



CLYDE WILLIAMS
ATTORNEY-AT-LAW



THE PROGRESSIVE AGENDA
A SAFE AND JUST SOCIETY

INTRODUCTION

1. There has not been a shortage of Reports on how ^{to} achieve Law and Order in Jamaica. Researching and documenting solutions are not our problems nor do we have a problem with assigning persons in committee or otherwise to monitor/oversee the implementation of a body of proposals.

2. Law and Order is elusive because of a combination of the following factors:
 - (1) **Lack of societal will**; not least of the problem is political will.

 - (2) **Inefficient use of existing allocations** to the Ministries of National Security (MNS) and Justice (MOJ). In 2008/09 fiscal year the budgetary allocation totalled approximately \$36.8 billion for MNS and \$3.1 for MOJ (Economic and Social Survey Jamaica, 2008, see appendix 3). The allocations in 2007/08 were approximately \$23.45 billion for MNS and \$2.82 billion for MOJ (appendix 2). In 2006/07 the allocations were approximately \$20.4 billion for MNS and \$2.6 billion to MOJ (appendix 1). In terms of percentages the allocation (Recurrent and Capital A) to MNS in 2006/07 was 5.6 per cent of the total national budget and to MOJ 0.7 per cent compared with 5.0 per cent and 0.6 per cent respectively for the 2005/06 financial year. Subsequent years have not seen any dramatic increase. From experience and observation there

are specific areas where greater efficiencies can be delivered. The use of court time is inefficient and too often wasteful. The rules and practise, especially in the lower courts, are often antiquated and hostile to our people. Whilst the demand for legal services remains exceptionally high the administrative, institutional and legal framework continues to deliver it in a highly inefficient manner. We can get more and must work, with a steady resolve, to get more from each dollar and the system as a whole.

- (3) **Lack of resources. We have a mismatch.** The supply of resources is just not enough to deal with the overwhelming demand. From demand for better wages to inadequacy/insufficiency of plant, equipment and personnel. As an example, *Cases* in the Resident Magistrates' Court in 2008: 91, 242 cases (criminal and civil) were brought forward; 253,521 cases were filed; 334,763 were set for trial; 227, 031 disposed of ; ***arrears of 117,732*** (Economic and Social Survey, 2008). One need only look in the Security Forces, Department of Correctional Services, and the Justice system to see the evidence of this mismatch.
 - (4) **Deep, ingrained sociological problems** that relate to our values, attitudes, the development of our personalities, the inadequacies in our socialization processes among other things.
3. This presentation sets out some broad policy considerations for the Opposition in national security and justice. It seeks to raise for discussion and decision some of the troubling questions. It will not go into policy detail. The outcome is ultimately

to get the Party discussing and deciding on a mix of policies to build a safe and just society. Several source documents are appended and where not appended appear at the paper clips on the soft copy; double click paper clip to open.

4. The Progressive Agenda (the PA) in the Safe and Just Society Pillar identifies six imperatives:

- (1) Application of a holistic approach to transforming the social order, and providing national safety and security.*

- (2) Modernization of the management, technical and scientific capabilities of our security forces.*

- (3) Preserve and protect human rights.*

- (4) Enable the empowerment of communities through social and economic interventions*

- (5) Ensure fair access to an efficient and effective justice system.*

- (6) Promote a culture of tolerance respect and social responsibility.*

5. An incremental approach (the current and not too distant past approach) is not likely to solve the problems. Several say, **will not** solve the problems. That approach has not worked. The problems are getting worst from year to year; perusal of documentation from the PIOJ drives home this point (see appendices 1-3 for *Economic and Social Survey Jamaica*, extracts, years 2006-2008) The patient is terminal and needs shock treatment. A transformational approach is urgently required. An approach with missionary zeal combined with the more efficient use of technology and greater attention to the development and deployment of our human resources is critical. The task at hand needs a team of transformers.

MINISTERIAL FRAMEWORK

6. To Remain as is. Would propose that a Junior Minister be appointed in each Ministry to drive the transformation agenda. Further, that a Cabinet Sub-Committee be appointed comprising:

(1) Prime Minister or DPM as Chair

(2) Finance Minister

(3) Education

(4) Youth, Sports & Culture Minister (s)

(5) Justice Minister

(6) Security Minister

7. The terms of reference of this sub-committee can be worked out. Broadly, the sub-committee provides an ongoing organizational tool to facilitate a holistic approach in dealing with these major issues.

