

MEETING OF ASSOCIATION OF CARIBBEAN COMMISSIONERS OF POLICE

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ADDRESS DELIVERED BY

SIR DENNIS BYRON

ON

HUMAN RIGHTS ISSUES IN THE CARIBBEAN AND ITS IMPACT ON POLICING

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Mr. Master of Ceremonies, distinguished members of the Association of Caribbean Commissioners of Police and all guests, I am indeed honoured to have been invited to address you on this important topic in your week of activities. Your organization has established a sound reputation and sets an example for others to follow in regional cooperation.

The topic on which you have asked me to focus is one in which there is a heightened awareness in the Caribbean particularly in certain sections of the legal profession practicing at the Criminal Bar.

This has without doubt raised the level of importance that Caribbean Police must give to the fundamental rights provision of the Constitution, the main source from which human rights provisions emanate in our respective jurisdictions.

These constitutional provisions have an impact on the daily routine operations of the police in maintaining law, order, peace and stability, and in investigating and prosecuting criminal complaints.

These provisions, with which I am sure you are familiar, are intended to guarantee that

- no one is deprived of their freedom or their life without due process of law,
- no one is subjected to torture or inhumane or degrading punishment or treatment,
- no one is subjected to arbitrary search of his person or property or entry by others into his premises, and
- everyone is presumed innocent until proven guilty with a number of antecedent rights in the investigation and prosecution of criminal offences.

These are nothing new. But despite the fact that they have been with us for a long time it is still necessary to consistently attract attention to the importance of their observation. When I told someone that I was addressing on a topic relating to Human Rights and Policing, I was given the tart response, you will have a hard time because human rights and policing don't go together. I had to explain that the Police Act and the several laws and rules of criminal procedure which the Police use in their daily routine give effect to specific constitutional provisions and the human rights provisions of the constitution is an important chapter in the Police Bible – so to speak.

I suppose that the main impact this must have on Policing in the Caribbean is the need to raise standards in the training of Police at all levels from the initial training of Recruits to the highest ranks of the force and to strengthen the component of constitutional law, forensic sciences, evidence and criminal procedure in the curriculum. It is also necessary to raise standards in the investigation of crime. The most heartbreaking incidents in a criminal prosecution can occur when the case disintegrates for no reason other than zealous but unskilled investigative tactics or strategies, even worse for breaches of procedural or evidential laws. One of the major developments in Human Rights issues in the Caribbean is that these types of default, affecting as they do the right to a fair trial, are sometimes categorized not only as breaches of the law but also breaches of the Constitution, and in many cases breaches of the International obligations of the State. The fact of international scrutiny of Human Rights issues arising from the Caribbean and the availability of access by our citizens to International Human Rights judicial tribunals must impact with tremendous force on Policing in the area. The imperative of improved training must be accompanied by institutional development to ensure that systems are in place to facilitate the observance of the constitutional and international obligations in policing.

I would link this to the question of human resources. I suspect that there is still difficulty in obtaining recruits of good standard. People do not equate the Police with a profession. Although many lawyers have come from the ranks of the police, invariably they have not been promoted within the force, with one or two notable exceptions among your group. Usually when police officers graduate with professional qualifications they leave the

force. This suggests that the Police force is not seen as an important adjunct to the justice system or even as a professional career, bearing in mind that the legal profession is not the only profession connected with policing . I think that human rights issues must lead to improved human resource policies that will improve the quality of recruits and encourage the already enlisted officers to seek professional qualifications and advancement. This is also linked to gender issues in the staffing of the force. Women seem to have a ceiling in rank. This is evident even as I look around this room as you do not seem to have any female colleagues of suitable rank to attend this meeting. Additionally I am not aware, hopefully through ignorance, of women trained to the level of leading prosecution or investigative units. This could prove to be an important issue as you seek to respond to the human rights issues of dealing with gender issues affecting women and children as perpetrators or victims of crime and the growing awareness of the value of specialized units to deal with such issues. I would think that human rights issues in the Caribbean would impact on the gender issue in staffing the force at its highest levels.

Then there is the growing attention being given to the human rights of offenders which impact on increasing importance being placed on rehabilitation of offenders and prevention of crime. These have always been a part of the police function, but increasing emphasis will have to be placed on training in these areas, and perhaps in the development of specialized units

For centuries, philosophers and jurists have spent much time pondering, analyzing and discussing the reciprocal relations and obligations between the state and the individual. On the one hand there is the awesome juggernaut of the state and its various arms: the courts, parliament, the public service bureaucracy, the Ministers of Government, and of course the army (where one exists) and the police. These various organs are invested with tremendous authority over individuals in society. For the society to function effectively it is imperative that the individual should be required to conform to rules and regulations, to the laws of the State. This is not just in the interest of the society as a whole but it is in the interest of each person on an individual level. The alternative to this would be chaos, if every individual were permitted to do just what he pleased when he pleased and how he pleased.

