



FEATURE ADDRESS

BY

**THE HONOURABLE THE ACTING CHIEF JUSTICE
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AT THE

BREAKFAST MEETING

ON

CRIME AND THE ADMINISTRATION OF JUSTICE

AT

**THE LEON AGOSTINI CONFERENCE HALL
TRINIDAD AND TOBAGO CHAMBER OF
INDUSTRY AND COMMERCE**

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Some days ago a newspaper carried the headline “Kill the kidnapers”. Strong words indeed and I pondered them for some time. The author of those words was no ordinary mortal; yet he felt compelled to shout them from the rooftop, so deep and ingrained was his anger and fear. How many of us feel the same way today. His words may well be a reflection of how we all feel about the crime epidemic that has taken hold of this country.

It is probably not well known or remembered but some twenty-two years ago the very same cry was made by a young man in New York. Crime had hit an all time high in that city and it had become epidemic. Bernhard Goetz, the so-called subway hero, had reached the end of his tether and he publicly proclaimed “We must kill the criminals if we are to rid the city of crime”.

It takes little to recognize the similarity of Goetz’s reaction to what we have been hearing in Trinidad and Tobago in recent times. When frustration begins to overpower us it is quite natural to call for drastic measures, even if those measures put at risk our fundamental rights and freedoms.

Goetz made his remarks when crime was at its highest in New York. Some months later, he carried out his threat when an attempt was made to mug him in the subway. He shot the four young men who had attacked him, wounding them severely. He became a hero overnight to those who were fed up with crime on the subways. The jury took little time to acquit him and there was jubilation in the streets of New York. But that did not stop the crime.

Violence begets violence and when we descend to such depths nothing is resolved and we become a violent people. Enough may be enough, I agree, but we must find other ways to resolve this crime epidemic; violence measured by violence will not. We are a civilized society; we live by the rule of law and as difficult as it may be to accept, we must take the high road. The rule of law must be paramount – to do otherwise is to invite and encourage anarchy. Even in war there are rules by which civilized men and women are guided – the Geneva Convention e.g. ensures that man does not descend to barbarity, and as evil and as difficult the experience and suffering inflicted by war may be, the rules of engagement ensure that a level of civilized behaviour is maintained. We do it to others today – as sure as night follows day – it will be done to us tomorrow.

So please do not misunderstand me – it is not that I am any less concerned or horrified about the state of crime and lawlessness than any of you, but I sincerely do not believe that the answer or solution lies in retaliation or vigilantism.

We talk about crime reaching epidemic proportions with no end in sight. We feel a sense of helplessness and rightly so because none of us are trained in combating criminals, particularly those who are allowed to carry firearms at will. We stand indignant that those who bear arms illegally do so with impunity. Those who carry illegal arms do so with one purpose in mind - to kill or maim innocent people like you and me. We all wonder when it will end. Are there any solutions to this epidemic, we ask in desperation?

Let me relate to you an experience I had some 22 years ago, probably around the same time that Goetz uttered his words of retaliation. I was still in private practice, at the office on St. Vincent Street. There were two palm trees at the front of the office. The janitor would cut the grass around these palms from time to time and generally kept the area in good condition.

One day the janitor migrated and for quite some time no one replaced him. As a result the garden became overgrown with high bush. It remained in that state for months until one day we cleaned it up. To my amazement, littered amongst the high bush were literally hundreds of sweet drink cans and food boxes. We cleaned up the area and restored the beauty by placing a few white stones around the palm trees. But then there was another lapse and when the area was once again restored, we found an equal amount of boxes and bottles as before.

What a strange phenomenon, I thought; and it made me realize that lawlessness, even something as insignificant as littering, abounds when there is chaos and disorder. As insignificant as the event may seem to you, little did I appreciate at the time that what I was witnessing was known as the “broken windows theory”.¹

Experts argue, and I believe correctly, that crime is the inevitable result of disorder. If a window is broken and left in a state of disrepair, people walking by will conclude that no one cares and no one is in charge. Soon,

¹ Gladwell Malcolm- The Tipping Point pp 141- 142, Abacus, 2005

more windows will be broken and a sense of anarchy will spread from the building into the road, sending a clear signal that anything goes. You see, in

my case it was fairly simple; pedestrians saw the high bush, came to the conclusion that no one cared whether the front of the office became a garbage heap and they just flipped the empty boxes and cans into the bush.

