence in the Bahamas, the Bahamas is the center of their interests, their attachment to Bahamian spouses and Bahamian born children and other demonstrations of attachment to the Bahamas. The policy rationale of such

a course of action would be the effective integration of the Haitian community into Bahamian society. The reasons justifying integration of the Haitian community were eloquently stated by Mr. Jethro Turner, in a letter to the editor, who reasoned that:

The logical end process of integration [of the Haitian community in the Bahamas] would be the development of a national plan to re-settle outlying islands and make them productive again, to establish a pool of agricultural manpower and to use this new labour to harness new resources and build a bigger and more secure future for us all. Such a policy would avoid all of the futility and human misery of the present approach which relies solely on punitive measures without the co-operation of the Haitian Government, and carries with it a threat to every Bahamian's freedom and security.

42

Second, I recommend that the Bahamas Government launch a national educational drive (inclusive of school curricula from primary to college school levels, television, radio, public posters and public pronouncements by political, religious and social leaders) to increase the consciousness and appreciation of the Haitian and other recent immigrants' contribution to the Bahamian society. Such a national program would help to diffuse the growing Bahamian hostility to immigrants in the Bahamas. The pervasive stereotypical Bahamian perception of the Haitian as a parasitic group, unless quickly eradicated, could serve as fertile source for fascistic appeals by unscrupulous politicians and agitators. However, this popular view of the Haitian immigrants as parasites is not substantiated by the facts. Mr. Charles Coakley, President of the Grand Bahama Chamber of Commerce, disclosed, relative to Freeport, that Haitians supply the labor for most jobs in the lower end of the economy, which Bahamians, because of a false sense of values do not want. He revealed that Haitians are good consumers, patroni-

zing Bahamian businesses, and that Haitians constitute the major labor pool for agricultural production, construction, domestic and support services in the hotel industries. Moreover, Mr. Coakley observed that the barbering and tailoring trades in Grand Bahama are almost exclusively Haitian supplied. He concluded that the Haitians came and made a cheaper product with competitive quality and that the constant raids are disrupting the local economy of the island, as Bahamians have not come forward to fill vacancies of deported Haitians.⁴³

It is also clear that this national education drive should address the expectations that many Bahamians have of the post-independent society and the general Bahamian aversion to agricultural and technical labor. The inflated expectations that many Bahamians have cannot be met within the limited tourist-based economy; thus, people must be resocialized to entertain careers in the fisheries and agricultural sectors. With a shift in Bahamian expectations, there would be a decrease in the demand for Haitian and other immigrant labor to do work that is necessary but which Bahamians refuse to do.

Third, I recommend that the legal community, in the Bahamas mobilize behind a package of legal reforms. Mr. Maurice Glinton, a Bahamian barrister, observes that the lack of a public law library constrains the training of lawyers and affects the proficiency of practicing attorneys.⁴⁴ There are only a small number of private fully equipped libraries; therefore, the legal preparation and exposure of Bahamian lawyers to developing common law trends and doctrines tend to be very uneven. This lack of availability of legal resources is exacerbated by the difficulty of ascertaining the posture of statutory law; there has not been a consolidation of Bahamian statutory laws since 1965. Mr. Glinton questions whether there is a commitment by the Bahamas bench to the development of a progressive Bahamian jurisprudence, as is reflected by the strong pre-

sumption that is often given to the State when in collision with individual rights.

One manner in which this concern can be addressed is through the establishment of a law review journal in the Bahamas, which would strengthen the appraisal function of law and establish a nexus between law and the Bahamian society. Professor Chen argues that "In an open, democratic, pluralistic society, such an appraising function is vital".⁴⁵ This function of evaluating the performance of law in society should involve lawyers, law professors, law students, the media and the public. Judicial decisions should be subject to critical evaluation by the legal academic community. Such a journal could provide a critical perspective of judicial decisions and offer ways by which law can be made to increase human dignity and personal liberties.

