

ADDRESS TO THE ROTARIANS
30th MARCH 2004

[SALUTATIONS]

THE LAST TIME I ADDRESSED A GATHERING OF ROTARIANS WAS IN MAY 2000 ON THE OCCASION OF YOUR DISTRICT CONFERENCE HERE IN GRAND CAYMAN.

I SPOKE ABOUT THE THINGS WHICH YOU AS ROTARIANS CAN DO TO HELP STEM THE RISING TIDE OF YOUTH CRIME AND GENERALLY, WHAT YOU CAN DO TO HELP BRING ABOUT RESTORATIVE JUSTICE.

THE PASSAGE OF TIME SINCE THEN HAS ONLY SERVED TO UNDERSCORE THE NEED FOR YOUR INVOLVEMENT. ALL THE TRENDS SINCE THEN SHOW AN EMERGING THREAT TO THE WELL BEING OF OUR YOUNG POPULATION AND INDEED TO THE SOCIETY AS A WHOLE.

I RECALL THAT IN EARLY MAY 2000, THE “COMPASS” CARRIED A LEAD ARTICLE DESCRIBING A PETITION BY WEST BAY CITIZENS CALLING FOR LONGER JAIL SENTENCES FOR BURGLARY OFFENCES.

THAT WAS TROUBLING ENOUGH SIGN OF THE TIMES. YESTERDAY, HOWEVER, THE EVEN MORE OMINOUS TOPIC OF THE EDITORIAL WAS “GANGS IN CAYMAN”.

SO THERE IS EVERY GOOD REASON WHY MY TALK TONIGHT SHOULD BE ON THE CONTINUATION OF THE SAME THEME.

INDEED THE ONLY THING WHICH HAS CHANGED FOR THE BETTER SINCE MY LAST TALK TO YOU HAS NOT BEEN WITH THE SUBJECT-MATTER OF THE MESSAGE, BUT WITH THE STANDING OF THE MESSENGER – BECAUSE TONIGHT I HAVE THE PRIVILEGE OF ADDRESSING YOU AS AN HONORARY ROTARIAN.

NONETHELESS, THE MESSAGE THIS EVENING MUST STILL BE ONE THAT APPEALS NOT JUST TO A SENSE OF ESPRIT DE CORPS AMONG US, BUT ALSO TO THAT WELL KNOWN SPIRIT OF SERVICE TO THE COMMUNITY FOR WHICH ROTARIANS ARE KNOWN.

PUT SIMPLY AND TERSELY, THE MESSAGE CONTINUES TO BE THAT, DESPITE THE GROWING THREAT OF CRIME, SOCIETY’S RESPONSE WILL CONTINUE TO BE INEFFECTIVE, UNTIL WE ARE ABLE TO RESTORE AS WELL AS PUNISH THE OFFENDER.

THIS IS AN OBJECTIVE WHICH CALLS FOR A COHERENT CRIMINAL JUSTICE POLICY. IT IS ONE THAT REQUIRES AN

EXAMINATION OF THE PROBLEM TO IDENTIFY AND TREAT ALL ITS CONSTITUENT CAUSES.

THIS MEANS THAT EVEN WHILE WE ADDRESS THE IMMEDIATE THREAT OF YOUTH GANGS AND GUN CRIMES, WE MUST ADDRESS THE REASONS WHY OUR YOUTHS ARE INCLINED TO BECOME GANGSTERS.

SO, FOR INSTANCE, WHAT DO WE DO ABOUT THE LACK OR BREAKDOWN OF PARENTAL CONTROL IN THE LIVES OF THE YOUTH WHO ARE AT RISK? ABOUT THE BREAKDOWN OF FAMILY LIFE? ABOUT THE SENSE OF OSTRACISM FELT BY SOME YOUNGSTERS WHO WERE BORN HERE BUT DO NOT BELONG? ABOUT THE VACUUM IN THEIR LIVES WHICH IS FILLED AT AN EARLY STAGE, FIRST BY THE NEIGHBOURHOOD PEER GROUP AND LATER BY THE COMPANY OF THOSE WHO HARBOUR ANTI-SOCIAL SENTIMENTS AND VIOLENT TENDENCIES?

THAT IS BY NO MEANS AN EXHAUSTIVE LIST OF QUESTIONS, BUT IT WILL SERVE TO DEMONSTRATE THAT THE ROCKS UNDER WHICH WE SHOULD BE LOOKING TO FIND THE RELATED CAUSES, ARE NOT ALL OBVIOUS AND OUT IN THE OPEN.

IT HAS BEEN STATED TIME AND AGAIN, THAT THE NATURE OF A TRULY RESTORATIVE AND COHERENT CRIMINAL JUSTICE POLICY IS THE HALLMARK OF A CIVILISED SOCIETY.