Democratic states are organized in such a manner as to ameliorate the unqualified power the state has over the individuals who live within it. So it is that the might of the state is divided into three branches thereby facilitating one branch to keep a check on the other. We therefore have, in the Caribbean and in other democratic countries, three branches of government: the executive, the parliament and the judiciary. Each branch has its own responsibilities. Parliament makes the laws, the executive conceives and implements policy measures and the judiciary interprets and enforces the law. In the countries of the English speaking Caribbean, a fundamental law sets out and carefully defines the relationship between these three arms of government. Each arm must function within the confines of that law. That law is of course the Constitution. The Constitution is supreme.

Even with this separation of powers, the individual is still at the mercy of the branches of government. It is quite possible, and it happens from time to time, that in its zeal to carry out its mandate, Parliament or the executive may temporarily neglect to give due consideration to the position of an affected individual. Further measures must therefore be imposed in order to safeguard the vital interests of the individual. Society must so regulate itself that there is a happy medium between the power and authority with which the state must be invested and the core interests of the individual.

There is another dilemma that democratic governments face. Democracy is government by the majority. But care has to be taken to ensure that this does not degenerate into a dictatorship of the majority. Even where legislative or executive action has the solid support of the majority, the position of minorities must be given due consideration and the state ought not to be permitted to ride roughshod over individuals or a group of individuals merely because they constitute a minority or because they are at the fringes of society.

This is where the concept of fundamental rights and freedoms comes in. In the wake of the Second World War and the atrocities of Nazi Germany the United Nations published its famous Universal Declaration of Human Rights. Not long after that the countries of Western Europe subscribed to a European Declaration of Human Rights. The English speaking Caribbean territories have borrowed heavily from these documents and have inserted in their respective Constitutions many of the concepts expressed in them. The sections containing these rights are usually contained in a Chapter of the Constitution that

is entrenched, that is to say, they have been regarded by the framers of the Constitution with such great importance that they cannot be easily altered. In many instances it is extremely difficult to alter or amend them.

The Constitution does not simply lay down these rights and freedoms as lofty goals to which the organs of the state should aspire. They are not there simply to give guidance to the organs of the state. The Constitution boldly proclaims that if anyone feels that any of his declared rights have been infringed or is likely to be infringed in relation to him or her then that person has the ability to pursue the matter in the courts. The Constitution further charges the judiciary with the responsibility for adjudicating such matters and granting to the citizen any relief to which the complainant appears entitled.

Every individual, whether a supporter of the government of the day or not, whether a member of any minority or not, every individual therefore has the assurance that he or she can complain if it is felt that some action taken by the state infringes or may infringe their human rights. And the court is required to hear the matter and to grant an appropriate remedy.

The Human Rights Chapters in the Constitutions of Caribbean countries go a long way towards striking that balance between the vulnerability of the individual and the might of the state. The citizen is guaranteed that whatever the state does and irrespective of how such action is viewed by the vast majority in the country, the citizen can complain if that action infringes or threatens to infringe his fundamental rights.

It is very important to bear in mind that one of the motive forces for the existence, entrenchment and enforceability of the human rights clauses is the safeguarding of the interests of the weak, the poor, the disadvantaged, and those who comprise a minority. In the first instance, it is these groups of persons that are in need of special protection. The clauses are there for everyone's benefit but it goes without saying that the strong and the powerful, those who comprise the majority, and the wealthy are sometimes able to fend for themselves in ways that may be unavailable to those at the other end of the scale.

Moreover, if the human rights of those at the margins of society are observed or enforced, then those people in the main stream ought to feel a greater level of comfort. They will feel that, if and when it became necessary for them to invoke *their* rights then the same would indeed be respected. One recalls the lament of a German priest who was persecuted by the Nazi authorities. He said, "First they came for the Jews. I was not a Jew so I said nothing. Then they came for the communists. I was not a communist so I said nothing. Then they came for the trade unionists. I was not a trade unionist so I said nothing. Then they came for the intellectuals. I was not one of them so I remained silent. Then they came for me. And there was no one left to say anything....."