FINANCIAL ALLOCATIONS

8. Existing resources (scarce) from experience and observation are underperforming. There are many areas where we can drive efficiencies. Greater use needs to be made of modern management systems and contracts that are driven by deliverables and timelines. Work ethic and practices by staff at all levels and quality delivery of service are specific areas more modern management and accounting systems

- could improve. Several of the Justice Reform Task Force and the JCF Strategic Review recommendations address some of these efficiency issues.
9. Efficiencies aside, there is need for pumping more resources into justice and security. There are limits to the amount which can be added to the debt. Ultimately the funds to properly finance justice and security on a sustainable basis have to come from growth. Growth is being undermined in part by crime and violence (see Ralston Hyman appendix 4). We need to create breathing space for the Jamaican Economy to begin on a path of sustainable growth. Our short to medium term objective is to arrest and reduce the crime and violence spiral thereby enhancing a greater sense of security of the person and property.
 10. It appears that grants and technical assistance from international development partners and the local private sector will be of paramount importance in the short to medium term. Harmonization of our foreign policy and relations with our domestic realities whilst not compromising our national integrity and sovereignty is of some significance. In other words, a progressive foreign policy is part of the solution to dealing with crime and violence in Jamaica.
 11. **Re-allocation of resources.** This is a disliked subject and may extract fierce and/or emotional responses. A forensic approach needs to be taken on how we now spend existing resources. The application of means testing and equity should be applied in the delivery of several public services in order to facilitate an increase in both the recurrent and capital budgets of the MNS and the MOJ. See paper clips for issues from the Consolidated Fund for years 2006-2008.
 12. We are in a kind of ‘*catch 22*’. Crime and violence undermines and has a debilitating effect on economic growth. Studies conducted by the IMF, World

Bank and Inter-American Development Bank in 2003 contend that the cost was almost 6.0 per cent of GDP. Several persons estimate that this percentage has increased (see appendix 4). Lack of economic growth severely limits our ability to adequately fund social and personal development, justice and security with the result that crime and violence increase.

13. World recession taken with the management and performance of the Jamaican Economy and the absence of competent and decisive leadership has caused and continues to cause a worsening of the problem.
14. It is in the context of a worsening of the problem and the need to 'buy' the economy and society some time to grow that re-allocation is being proposed.

IMPLEMENTATION OF THE JCF STRATEGIC REVIEW AND JUSTICE REFORM

15. There is no need to re-invent the wheel. We need to have sustained, vigorous implementation of the recommendations from the review reports of the JCF and the Justice System. The Junior Ministers with their support team are to be charged with this as a major deliverable.
16. The recommendations need to be priced and timelines with measurable deliverables and outcomes set. The PNP should consider approaching the implementation of these recommendations as a project, complete with all the incidents of projects: costs, timelines, outcomes, management of implementation, measurement criteria among others. Major Timelines could be *First 200 days (6 months), Year 1, 18 months, 2 years, 3 years, 5 years etc.*

17. Greater detail will have to be worked out and implemented so that we get more out of each dollar allocated to justice and security. This involves dealing with corruption, waste and inefficiencies.
18. There is however the grim reality that we need more financial resources, technical facilities and human resource development to tackle the problems and drive a transformational approach. The Implementation Oversight Committee for the JCF Strategic Review in reporting on the period August 2008-August 2009 says at p.14 *“The inability to clearly identify the financial resources for implementation of the plan coupled with the perceived lack of will to implement the legislative changes required present critical challenges to the ability to implement the desired strategic Transformation of the force.”*
19. The transformation of our Justice System and the driving of transformation in our Police Services require resources, lots of it. Whilst this is the case it was estimated by the World Bank in 2003 that the cost of crime expressed as per cent of GDP was about 6.0 per cent. This includes the costs of fighting the scourge and production losses. There are significant capital expenses that would have to be met in the short to medium term. Recurrent spending would also need to be increased as there is need for more police, prosecutors, magistrates, judges, probation workers, correctional personnel and other categories of workers.
20. Ralston Hyman is of opinion that *“Fiscal Reforms will help to provide more resources, while the World Bank Inter-American Development and Cida can be approached for more support in the fight against crime.”* That *“A powerful argument can be made for multilateral and bilateral sources, as well as the private sector to pump more resources into fighting against crime, given its debilitating*

impact on the economy at a time when higher levels of economic growth is of paramount importance to national security.” [appendix 4].