WE DO NOT JUDGE OTHER NATIONS BY THE LAWS ON THEIR STATUTE BOOKS, BUT BY THE LAWS WHICH THEY PRACTICE.

OUR SOCIETY MUST JUDGE ITSELF IN THE SAME WAY.

THIS IS ESPECIALLY IMPORTANT IN THE AREA OF THE CRIMINAL LAW WHICH ADDRESSES ITSELF TO ALL CITIZENS AND EXPRESSES, OR AT LEAST OUGHT TO EXPRESS, OUR BASIC MORAL VALUES.

THE ESSENTIAL QUESTION FOR US IS THIS: HOW DO WE TREAT THOSE WHO OFFEND AGAINST US?

IN THE DESIRE TO CURB CRIME, IT HAS TO BE UNDERSTOOD AT ALL LEVELS – FROM THE LEGISLATIVE CHAMBER TO THE STREETS - THAT THE COERCIVE POWER OF THE CRIMINAL LAW, ITS AGENTS AND PROCESSES, HAVE TO BE USED WITH RESTRAINT OR THEY COULD FURTHER INJURE THE SOCIAL FABRIC. WHAT IS INTENDED TO CREATE ORDER, MAY CREATE DISORDER. WHAT IS AT HEART, AN EXPRESSION OF GOOD INTENTIONS MAY IN FACT WORSEN THE SITUATION, IF RULES ARE USED NOT AS GUIDES FOR JUST RESOLUTION; BUT AS A SHIELD AGAINST THE PROBLEMS AND, ULTIMATELY, AS A HINDRANCE TO A FULL UNDERSTANDING OF THE PROBLEMS THAT CONFRONT THE SOCIETY.

THERE IS ALREADY, I AM HEARTENED TO BE ABLE TO SAY, TANGIBLE EVIDENCE OF A PARADIGM SHIFT AWAY FROM THE OLD TO THE NEW WAY OF SEEING THE PROBLEMS.

AT LONG LAST, THERE IS NOW AN ACCEPTANCE IN OFFICIALDOM OF THE NEED FOR AN HOLISTIC APPROACH TO THE TREATMENT OF CHILDREN IN NEED OF CARE AND PROTECTION AND OF YOUTH OFFENDERS. NO LONGER, AFTER DECADES OF DECRYING IT, ARE THE COURTS EXPECTED TO INCARCERATE CHILDREN AT THE UNWHOLESOME WEST BAY LOCK UPS.

INSTEAD, THERE ARE NOW REFURBISHED AND REDEDICATED CHILDREN'S HOMES – CENTRAL AMONG WHICH ARE THE BONAVENTURE AND FRANCES BODDEN HOMES - WHICH ARE ROTARY BUILT FACILITIES.

NEXT WEEK, WITHIN THE GROUNDS OF THE NORTHWARD PRISON, BUT COMPLETELY SEGREGATED FROM THE ADULT SIDE; WILL BE OPENED A YOUTH REHABILITATION CENTRE CALLED “EAGLE HOUSE”, TO WHICH THOSE YOUNG OFFENDERS WHO MUST BE INCARCERATED CAN BE SENT.

JUST AS IMPORTANT AS THE FACT THAT IT WILL BE A SEGREGATED FACILITY, DESIGNED TO TAKE YOUNG OFFENDERS; WILL BE THE FACT THAT IT WILL BE RUN BY SPECIALLLY CHOSEN STAFF AND WILL HAVE PROGRAMMES DEVELOPED TO SUIT THE NEEDS OF THE YOUNG INMATES.

FOUR YEARS AGO, I ALSO TOLD YOUR CONFERENCE ABOUT RECOMMENDATIONS MADE BY A COURT CONVENEED COMMITTEE FOR NEW SENTENCING MEASURES. THESE