Well, it is no different whether the offender be a litterbug, robber or mugger. Chaos gives them cover. It is an enabling environment for crime and criminals know that their chances of being caught are significantly reduced if the prevailing conditions lend to an atmosphere of disorder and anarchy. Wherever disorder seems to prevail, criminals reason that it is less likely that anyone will call the police or even interfere if they grab hold of someone's purse and run off. So criminologists argue that crime is contagious – it can start with a broken window and spread throughout a community.

Crime is not the offspring of a particular kind of person, someone, e.g, from a broken home, an abused family, one who has never been taught moral values or right from wrong. No. The epidemic does not begin with such a person but with something environmental. It flourishes when the environment makes it conducive to behave in a particular way. Knowing that the police seldom respond with alacrity, criminals become emboldened and secure in the knowledge that the chances of getting caught are slim.

We do not have to go very far to prove this theory. It happens on a daily basis for us to see. Take the Foreshore Highway for example – how many of us witness those drivers who pull onto the shoulder and run down the line to cut in front of other motorists at the lights. The sad thing about all this is that we know the solution but it happens day after day. The only reason drivers do such crazy things is because they know that they will get away with it.

In truth, we have created that environment that permits these persons to do what they do with impunity. We have created the conditions for lawlessness. We all know that the solution is a simple one – place an officer at the end of the line and haul the driver off the road. Keep him there for at least forty-five minutes and then give him a ticket. Radical treatment, maybe, but effective and if consistently done, will have a lasting effect. When people know that there is a price to be paid, they think twice about committing the act.

Earlier I alluded to Bernard Goetz's violent reaction to combat crime and the fact that it did not stop the crime epidemic. What then was responsible for stopping the epidemic?

It was the implementation of the 'broken windows' theory² some time later that drastically reduced crime across New York. It took quite a few years but it began with a first step. The New York Transit Authority hired a consultant to assist in cleaning up the subways. It was he who urged the authority to put the theory into practice because he firmly believed that crime was the inevitable result of disorder. Simple crimes, if unchecked, would lead to more serious crime.

Crime continued for some time but slowly but surely, as the subways were cleaned up, crime began to decline. What was done to achieve this. First, they tackled the carriages. They were filled with graffiti, inside and outside and they focused on eliminating it from every single passenger train because, to them, graffiti was a symbol of the collapse of the rail system and the battle against the perpetrators had to be won if the authority was to have any success in cleaning up its act. It took courage and determination because every time the carriages were repainted the vandals would strike again and again. Eventually, the vandals gave up.

Next on the list were the fare-beaters, the men who jumped the turnstiles to avoid paying the fare. That alone was costing the authority millions of dollars a year in lost revenue. The authority reckoned that like graffiti, fare beating could be a sign of disorder that would encourage more serious crime. Station by station, they pounced on every fare beater. Plainclothes police officers were stationed behind the turnstiles and as a fare beater jumped the stile he was nabbed and cuffed to a post. When the number was large enough, they carted them off to be charged. A mobile station was installed outside the subway to do the paper work on those charged. The quicker they booked them the quicker the officers could return to nab more fare beaters.

The penalty for the offence may have been small but the effect on other would be fare-beaters was profound. Soon they got the picture, no infraction, no matter how small or insignificant, would be overlooked. It was 'zero tolerance'. A significant sequence to this operation was that the majority of

² (ibid, p.2)

persons caught either had previous records or outstanding warrants for other crimes, a sort of “two birds with one stone” pay off.

The same strategies were applied to the city at large. Officers were instructed to crack down on quality of life crimes – young men for example who cut drivers off at intersections and demanded money for washing the windshield were taken down and charged. Littering of the streets, relieving oneself in public, loitering, damaging public property, were no longer tolerated. If caught, you paid the penalty. Minor, seemingly insignificant crimes were all responsible for more violent crime and when the former was crushed the violent crime declined dramatically. Yes, zero tolerance worked for New York because certain individuals had the courage of their convictions not only to believe in the broken windows theory but also to do something about it.

What is so attractive about the theory is that something so seemingly insignificant, so simple, worked and worked effectively. We are searching for solutions to the crime epidemic here and it may be that we are probably looking too far down the road for that solution while it is right in front of us. There is nothing magical in the broken windows theory– what it is in effect is the enforcement of all laws across the board, and, contrary to popular belief, what creates the initial success is the enforcement of the minor offences. It may take much planning, much organization, much determination but New Yorkers did just that and won the battle.