21. This fits well into the project approach. The PNP should settle on a five year plan for these two areas and break it down around major outcomes and timelines, cost it and have it ready. Some of the work is likely be around service contracts for precise duration. For example, a case backlog reduction project where lawyers, judges and other personnel are contracted for the period of the project (see Jamaican Justice System Reform Task Force Report, Extract, appendix 5).
22. Some specific recommendations of these Reports will be singled out for separate treatment.

THE POLICE SERVICES

23. Business as usual will not solve the problem nor will an incremental approach do it. Our Police Services need surgery. We need to take and implement some decisions about how we are going transform our Police Services. Kingston, St. Andrew, St. St. Catherine, Clarendon and James in 2008 accounted for 73% of major crimes (murder, shooting, rape, carnal abuse, robbery, larceny and breaking). Of a 10,039 national total Kingston had 928, St. Andrew 3140, St. Catherine, 1,283, St. James 1155 (appendix 3). In 2007 it was 74.8 per cent; the position was similar in 2006. The 2006 Economic and Social Survey show those same parishes topping the list; Kingston, St. Andrew and St. Catherine accounted for 55.5 percent of all major crimes in 2006.



24. Might it not be the appropriate time to consider for implementation the fashioning of a Metropolitan Police to cover Kingston, St. Andrew and Urban St. Catherine/St Catherine? Benthon Hussey in his Final Report April, 2009 on the Design of the JCF Organizational Structure, part of the strategic review of the JCF speaks to such a Metropolitan Police Service. This fully recognises that policing in Urban Jamaica; in particular Kingston, St. Andrew and Urban St. Catherine require special attention, focus and resources.
25. The recruitment, training and launch of the *Kingston Metro* with new symbols, ethos, terms of duties et cetera could service as a model for driving the transformation of our police services. . Aside from it being an institutional response to urban crime it also provides the opportunity to transform the Police Services. The *Kingston Metro* should be given the manpower, training, management, technical and scientific capability to deal with our specific ‘*zinc fence*’ ‘*man-a-bad-man*’ ‘*dem man deh a Big-man*’ set of problems. A term of years should be set for transforming the entire police services in Jamaica using the Kingston Metro as the example.
26. In the end, the Party must commit to driving the process of transformation of the Police Services. Creation of a *Kingston Metro* provides an opportunity for effective screening, selection, training and retiring of police personnel and for the transformation of the Police Services. More efficient use of existing resources is an imperative. But it will require additional resources to make an impact.

DEVELOPMENT OF A COMPREHENSIVE CRIMINAL CODE

27. The development of a comprehensive criminal code is a recommendation of the Justice Reform Task force, *“The Task Force recommends that a Jamaican Criminal Code Project be initiated with the mandate of developing an updated and unified restatement of the criminal law, procedure, evidence and sentencing provisions.”*(p.204). The Party needs to sign off on this specific recommendation as it entails project design, costing, implementation. A team of technical and administrative and other personnel will be required to be contracted for the project. This is a project that should start as we form the government and work towards completion and legislation by a defined time in the first 3 years.
28. There are some critical parts of this code that require urgent drafting and promulgation. We could take the approach of incremental promulgation with the appropriate sunset clause in those Bills that anticipate the completion of the entire Code.

REGIONALIZATION OF THE SUPREME COURT AND PROSECUTORIAL SERVICES

29. *“The Task Force recommends that the decision regarding regionalisation of the Supreme Court be made after careful study in the context of the comprehensive reform of the Jamaican justice system and guided by the vision, principles and reform recommendations set out in this Report.”* (Justice Task Force Reform Report). Such a process is likely to drive the regionalisation of our Prosecutorial Services, and Legal Aid Services. The decentralisation of these services provide opportunities for expansion, more accountability, more participation, better

- management, more and diverse career opportunities; in the end, creating increased opportunities for changing the whole system.
30. Regionalisation comes with a cost. Infrastructure would have to be built. The building of this new infrastructure could have a positive spin off on the economy. This construction period provides us with the opportunity to design multi-purpose Civic Centres which house court rooms, counselling, mediation and other dispute resolution services. These centres must be modern and highly energy self sufficient and efficient.
31. In the end, regionalisation is likely to have a positive broad based impact from creating employment, expanding career opportunities, through driving efficiencies, accountability and access.
32. Regionalization (a decentralisation of power and delivery of services which involve more players in the process) of our judicial and prosecutorial services is a matter that the party would have study and take a decision on. There are studies and reports that exist on regionalisation of service delivery in countries. We could invite specific proposals as to how regionalisation of these services could be done, costs and benefits. We should not be dissuaded from exploring this matter because it fundamentally alters our current arrangement and involves some labour intensity.