RECOMMENDATIONS CALL FOR MANY NEW APPROACHES TO SENTENCING. THESE WILL INCLUDE ELECTRONIC TAGGING, COUPLED WITH CURFEW ORDERS, INSTEAD OF IMPRISONMENT; COMMUNITY SERVICE ORDERS; CONDITIONAL SENTENCES, TO ALLOW FOR SERVICE OF SENTENCES IN THE COMMUNITY INSTEAD OF IN PRISON; INTERMITTENT SENTENCES, TO ALLOW FOR INCARCERATION AT TIMES WHICH WOULD ENABLE THE OFFENDER TO KEEP HIS JOB AND SUPPORT HIS DEPENDENTS; RESTITUTION AND COMPENSATION ORDERS, TO REQUIRE OFFENDERS TO MAKE REPARATIONS DIRECTLY TO THEIR VICTIMS AND BE CONFRONTED BY THEIR VICTIMS; FAMILY GROUP MEDIATION AND COUNSELLING FOR YOUNG OFFENDERS, WHICH WILL INVOLVE THE FAMILY AND EVEN THE IMMEDIATE COMMUNITY OF THE OFFENDER IN MEDIATING CERTAIN OFFENCES AND COUNSELLING THE OFFENDER; PERFORMANCE ORDERS, REQUIRING OF THE OFFENDER WITHIN A SPECIFIED TIME TO DO ONE OR MORE THINGS: SUCH AS PARTICIPATE IN DRUG TREATMENT OR OTHER COUNSELLING, LOOK FOR AND OBTAIN SUITABLE EMPLOYMENT, TAKE ACADEMIC OR VOCATIONAL TRAINING COURSES AND SO ON AND SO FORTH.

ALLIED TO THESE AND SEVERAL OTHER NEW MEASURES, WILL BE THE DRUG COURT WITH ITS SPECIALLY DESIGNED PROGRAMMES FOR DEALING WITH DRUG ABUSE OFFENDERS.

TIME DOES NOT ALLOW THIS EVENING FOR A DETAILED DISCUSSION OF ANY OF THESE OR THE SEVERAL OTHER MEASURES WHICH ARE RECOMMENDED.

THE SENTENCING COMMITTEE'S REPORT WAS TABLED IN THE ASSEMBLY. IT IS A PUBLIC DOCUMENT AND COPIES CAN BE OBTAINED FOR THOSE OF YOU WHO MAY BE INTERESTED.

TANGIBLE PROGRESS HAS BEEN MADE WITH THE EXISTENCE NOW OF DRAFT LEGISLATION TO MAKE THE RECOMMENDATIONS INTO LAW AND TO CREATE THE DRUG TREATMENT COURT

SO WHILE IT IS STILL FAR TOO EARLY TO START CLAIMING SUCCESSES, THERE OVERALL, IS AT LAST, AN ENLIGHTENED BEGINNING.

IT MUST BE EMPHASISED, THAT THE OBJECTIVES OF THESE REFORMS CANNOT BE ACHIEVED JUST BY NEW LAWS; NOR CAN THEY BE IMPLEMENTED BY EXPERTS AND OFFICIALS ALONE. THEY WILL REQUIRE EXTENSIVE COMMUNITY INVOLVEMENT. IT IS THE COMMUNITY FROM WHICH THE PROBLEMS OF CRIME ARISE AND REAL SOLUTIONS CAN BE FOUND ONLY THERE.

AND THE FACT THAT MANY OF THE NEW APPROACHES MAY NOT INVOLVE FORCE OR COERCION, DOES NOT MEAN SOFTNESS OR COMPLACENCY. ON THE CONTRARY, IT IS SOFTNESS AND COMPLACENCY IF CITIZENS ASSUME THAT THE

PEACE AND ORDER OF THE COMMUNITY IS THE BUSINESS ONLY OF THE STATE AGENCIES AND THAT THEIR ONLY CONTRIBUTION IS TO COMPLAIN WHEN THINGS GO WRONG.

NOW TO COME IF I MIGHT, TO THE POINT OF MY TALK TO YOU TONIGHT: FROM ALL THE FOREGOING I BELIEVE NOW, AS I DID FOUR YEARS AGO, THAT YOU WILL HAVE DISCERNED THE MANY AREAS OF NEED IN WHICH THE TRADITIONAL ROTARIAN PLEDGE TO ACT WITH CONSISTENCY, CREDIBILITY AND CONTINUITY, FINDS READY SCOPE FOR APPLICATION. INDEED, EQUALLY SOME FOUR YEARS AGO, THE DIRECTOR OF VOCATIONAL SERVICES OF THE ROTARY CLUB OF GRAND CAYMAN, REFERRED FOR MY CONSIDERATION, THE “FIRST OFFENCE PROBATION PROGRAMME” WHICH AT THAT TIME, WAS REPORTED AS VERY SUCCESSFUL IN DAVENPORT, OHIO; WHERE IT WAS FIRST INTRODUCED BY A JUDGE TOGETHER WITH THE DAVENPORT ROTARY CLUB.

THE IDEA OF THIS PROGRAMME WAS INCORPORATED INTO OUR SENTENCING REFORM RECOMMENDATIONS WHEN THEY WERE SUBMITTED TO THEN GOVERNOR SMITH IN OCTOBER 2000.

IT IS AN IDEA THAT WILL BE PRACTICABLE WITHIN THE FRAMEWORK OF THE LEGAL CHANGES TO BE INTRODUCED.