There is another significant aspect about the enforcement of human rights that is worth mentioning. I have previously alluded to the United Nations Declaration on Human Rights and the European Declaration on Human Rights. In this part of the world, most states have also subscribed to the American Convention on Human Rights and the Inter

America Convention on Civil and Political Rights. In some instances, the states signatories to these treaties have established international tribunals to adjudicate complaints as to the observance or non-observance of the treaty provisions. Regionally and internationally therefore, a tremendous body of law has developed and continues to be developed relating to the applicability of human rights provisions. Exactly what kind of action by the state constitutes a human rights violation? In what circumstances can an apparent violation be excused? What type of remedy is appropriate for particular violations? These and other questions are answered by these tribunals. This body of law and the decisions from these tribunals are of course not binding on the courts of the Caribbean. Nevertheless, they can sometimes give guidance to the Caribbean judiciary when we seek to grapple with controversial issues involving the interpretation of our own human rights clauses that are worded similarly to the treaty provisions. Such was the case in the recent decision of the Eastern Caribbean Court of Appeal in the case of SPENCE v. THE QUEEN. A majority on the court took the view that even though capital punishment was lawful the automatic death penalty for all murder convictions was contrary to that section of the Constitution that protected the citizen from inhuman or degrading punishment. In their judgments the members comprising the majority paid great heed to the experience in other jurisdictions and the recent decisions of foreign tribunals including those set up under the Inter American Conventions.

The human rights issues that are most often in the news probably relate to matters regarding the death penalty, the treatment of prisoners and suspected persons and the freedom from inhuman or degrading treatment. The preoccupation with these issues by

some human rights advocates can sometimes lead to the unfortunate conclusion that in the sphere of human rights the law is more concerned with looking after the interests of the perpetrators of crime rather than those of the victims of crime. But of course one has to see this perceived preoccupation in the context of the points I have raised earlier.

Certainly, the victims of crime and their families ought also to be looked after. In some countries there is legislation that makes provision for the granting of compensation to victims or their families in certain instances. Whenever, for example, a major breadwinner is murdered by someone against whom it would not be profitable to bring a suit for wrongful death, then the dependants of the murdered person can be guaranteed some form of compensation from the state. These are laudable initiatives but discussion on them is for another time.

The Police play a very pivotal role in the observance of human rights. This is natural because the police force represents a coercive arm of the executive. The state relies on the police to enforce obedience to the law. In performing their role, police officers must interface regularly with the criminal element of society. It falls to the police to be directly involved in detecting, investigating and prosecuting crime. It is the police who apprehend, arrest and initially detain suspects. Perhaps more than any other agency of the state, the police are therefore called upon, on a daily basis, to strike the balance between the constitutionally permitted use of the coercive power of the state on the one hand and the sanctity of the individual human rights of the citizen on the other. In the face of an active Press scrutinising and publishing the every move of the police and zealous human

rights bodies quick to highlight the foibles of members of the force yours is not an easy task. But these are responsibilities that must be carried out continuously and consistently. As in any other of your endeavours in this area too you must strive for excellence.

Your task is made just a little easier by the way in which the human rights clauses are worded in our respective Constitutions. In some countries human rights clauses are worded in broad and sweeping terms. The constitutional document does not list any exceptions or qualifications that accompany the rights. The police have little guidance on what is or is not authorised in order to stay within compliance of the particular right. It is then left for the decisions of the courts to inform the police on what is or is not authorised. Such is the case in the United States of America for example.

That is not the case with Caribbean Constitutions. Almost all of the freedoms declared in the Human Rights Chapter of our respective Constitutions contain a statement of the exceptions and qualifications that accompany the respective freedoms. There is therefore in the Constitution itself some guidance given to the police. So for example, while the Constitution protects the citizen from arbitrary arrest and detention, the section goes on to outline those circumstances in which arrest and detention would be excused. One such area for example is where there is reasonable suspicion that the person has committed, is committing or is about to commit a criminal offence.

To take another example, the Constitutions protect the citizen from being subjected to the search of his person or the entry by others upon his property. But here again there are

several qualifications and exceptions. For example, in the interests of defence, public safety, public order, public morality and the like, Parliament is permitted to make laws that authorise officers of the Government, including the police, to search the property and the person of the citizen provided that the law in question is reasonably justifiable in a democratic society.

Even with this sort of guidance however, it must be borne in mind that ultimately it is the courts, the judiciary that has the task of interpreting the Constitution. Not the police, not the executive. To compound matters, the judiciary regards itself as being obliged to interpret the human rights clauses generously in favour of the citizen. It therefore behoves the police to keep abreast of all the decisions of the court that bear on constitutional interpretation. This is the surest way of discovering the limits of permitted police action where there is doubt as to whether such action does or does not transgress the Constitution.

Very often, accused persons before the court are wont to challenge their confession statements as not having been made voluntarily. The court then tries that matter as a separate issue. On BBC Television a few days ago there was a news item relating to police practices in Mexico. It was reported, and the authorities now apparently believe the allegations, that confessions were extracted from suspected persons by dubious methods. The point that intrigued me was the comment made by someone that in addition to the obvious denial of respect for human rights that occurs when this happens, there is also another very serious consequence to such practices. The point is this. Where a

practice develops whereby crime is solved mainly by confession statements then, quite apart from the fact that the confessor may not necessarily be the perpetrator, there is little motivation for the police to attain high standards in forensic and investigative skills. Where such motivation is lacking then naturally those standards begin to decline. This is what, according to the report, was happening in some parts of Mexico. The police were relying so heavily on confession statements to solve crime that the forensic skills of the officers were not being honed.