COURT MANAGEMENT – CHIEF JUSTICE TO BE RELIEVED OF ADMINISTRATIVE FUNCTIONS - COURT SERVICES AGENCY

33. *“The Task Force recommends that the Government of Jamaica move towards a more independent model of court administration as part of the comprehensive*

reform process.” Central to this model is an independent staff lead by a Chief Executive Officer. This allows the Chief Justice to focus on judicial processes and leave national Court administration to a team led by the CEO [see appendix 6].

CORRECTIONAL AND REMAND SERVICES

34. Building of more correctional facilities including for juveniles is required if we are to carry out an effective rehabilitation programme, reduce the extent to which correctional facilities are dehumanising and serve as incubators for criminals and social deviants. Several of the current Facilities are very overcrowded. In 2006 the adult correctional facilities at Tower Street, St. Catherine, Fort Augusta, Richmond Farm, Tamarind Farm, South Camp and New Broughton housed 981 inmates in excess of their ideal capacity. In 2008 the excess amounted to 785. Two of the facilities are particularly burdened: Tower Street which housed 1711 with an ideal capacity of 850 and St. Catherine which housed 1286 with an ideal capacity of 850. This is the current situation where conviction rates for major crimes are extremely low. When conviction rates for major crimes increase, as they must if we are to reduce crime, the situation will be exacerbated. Conviction rates reduce the supply of criminals on the streets which in turn will impact on the incidence of crime.
35. Consideration should be given to constructing new facilities which are energy sufficient and efficient. Different tiers must be built to house different types of offenders. Serious consideration should be given to closing down the Tower Street Facility and converting that space to commercial/financial/training or other purpose consistent with the use of coastal property in a major city.

36. The revamping of our correctional facilities is a critical component in our crime containment and reduction strategy. We must take, implement and rigorously oversee the implementation of decisions which treat members of our family who have wronged us to maintain their dignity when their liberty is taken for a while. The reports abound of how we treat persons in the custody of the state in cruel and inhuman ways, from Agana Barrett to Armadale.
37. Remand services also need significant upgrading. There are recommendations in the Justice Reform Report that relate to the creation of regulations governing the treatment of remandees. There is no getting around expanding our current remand capacity, especially in our Urban Centres. Expansion should contemplate change of use over time of the remand facilities as the demand slackens given wider changes.

ESTABLISHMENT OF A NATIONAL TRAUMA INSTITUTIONAL COMPLEX

38. The driver of this idea is Dr. Winston Davidson. The idea provides for a national trauma hospital facility combined with a national forensic and DNA laboratory, a public morgue and national trauma and violence prevention and social rehabilitation centre. These are the four institutional elements of a comprehensive medical / scientific input to address the epidemic of trauma and violence [see appendix 7].

GREATER AND MORE EFFECTIVE USE OF BILATERAL TREATIES

39. There is a need to create ways in which we can use and benefit more from bilateral agreements on crime fighting. It may well be that with the best will in the world

we end up lacking capacity in an area or two for a number of years. These bilaterals could help to fill these deficiencies and add to our capabilities.

40. In the end, it comes down to in many instances to the security and prosecutorial services possessing the determination to pursue sustained investigations and evidence gathering and building strong linkages with law enforcement and prosecutorial authorities in treaty countries. Transnational crime threatens our national security, democracy and way of life; we cannot fight by ourselves.

GANG AMENSTY

41. Organised gangs in Jamaica are in part involved in economic activity that create and in many instances cement ties. The rise of gangs, inter alia, is related to the underperformance of our economy. The 'stick' approach, as important as it is, to dealing with this socio-economic phenomenon will continue to have limited success, by itself. A carrot should be offered. The PNP should consider the roll out of a Gang Leaders and Members amnesty tied to the contemporaneous creation of and assistance for legitimate economic activity and/or social status. There are a range of options and models that we can create and/or utilise. This is a multifaceted approach. Spear fishing driven by intelligence is an imperative. At the end of the amnesty we should commence a zero-tolerance approach, driven by intelligence, to gang leaders, members and activities.
42. If gangs are to take government/the people serious there has to be multiple prosecutions and convictions of gang leaders and members thereby weakening and eventually disabling gangs.