Professors McDougal and Reisman posit that lawyers, as specialists in decision, perform five intellectual tasks: "they are clarifying goals, testing past trends in decision for conformity to those goals, understanding decisions by reference to the context of conditions in which the decisions were made, trying to predict alternative trends in future decision and devising alternative courses of action."⁴⁶ Therefore, the Bahamas Bar Association must lobby for the harmonization of the treatment of aliens, particularly Haitians, with the established norm of nondiscrimination under international human rights law.

The legal profession in the Bahamas has been the target of much criticism lately. Minister of Works Darrell Rolle, himself a lawyer, speaking at the Call of two new attorneys to the Bahamas Bar, stated that the proper conduct of lawyers is a matter of grave concern within the Bahamian community. He admonished his colleagues that:

The Bar after all is not just a profession. It is that and more. It is an integral and indispensable part of our system of justice, without which, I venture to say, life would be much more difficult if not im-

possible.⁴⁷

Some lawyers have expressed frustration with the apparent indifference of the Bahamas Bar to law reform and human rights abuses in the Bahamas. Such frustration was voiced by Mr. Frederick Smith, an executive member of the Bar, who recently stated before the Bahamas Law Guild:

Our Bar which is supposed to be the bulwark and watchdog of the Constitution and which stands between the executive and the people of the country is disunited, disillusioned, [intimidated] and frustrated. The Bar right now is, for the most part, a fraud.⁴⁸

Mr. Smith encouraged his colleagues in the Bar to agitate for law reform and improvements in the administration of justice.

However, law reform should not only concern lawyers. As Professor Rex Nettleford observed, "To the mass, 'law' is very a discrete matter that describes and determines their very existence. It is only the cynical

who would dismiss as merely a 'litigious' propensity the people's frequent journeys to the courts to seek redress for abuses against their property rights, their character or their physical states. For they know that their very status as persons dating back just over 150 year as citizens since [emancipation], rests squarely on . . . law."⁴⁹ Professor Nettleford argues further that law can serve a creative function in Caribbean societies:

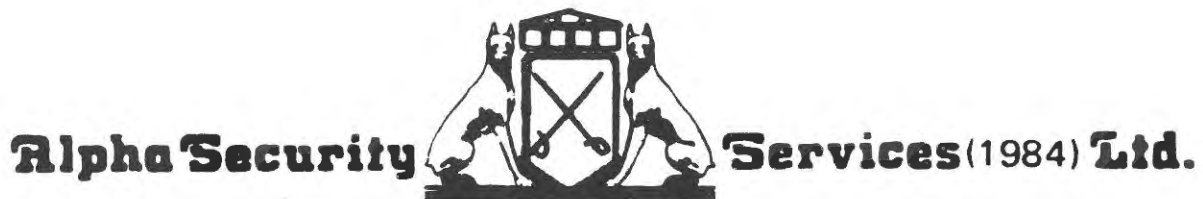
While there are limits to the operational capability of the law, these need not be imposed with a rigorous temper born of other people's traditions and idiosyncracies. The "rigour", that all systems of rules and regulations must have, should be made to emerge out of the substance of the social phenomena which shape and are in turn shaped by the lives of those for whom "the law" is enacted and operates. While in part a mechanism to articulate established facts and reality, the law can serve as stimulus toward

the improvement of the quality of life as well as the advancement of human growth and development while facilitating the reinforcement of commonsense and the refinement of sensibility.⁵⁰

As Professor Nettleford reminds us, the legal emancipation of enslaved blacks was to make it possible for the development of a society of self directing persons, although material dispossession, social snobbery and cultural subjection continue. Therefore, because the law has been so crucial to social development of the Commonwealth Caribbean, the application of law must be dynamic and compassionate, as an attempt is made to shape a new society out of colonialism. The Haitian immigrant problem in the Bahamas has presented the Bahamas with a crucial choice of whether the law will be used to enhance human dignity and personal liberties or to legitimate popular prejudice and discrimination against an insular and discrete minority.

The Copyright in this article is held by the Author. No part of it may be published or used without prior consent of the Author, and with acknowledgement.

