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**THE FUTURE OF CARIBBEAN LEGAL EDUCATION-  
THE SEARCH FOR PROBLEM SOLVING TOOLS TO HUMANISE OUR  
SYSTEMS OF JUSTICE**

**The Honourable Mr. Justice Vasheist Kokaram**



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***Salutations<sup>1</sup>***

1. Graduates....allow us for this millimoment in this proscenium of time to tap into that liberating resource of compassion still beating in your hearts before it becomes over crusted with heavy layers of legal strictures. Before the glimmer of hope in your eyes loses its sparkle as you become “zombified” in the unfeeling application of known law. Indulge me with one act of rebellion...perhaps an act of legal heresy...for us together to declare tonight that “we do not need any more lawyers”... nor judges for that matter...obsessed with legal rights at the expense of human justice; that dispenses law which normalises oppressive reflexes to conflict at the expense of developing richer human relationships; that preserves structural violence in our rule by law at the expense of our humanism. We need healers. We need Peacemakers. We need a legal order that is empathetic to the human condition, which places value in the diversity of our humanity and instils a credo of peaceful co-existence through compassion.

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<sup>1</sup> Delivered at the Hugh Wooding Law School Graduation, 2019

2. I should have recognised this years ago....In my very first year after being called to the Bar, there I was advocating the cause for the Claimant to tear down his neighbour's fence which obstructed him from accessing a right of way. It was a trespass. It was a nuisance. It was an illegal usurpation of his land. I threw in all the doctrines from Halsbury to Megarry and Wade, from the wise English Law Lords to our brilliant jurists. Everything my good lecturer taught me in property law and damages. I asked for hundreds of thousands of dollars and injunctive relief. I threw everything I had and then some more. After three hours of submissions I felt proud. I did a fantastic job. The judge then looked up at my client "Sir what do you really want?" and he blurted out "me eh know wat going on here nah judge. All I want is a key to open a gate."
3. What do you really want? A simple question. Are we equipped as lawyers and judges to ask that question and do we have the tools to respond to the deeper social meanings of the answers? Are we really listening at all or are we engaged in an automated application of the monolith of legal directives to order and to compel. To tell you want to do or what not to do rather than how to help...Are we listening to our society today immersed in conflict, violence, scepticism and mistrust. Do we think that traditional legal tools will solve the problems facing our Caribbean peoples?
4. Traditional legal education fashions a cookie cutter for human problems. It's efficient. It's uncomplicated. It's linear. It wires how we think and respond as lawyers to social problems in legal boxes. But human problems are far from linear and far more complex than legal precedent may offer. Perhaps if we recalibrate our approach to conflict to focus on peace as the output of justice we may yet provide the answers to our Caribbean peoples mired in conflict. It calls on us as attorneys and judges to realign ourselves to a wider purpose of peacebuilding, to be empathetic to human problems, place value on preserving a harmonious co-existence, being aware of the toxicity of "Ism" and violence inbred in our traditional adversarial instincts, find humanistic tools to treat human conflict and pain which transcend the stale texts of laws. In doing so we truly democratise our systems of justice that makes it "people centric". If we ignore such an approach to peace building in the treatment of our law and as the purpose of the rule of law then we will condemn our legal education, our legal practice and our legal system to an irrelevancy and our Caribbean society to "cycloptic" solutions which fail us in our mission of creating a Caribbean identity.

5. I am grateful to Mr. Armour, Senior Counsel (and Peacemaker) for the quiet exchange we had on the theme of our address on the future of legal education. In two recent judgements of our High Court and the Caribbean Court of Justice, the question of legal education in the Caribbean emerged as a pressing and urgent one. In **Jason Jones v The Council of Legal Education** [2018] CCJ 2 (OJ) 1 Mr. Jones unsuccessfully challenged the policy of law schools to restrict the admission of non-UWI students creating a hurdle of an entrance examination with UWI students offered automatic entry. In **Dianne Jhamilly Hadeed v The Attorney General of Trinidad and Tobago** et al CV2018-02726 Ms. Hadeed challenged an obstacle in her path to admission to the bar where her Trinidad and Tobagonian counterparts were afforded the opportunity to “by pass” the requirement of obtaining the Legal Education Certificate “LEC” by enlisting in the LPC or BVC programmes offered in the UK. That path of admission was restricted only for nationals of Trinidad and Tobago and not afforded to any other Caribbean national.<sup>2</sup> **Hadeed** and **Jones**, of course, engages us in a dialogue on our indigenous system of legal training and the benefits of Caribbean legal certification. There is no doubt a legitimate debate in liberating the market on legal education and the notion of creating an indigenous legal profession. Should our Caribbean societies be treated by foreign based legal training or an indigenous product? While the answer may have been answered long ago with the CLE, it is left to be seen if the law in the new environment of globalisation can adequately deal with the question of a breach of the Council of Legal Education Agreement (CLE agreement), which prohibits the recognition of any lawyer without a LEC from our law schools. Whether that decision is right, which remains to be seen, can our traditional legal system provide the correct forum for an informed debate on the future of Caribbean legal education? Ironically, if we respond to this debate with the traditional legal tools of resolving conflict, we may lose legitimacy for the idea of an indigenous Caribbean legal education and worse a Caribbean identity.
6. I am limited of course in what I can say about **Hadeed**, it being a judgment on appeal, but the theme I wish to extrapolate from these cases and others which I will discuss is the crisis of

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<sup>2</sup> Across the Atlantic, in Ghana, recent litigation has stirred up from similar barriers to legal education. There was a mass failure in the law entrance exams with only 128 graduates of the total 1820 students passing the exam. Mr. Alban Bagbin, a legislator of Ghana stated “the systematic mass failure in the law entrance exams by law graduates is an indictment on the various law schools and their teachers across the country.” See <https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Blame-law-schools-teachers-for-mass-failure-of-law-graduates-Bagbin-784825>

identity in our Caribbean legal system to treat our conflict which can be transformed by a revolution in our legal education and legal profession and with you graduates leading the charge in developing a peace jurisprudence.