43. Jamaican males between the ages of 16-25 constitute just about 50 per cent of persons arrested for major crimes; 16-30 age group about 65 or so percent. See paper clips.
44. The PNP's broad policy framework should have a big focus on youth, education/training, sports, culture and recreation. Additionally, specific programmes in these areas are to be developed to provide alternative opportunities for our youth and young adults to achieve self actualisation and live violent free and productive lives.

COMPLETION OF THE CONSTITUTIONAL REFORM PROCESS

45. The completion of the constitutional reform process includes the establishment of a republican form of government, the establishment of the Caribbean Court of Justice as Jamaica's final court, and the passing of a Charter of Rights.
46. The PNP should give consideration to making the Office of the Public Defender a Constitutional Office as was intended at the outset. For that reason s.3 of the Act provides "*This Act shall continue in force until provision is made in the Constitution of Jamaica for the establishment of a Public Defender in terms which preclude the alteration of that provision otherwise than in accordance with the procedures prescribed by or in relation to section 49 (2) of that Constitution and shall then expire.*" Such a change should come with an increased remit to include granting to the Public Defender locus standi and the consideration of creating

- regional offices and making the Office also responsible for the delivery of legal aid.
47. Creating a network of regional offices creates more opportunity for accountability both in the delivery of the services as well as facilitating the collection of contributions from users of the legal aid service.
48. In the end, the Public Defender will have constitutional responsibilities for defense of the Charter and provision of legal aid.

IMPROVING THE INFRASTRUCTURE AND REGULARISATION OF SQUATTER SETTLEMENTS AND RESTORATION OF URBAN CENTRES

49. This is not within the specific remit of Justice and Security but needs to continue with some expedition thus reducing situations for domestic and interpersonal violence. It will also serve to make policing less hazardous in many communities across the Island. The PNP needs to develop a programme for this restoration complete with outcomes and timelines. Geographical incidence of crime and violence are critical determinants in prioritizing. We need to have a sense of what we can realistically expect to accomplish over two 5 year periods and aggressively pursue it. Costing and financing of the programme is critical and must be sustainable. Securing financing and tangible outcomes in the first 18 months, 3 years, 5 years is likely to be a challenge.

IMPACT OF CRIME ON COUNTRY

50. In the words of Ralston Hyman “*Crime impacts business expansion and investments in productively negatively. Crime prevents companies from operating*

on two and three shifts, while providing incentives for companies to locate outside Jamaica....”

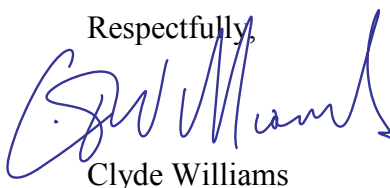
51. Crime affects every facet of our lives. Its debilitating effect is felt in the socio-cultural sphere with the same or greater force as it impacts on the economy.
52. Law and Order are the different sides of the plan required to fight, contain, reduce crime and violence in our society. We need a policy mix to be implemented that arrests the decline within 3 to 5 years achieving tangible outcomes thus giving the country some breathing space to develop. The proposal is for us to write a 3-5 “*Crime Reduction and Justice Enhancement*” project complete with time lines, costing and all the incidents of a project.

CONCLUSION

53. This represents the 2nd draft of an attempt to begin culling the policies in justice and security. Several persons have contributed to this draft, most notably is Ralston Hyman who provided an appreciation of the macro-economic framework and Julian Robinson whose understanding of the Party and what it can achieve provided party/political context. The appendices are several source documents. Appendix 8 is an extract on justice and security from the PNP manifesto of 2007.

March 30, 2010

Respectfully,



Clyde Williams

Chairman PA Sub-Committee
Safe and Just Society



CLYDE WILLIAMS
ATTORNEY-AT-LAW

TEL: (876) 851-1490 • FAX: (876) 622-6782
CLYDE@CWILLIAMSLAW.COM • WWW.CWILLIAMSLAW.COM