With the compliments of



Savanna-la-mar:
Telephone: 955-2642

May Pen
Tel: 986-2133

(Main Office)
3 Skibo Avenue
Kingston 10
Tel: 926-4101
926-7819

Ocho Rios

Mandeville
Tel: 962-1697

FOOT NOTES

1. Dawn Marshall, **The Haitian Problem: Illegal Migration to the Bahamas**, p. 99 (1979).
2. *Ibid.*, p. 98
3. Bahamas Census, 1980
4. See The Grand Bahama Human Rights Committee, **Press Release**, October 3, 1986.
5. Bahamas Census, 1980. vigilance at sea; harsh criminal penalties and deportation.⁶
6. Marshall, *op. cit.*, pp. 98-106.
7. Colin A. Hughes, **Race and Politics in the Bahamas**, p. 208 (1981).
8. P.L.P. Government Senator, Dr. Doris Johnson, argued that because so many Haitians were raising families in the Bahamas "expulsion is out of the question". She emphasized the necessity for the education of Bahamians and Haitians in order to create better understanding between the groups. **The Tribune**, April 29, 1967. Father Guy Sansaricq, speaking for the Committee to Promote Haitian-Bahamian Relations, suggested that the Haitian community be absorbed into the Bahamian community, not isolated, through a program of adult education to familiarize Haitians with Bahamian culture and institutions. To achieve a more realistic immigration policy towards the Haitians, he recommended that alien resident status be given to Haitians already in the Bahamas, on the theory that a Haitian with a resident alien status would become immediately and genuinely interested in the progress of the country. Moreover, he stressed the need for Haitian labor in the farming, wood pulping, tourism and construction sectors of the Bahamian economy. Quoted in Marshall, *op. cit.*, p. 109.
9. Marshall, *op. cit.*, p. 109; J.P.H. Barratt, Grand Bahama, p. 107 (1982).
10. His Excellency Serge Charles, Haitian Ambassador to the Bahamas and Permanent Representative to the United Nations, counters that such instances of refusal by the Haitian Consul in Nassau to issue visas to Haitian nationals were due either to administrative problems or a determination by Haitian authorities that the status of many of these Haitian nationals should be decided in a Bahamian court of law, as many of them had been in the Bahamas for many years, with Bahamian born children, property in and other ties to the Bahamas. Interview, November 18, 1986 New York, U.S.A.
11. Treaty Regarding Illegal Immigration, September, 1985, Commonwealth of the Bahamas-Republic of Haiti. See Annex 2 (d) for the amnesty provision.
12. *Ibid.*, Article 2 (3). The qualifications are that the immigrant must not have a criminal record; must have a job at the commencement of the treaty; or must be married to a Bahamian citizen; or must own real estate in the Bahamas.
13. *Ibid.*, Article 2 (5).
14. Interview with His Excellency Serge E. Charles, Permanent Representative for the Republic of Haiti to the United Nations and Ambassador to the Commonwealth of the Bahamas. November 18th 1986, New York, United States.
15. *Ibid.*
16. Bishop Laurence Burke, "The Position of the Catholic Church on the Haitian Problem", **The Grand Bahama Sun**, March 29, 1986.
17. **The Freeport News**, May 21, 1986.
18. Dr. Marcus Bethel, testifying as an expert medical witness before the Bahamas Supreme Court, described the conditions at the Fox Hill Prison in Nassau where Haitian immigrants are usually detained as "... unhygienic and conducive to infectious disease problems". After examining 48 of the Haitian detainees on July 15th and 17th, 1986, Dr. Bethel reported to the Court that he had found that the Haitian detainees had a very common fungal rash on their skin, particularly in the groin area and most of them complained of generalized itching of the skin and scabies was noted on one of the individuals. In establishing causation between these diseases and the conditions within the prison, he stated that "They are naked except for undershorts. They have a greater opportunity for personal contact. The conditions foster them to clutter together at the entrance of the cells rather than sit on their bunks. Hence closer body contact, hence greater risk of possible disease." **The Tribune**, July 23, 1986.
19. See Vienna Convention on Diplomatic Relations, 23 U.S.T. 3227; T.I.A.S. 7502; 500 U.N.T.S. 95. The arrest and detention appear to be in direct contravention of international law regarding immunity of diplomatic agents. Article 29 of the Vienna Convention states: "The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."
20. **The Tribune**, August 18, 1986.
21. Interview with His Excellency Serge E. Charles, Permanent Representative for the Republic of Haiti to the United Nations and Ambassador to the Commonwealth of the Bahamas. November 18th 1986, New York, United States of America.
22. *Ibid.*
23. According to the Vienna Convention on Diplomatic Relations, Article 9 (1): "The receiving State may at any time and without having to explain its decision notify the sending state that the head of mission or any member of the *persona non grata* or that any