A recent decision of the Eastern Caribbean Court of Appeal has held that in some Eastern Caribbean States, the provisions of the United Kingdom Police and Criminal Evidence Act 1984 (PACE) are applicable. PACE sets out the law relating to the powers of the police to stop and search persons, to enter and search premises and to seize property therein, to make arrests, to detain persons without charge and after charge and to question persons who have been detained. The Act sets out to define the limits of the powers of police officers in these areas and to provide a series of checks and controls on the exercise of those powers. The contents of the Act have been supplemented by a series of Codes of Practice.

Police officers in the region are therefore simultaneously faced with two stark realities. The first is the tendency on the part of the courts to be very vigilant in securing the human rights of the citizen. This of course is a constitutional duty of the courts. If it seems as though the courts are addressing this responsibility more vigorously of late then

that is because of the increased attention being placed the world over on the protection of the rights of the citizen.

The second reality is the imposition of tighter standards on the part of the police in situations where the rights of the citizen might be at risk. The provisions of PACE are but one example of this.

It would be a profound error to ignore or underestimate the impact of these realities. A positive response to them on the part of the Police Services of the region will be required. Of course, it will be for each Service to define the scope and depths of the measures it will adopt in response. Those measures will naturally be in keeping with the actual needs of the particular Service. It is clear however, that any such response must encompass the improving of the efficiency of the Service and heightening the professionalism of those within its ranks.

The law is that evidence obtained in breach of the PACE codes of practice may be excluded by the trial judge. It is no use having a situation where painstaking days and hours are expended at the investigative and evidence gathering stages only to see all that work come to nought because of serious procedural flaws. In those jurisdictions where PACE may be applicable, and even in those where it is not, it is incumbent on the Police Service thoroughly to understand the relevant law and practice and be scrupulous in observing them.

For example, the phrase "reasonable grounds for suspicion" is an important one within the framework of PACE. That concept can be very technical. The phrase is not defined in the Act itself but the Code does give some guidance on it. By following the Code Police Officers can become familiar with the kinds of circumstances that can support reasonable suspicion and those that will not.

The Code also stipulates that only officers of a certain rank are permitted to carry out certain functions. In order to maintain efficiency it is obviously necessary for police officers to be regularly exposed to high levels of training in the Codes of Practice.

Another important development that concern with human rights issues will have, is timeliness of investigation and prosecution. It is increasingly recognized that justice delayed is justice denied and the police will have to be concerned with the expedition of the disposition criminal cases. This is of even greater importance in dealing with crimes against tourists where the state is often faced with costs of bringing in foreign witnesses who had to leave before the matter came on for hearing. There is a case to be made for the increased use of technology in the process and for the utilization of the techniques which I know your organization has endorsed of vide-taping evidence which could be used in the lieu of personal appearances in all but the most serious crimes.

Concerns are also usually raised in the Press at times about the tactics of the police whenever a person, usually a dangerous criminal, meets his death in a confrontation with the police. Such concerns are best left to be judicially resolved at Inquests where, in an

orderly manner, a tribunal established for that specific purpose can sift through all the available evidence and make appropriate findings.

The Police Force is not insulated from the rest of the community. It is from the community that its members are drawn. I am sure that every Commissioner present here appreciates that any perception that the police are habitually guilty of human rights abuses can serve only to weaken morale within the ranks of the Force and make it more difficult for the Force to obtain the cooperation of the general public. Effective policing depends to a large degree on the general public having confidence in the methods and operations of the police. A transparent approach to the investigation of allegations of human rights abuses and the prosecution of those suspected of such abuses will shore up that confidence.

It is also important that each police force should pay some attention to developing and maintaining effective public relations. There is a section of the community that is wont to give credence to every allegation made against the police. Often these allegations are so embellished that they present only a partial picture of events. But if the public has a dearth of timely and factual information or if the Press finds it difficult to obtain informed comment on the matter from senior ranks of the police, then the embellished or sometimes inaccurate version of events naturally gains currency.

In conclusion I wish to express my gratitude to you for inviting me to deliver this address. Concerns about the impact of human rights issues on policing are best dealt with

in a frank and open manner. Those concerns cannot be brushed aside. It is a tribute to your idealism and integrity that you have sought publicly to engage in dialogue on these matters and I am very pleased to briefly share these thoughts with you.