It would be interesting to find out from those members of the Chamber who recently undertook a major overhaul campaign of Charlotte Street what has been their experience. From what I have been told, when they first began the project many people operating on the street objected. They had a hard time but they believed in what they were doing and today Charlotte Street is a different place and the once upon a time objector is now a big time supporter. The chaos and disorder is no longer there, the street is cleaned every day. It would be interesting to find out whether crime on that street has declined since the project was undertaken. It would not surprise me if it has.

You may be asking what does the broken windows theory have to do with the administration of justice in this country. It has a lot to do with it. In any civilized society there must be an expectation that all the laws of a country are to be enforced, not just the laws that relate to serious crime. If that is the

expectation, then it makes little sense not to have a judicial system that is efficient, well lubricated, in order to deal with those persons who are brought before the courts to answer various charges. If the theory were to be implemented here then in order to achieve any measure of success the court system would have to be sufficiently prepared to deal with all offences as expeditiously as possible.

And this is what the judiciary has been working towards for some time. Not that it has been suggested that the theory will be implemented, that is a matter for the powers that be, but once our broken windows are repaired rest assured that we shall be in a position to meet any challenge that requires efficiency and expedition. Over the last five years the judiciary has been developing the infrastructure to effectively deal with the management of cases, whether minor or serious offences, and to address the backlog in both the judiciary and in the Magistracy. One of the major impediments to the effective functioning of the system is the overcrowded lists which confront the courts on a daily basis.

Case flow Management has been recognized as the vehicle to allow magistrates to function with manageable lists and with a higher degree of efficiency by creating event date certainty. Attorneys, and all persons who provide the courts with assistance for that matter, will better prepare for events in the case when they know that these events will take place as scheduled. I was in Virginia not too long ago and I was amazed to find that the courts there (equivalent to our Magistrates' Courts) would list five matters per day. Each of those cases had been case managed up to trial and was disposed of on trial day. One may think that the disposal of five cases a day is not a significant amount but when the addition is done at the end of the month the total of 100 odd is attractive.

The Judiciary has therefore been addressing the redesign and upgrade of court facilities to accommodate re-engineered processes and workflows, an integrated Case Management Information System and digital court recording technology. Extensive studies have taken place, discussion has occurred with all major stakeholders in the criminal justice sector, the data has been analysed and a brief submitted to a preferred Case Management Information Software provider to develop a customized solution for the magistracy.

In the very near future we shall begin a pilot project in Tobago that is designed to ensure trial date certainty and to reduce meaningless visits to the

court. Each time a matter is brought to court it will be for a specific purpose that leads it up to the eventual trial. In fact, when I leave here today I go over to Tobago to examine the project to ensure that it is running on schedule. We are now in the process of upgrading the Couva and San Fernando courts and if this pilot project is successful – we are confident that it will - it will be introduced there.

The Judiciary has embarked upon a programme to introduce digital recording technology in all courts to replace the antiquated system of longhand note taking in the court system. Although equipment has been installed in sixty percent (60%) of the nations courts and funding has been provided for the acquisition of additional equipment, the challenge that faces the Judiciary is the sourcing of adequate support transcriptionists to allow the Digital Recording system to function more effectively. This is currently being addressed.

Another area that has become increasingly critical to bring about an effective change in the present system and allow the proposed case management system and new technology to achieve its objective, is the upgrading of the knowledge and skills of Judicial Officers, Court Staff, users of the Judiciary's services and support agencies in the Justice Sector. In this area a comprehensive training programme has started to increase the capacity of the present Human Resources to operate within the parameters of these new systems.

Notwithstanding the system changes that are being introduced, a study will soon be commissioned to provide a more comprehensive picture of the additional staffing and system resource requirements to allow for an increase in the number of courts that are required to deal with the ever increasing case load in the system. The Judiciary is certainly not standing still. It is on the move and quietly and persistently we are getting there. Our aim is to achieve efficiency that will lead to expedition.

There is however a major broken window that is in need of urgent repair if we are to realize our objectives. It is a matter that I alluded to in my opening of term speech and that is the matter of more court rooms. But let me put the issue in its proper perspective so that you will understand how the difficulty arose and better appreciate the solution. While in the last five years or so there has been adequate funding that has allowed the judiciary to acquire the necessary resources, most of which I have already described, the focus has

not been on the provision of more courts. In the seventies, for example, the case load before a magistrate was manageable and it allowed him to complete most of his cases on a timely basis. I am not saying that all matters were completed on target, some were adjourned but by and large he could cope with the list.