THE IDEA IS THAT ROTARY CLUB MEMBERS, AS WELL AS OTHER SUITABLE VOLUNTEERS TO BE IDENTIFIED BY THE COURTS OR THE GOVERNOR IN CABINET, WILL BECOME INVOLVED AS QUASI-PROBATION OFFICERS.

THEY WILL ENGAGE IN PROBATION PROGRAMS ON THE ONE TO ONE BASIS, WITH YOUNG OFFENDERS IN THE AGE GROUPS 18 TO 25 YEARS AND WHO ARE CHARGED WITH OFFENCES WHICH CAN PROPERLY BE DEALT WITH IN THIS WAY. TYPICALLY, THESE WILL BE MINOR DRUG OFFENCES, OFFENCES INVOLVING DISHONESTY OR LESSER ACTS OF VIOLENCE.

THE PROGRAM WILL SEEK TO PROVIDE ONE TO ONE COUNSELLING OR MENTORING TO THE YOUNG OFFENDERS. IN THE PROGRAMME, ROTARIANS SERVE AS POSITIVE ROLE MODELS AND ATTEMPT TO PROVIDE EFFECTIVE GUIDANCE BY SETTING GOALS, STRESSING THE IMPORTANCE OF EDUCATION AND FOCUSING THE MINDS OF THE YOUNGSTERS ON CAREERS.

IN EFFECT, A BIG BROTHER/BIG SISTER PROGRAMME, BUT WITH THE FORMAL AND INSTITUTIONAL RESPONSIBILITIES OF ENSURING THAT CONDITIONS OF PROBATION ARE COMPLIED WITH – SUCH AS DRUG OR ALCOHOL TESTING, AND THE RESPONSIBILITY OF REPORTING ANY VIOLATIONS BACK TO THE COURT.

THE PROPOSAL FROM ROTARY GRAND CAYMAN, IS THAT THESE PROGRAMS BE ADOPTED HERE AND THAT EACH SHOULD LAST FOR SIX MONTHS PER OFFENDER. MONTHLY REPORTS WOULD BE PROVIDED TO THE COURT FOR JUVENILE OFFENDERS AND, FOR YOUNG ADULTS; A SINGLE REPORT A FEW WEEKS BEFORE THE END OF THE PROBATIONARY PERIOD.

A FURTHER RECOMMENDATION STILL TO BE ADDRESSED AT THE POLICY LEVEL, IS THAT SUCCESSFUL COMPLETION OF THE PROBATIONARY PERIOD, WOULD RESULT IN A CLEAN RECORD FOR THE PROBATIONER.

IF NOT SUCCESSFULLY COMPLETED, THE ALTERNATIVE WOULD BE A CRIMINAL RECORD AND A FINE OR OTHER MORE STRINGENT TREATMENT WHICH COULD INVOLVE A TERM OF IMPRISONMENT.

THIS SORT OF APPROACH TO THE TREATMENT OF OFFENDERS IS VERY MUCH IN KEEPING WITH THE MODERN ENLIGHTENED APPROACH WHICH PLACES EMPHASIS ON THE WHOLE CONCEPT OF RESTORATIVE JUSTICE. IT IS VERY WELL SUITED TO THE ROLE WHICH A COMMUNITY ORGANISATION LIKE YOURS CAN BE EXPECTED TO UNDERTAKE IN THE ADMINISTRATION OF JUSTICE.

FOUR YEARS AGO, I ALSO TOLD YOUR CONFERENCE THAT BEFORE IT CAN BE IMPLEMENTED IN THE CAYMAN ISLANDS, LEGISLATIVE CHANGES WOULD BE REQUIRED TO MAKE IT WORK. THE LEGISLATION IS STILL NOT YET PASSED BUT AT LEAST YOU ARE NOW AWARE THAT IT IS BEING ATTENDED TO. THE MILL OF CHANGE TURNS VERY SLOWLY, BUT IT IS TO BE EXPECTED THAT IT GRINDS FINELY AND COMPLETELY.

I URGE YOU TO KEEP “STANDING BY” AND IF PRESSED FOR AN ESTIMATE OF TIME-FRAME TONIGHT, ALL I COULD SAY IS IN THE VERNACULAR “SOON COME”.

IN THE MEANTIME, PLEASE BE ASSURED THAT MY DOOR AND THOSE OF MY COLLEAGUES OF THE JUDICIARY ARE ALWAYS OPEN FOR DISCUSSIONS ON THESE MOST IMPORTANT MATTERS. IT IS A PLEASURE TO BE HERE WITH YOU.

THANK YOU FOR YOUR ATTENTION AND GOOD EVENING.

HON. ANTHONY SMELLIE
CHIEF JUSTICE