- other member of the staff is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission . . .” Therefore, the Bahamas was exercising its rights as a sovereign when it had Mr. Francois recalled. Whether it was politically wise is another issue.
24. **The Tribune**, July 18th, 1986.
 25. *Ibid.*
 26. Mr. Frederick Smith, Esq., a civil rights lawyer in the Bahamas, after interviewing the detained Jamaican nationals on July 17th, declared: “Legally, the Immigration Department has no authority to do what they are doing. When an alien arrives at a port of entry, the Immigration Department must either say yes you can come in and impose certain conditions, or say no. The Immigration Department has no authority to detain them if they have not committed any offense. For the Immigration Department to say that these people are not under arrest they can leave . . . civil liberties are being trampled upon day in and day out in this country, Bahamians and non Bahamians.” Mr. Smith posited that “Speaking strictly, these people can sue for damages due to illegal detention.” However, he said the detainees were so petrified they were afraid to take legal action to seek their release, lest the Immigration Department refuse them entry to the Bahamas again. **The Tribune**, July 19th, 1986. See also *Jamaat-ut Islan*, the Islamic Movement in Bahamas, issued a press release condemning the treatment of the Jamaicans. They argued that “It is hypocritical for the Government to ask Bahamians to support a boycott against apartheid in South Africa but stepping back when it comes to humane treatment of Haitians and Jamaicans.” **The Tribune**, July 21, 1986. According to **The Tribune**, July 23, 1986, the Jamaican Embassy in Washington was gathering data
 - ton was gathering data on the incident in preparation of a Diplomatic Note to be sent to the Bahamas Government.
 27. **The Tribune**, August 12, 1986.
 28. **The Tribune**, June 9, 1986.
 29. Simon Lewis, “80 Haitian Nationals Rounded Up in Early Morning Raids on GB,” **Freeport News**, May 30, 1986.
 30. *Ibid.*
 31. *Ibid.*
 32. **The Applicants v. Minister of National Security** (1986) 700 Bahamas Supreme Court (Criminal Side) 8.
 33. **Lassalle v. Attorney-General** (1971) 18 W.I.R. 379, 406 H.-I.
 34. Marshall, *op. cit.*, p. 58.
 35. Henry J. Bowen, **The Tribune**, September 5, 1986.
 36. **The Tribune**, September 3, 1986.
 37. Interview with Mr. Rawle Maynard, Bahamian barrister, Freeport, Grand Bahama, June 22, 1986.
 38. **Plyer v. Doe**, 457 U.S. 223, 224, 230 (1981)
 39. *Ibid.*, at p. 241
 40. Interview with Ambassador Serge Charles, *op. cit.*
 41. Ian Brownlie, *Principles of Public International Law* p. 520 (1979)
 42. Jethro Turner, “Should We Expell or Integrate Existing Haitian Immigrants?” **The Freeport News** May 14, 1986.
 43. Interview with Mr. Charles Coakley, President of the Grand Bahama Chamber of Commerce. Freeport, Grand Bahama, June 25, 1986.
 44. Interview with Mr. Maurice Glington, Bahamian human rights lawyer, Freeport, Grand Bahama, June 19, 1986.
 45. Lung-Chu Chen, “Institutions specialized to the Protection of Human Rights in the United States”. 1N.Y.L.
 46. McDougal and Reisman, **International Law in Contemporary Perspective**, 3 (1981).
 47. Sch. Human Rights
 48. Annual 27 at p. 31 (1983)
 49. Rex Nettleford, “The Law as Creative Agent,” **The Sunday Gleaner**, September 28, 1986.
 50. *Ibid.*