In the seventies, there were eight courts in St George West to deal with such case load. Today there are thirteen courts so that means in the last 30 years we have expanded the court capacity in this district by 60%, but the number of matters entering the system has increased by some 500%. The same applies to the other two districts. This is a big 'broken window' that we must repair.

What is needed in these districts are more court rooms and by extension more magistrates. Buildings take time but we must begin now. From discussions I had recently with the powers that be, the idea of a court complex in each of the districts I have identified may become a reality. If it does, that will have a profound impact on 'turnaround' time.

Turning to the Criminal Courts, before the construction of the Hall of Justice the Criminal Courts were housed in the Red House. There were four criminal courts then. When the Hall of Justice was completed in 1985 one would have expected it to house at least 10 to 12 criminal courts. Probably for fiscal reasons more than any other reason, the building unfortunately was downsized during construction with the result that we ended up with six criminal courts only. At the time the number may have seemed adequate but in the last ten years the case load has increased a hundredfold and six courts are now inadequate.

So it is pretty obvious, while on the one hand we have been making provision to improve the administration of justice we do have our own broken windows to repair. We need to expand to deal with the increased workload that is overwhelming the courts today. The powers that be are aware and as concerned as we are. I know that efforts are being made to source the land upon which more courts can be established but, as with everything, it takes time.

A step in the right direction was the disclosure some time last year that there were plans to build a Court in the East that would specialize in certain serious offences. It would house some six criminal courts and ten

magistrates' courts. Of course, if this is indeed so then it has to be one of the most ambitious plans to have been laid on the table in recent times. It will have a profound positive effect on turnaround time. It is a plan that must be wholeheartedly endorsed with the hope that it becomes a reality in the not too distant future.

There is always the tendency to blame the delays in our judicial system solely on the judges and magistrates. In the criminal Courts a Judge can only do one matter at a time and some trials can take as much as six weeks to complete. Judges sit everyday in that jurisdiction. On the Magistracy side, the majority of Magistrates spend long hours in court doing their best in a difficult situation. Some have to devise a method simply to be able to operate within an already chaotic system that places some sixty to one hundred cases before them on a daily basis. Try as they may, it is physically impossible for one person to manage such a case load. By providing more court rooms, the case load will be reduced to a more manageable level and the disposal rate will improve significantly.

While I have touched on but a few matters that affect the administration of justice, there are many more areas that are in need of repair. There are many agencies for example upon which the judiciary depends to function properly. To mention just one - the office of the DPP. If that department is not properly staffed then the work of the court is affected. At present, I am told that there is a shortage of some 26 attorneys in that office. The department must be stretched to the limit and one thing is for sure, there is no long line waiting outside to be recruited there. The lure and attraction of private practice is far more compelling than public service and that is a main stumbling block to improving the judicial system.

I have no doubt that the Chamber has an important role to play in all of this. We all live here and we all want to continue living here – so it is imperative that not only your voice be heard but that your members seek out ways and means to contribute to repairing the many broken windows in our society. And the windows are not limited merely to the enforcement of the laws. It must extend to the wider community to be effective. Only the other night I was heartened to hear the Commissioner of Police tell his audience that in almost every district where there is a police station the police are organising youth groups among the young people. As he said, instead of coming from behind when the damage is already done, the police are now pro-active to ensure that the youth of this country are saved. Last night I listened to the

eloquence of Chocolate Allen on television and admired her courage. At that tender age this little girl is prepared to make the sacrifice she is making just for you and me. Maybe we are beginning to see the light. These may be small steps in repairing our windows, one that the chamber may wish to encourage and support, but whatever we do, the time has come to take our country back.

Let me say this- I have the confidence that by our efforts to improve the administration of justice we shall contribute to the removal of this crime epidemic now facing us. On the outside, it may be that others may see the wisdom of the theory I have spoken about and resolve to take a first step. And one day, hopefully in the not too distant future, we shall all look back with a measure of pride when serious crime is on the decline, and say that we did it, we did it without firing a shot. Then and only then shall we have demonstrated that by our collective effort the rule of law can be triumphant.

Let me end with the words of Alfredo Younis, a senior advisor to the World Bank. He described the kind of world he would like to see when he woke up tomorrow morning as one free of poverty, crime, racism, one full of equality and understanding, where people are in happiness, a world without environmental destruction. And when asked: "Why is it that we cannot find that world?" he said these words: "We don't have to create this new world. We have to become this new world. We have to change again and again to be able to awaken one day into that world which we are all waiting for. The tragedy of humanity is that this beautiful world is already there and yet somehow we don't grab it, we don't see it".

God bless and thank you very much.