7. In this short discourse with you I wish to set out a case for young graduates to interrogate the future role of legal education in four quadrants of (i) understanding our identity; (ii) the emergence of a new approach to conflict (iii) our changing roles to fulfil the fundamental right to peaceful co-existence (iv) our new agenda of a peace jurisprudential approach to education and our profession. First two matters of context.

### **CONTEXT I-“THE OTHER”**

8. In an interesting dialogue on identity with Sir Derek Walcott and Édouard Glissant:

“One of the great, great, great tasks of this time is to understand the other, to live with him, or to accept him. ...You can be what you are and I don’t need to understand that, or to reduce you to a transparency, to live with you or love you or accept you....”<sup>3</sup>

9. To what extent has our legal system and legal education prepared us for such a simple but important concept as living with “the other”. In Port of Spain, recently, a Claimant looks to me in exasperation “I’m sorry Sir Judge with all due respect, I will get no justice here unless that man, the Defendant, feels the full brunt of the law, he needs to be punished.” Several injunctions, several applications for contempt later, the relationship between these parties are no better and the complaints to the police and to every level of our courts from the Magistrates Court to the Court of Appeal to enforce the law continues unabated...no justice here. In San Fernando, a Claimant seeking to preserve his right to possession to a parcel of land against the State files one witness statement, but has no corroborating evidence, no expert evidence. Despite the holes in his testimony shown up at the trial, no doubt crushed under the heel of brutish cross-examination, he turns to the Court and whelps “But Sir, this is my mother’s land and her father’s land before her. It’s been with us for years since indentureship. If I knew you wanted evidence, I would have brought the whole village today”. In response, the claim is dismissed, a heritage gone unacknowledged, no justice here...In a society’s quest for retribution a man is held in remand for years, victims subject to

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<sup>3</sup> Martinique-born writer and thinker Édouard Glissant (1928–2011) and Saint Lucia–born poet and playwright Derek Walcott (1930–2017) discussed the epic after a reading they gave together at Poets House on April 11, 1991.



re-victimisation, no justice here.... A family court judge splits custody of two children between two parents, the daughter to the mother the son to the father. Is there any wonder that there are engaged in a corporate battle between themselves over the shares of their deceased parents in the father's company. Ms. Hadeed herself turning to the Constitutional Court, won when it was declared that section 15(1A) of the Legal Profession Act was unconstitutional but lost as it was left to the State to take legislative action. She was not the only loser for it pulled the rug from several of your friends or family members...Ms. Hadeed's claim to recognise self came at the expense of a bruising loss to a much wider set of persons. These are but examples of losers in our adversarial system of justice from the oppressiveness of the law that compels, that directs what to do and defines what you should not do:

“Legal interpretation takes place in a field of pain and death. This is true in several senses. Legal interpretative acts signal and occasion the imposition of violence on others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.”<sup>4</sup>

10. In such a system churning out legal gladiators on a conveyor belt to mechanically usher unwitting clients to the trial room and unapologetically tell them this is the best we can do ...where is the morality in our law? Where is human justice? Where is the legitimacy in our approach to human conflict? Sudhish Pai recognised that “Justice is what mankind seeks and which cements the fabric of a secure society”. “Peace is the fruit of justice”. Would it not be worth our while to achieve a fundamental right to peaceful co-existence by giving full life to the humanism that underlies our legal world.
11. Graduates...I daresay Peacemakers... the need to revolutionise your approach is urgent if not immediate. For those of you in Guyana, you face the conflict of stalled elections, a government in crisis<sup>5</sup>. The CCJ has already ruled in the case of **Christopher Ram v The Attorney General et al** CCJ Appeal No. GYCV2019/009, CCJ Appeal No. GYCV2019/010, CCJ Appeal No. GYCV2019/011 but has the dispute ended? Or you in Trinidad and Tobago, we face the trauma of the Law Association adjudicating the question of the removal of a

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<sup>4</sup> “Violence and the Word”, Robert Cover, 1986

<sup>5</sup> The U.S and European Diplomats declared that Guyana's government is in breach of the country's constitution until new elections are held.

Chief Justice in a litigious and hostile climate. Does the application of known law provide the solutions to the deeper issues in these conflicts? Is our response to such conflict more harmful than productive? From private relational disputes to larger institutional questions, if we treat these problems with the bullying force of rights without an appreciation of community, of identity, of the importance of dialogue, communication, empathy, we will rip our societies apart, we will destroy the basic foundational purpose of a Caribbean education to advance the common good of all our people. If we fail to pay heed to this cry for social justice for peace, our efforts here this evening and your time spent in law school would be worthless....

12. So this is more than a graduation...this is a clarion call to awake and lead a jurisprudential revolution that calls upon you to recalibrate, re-orient your roles to achieve social justice a peace jurisprudence to realise the social order envisioned in our Constitution as a society of free persons, free institutions, that upholds the dignity of the human person respect the principles of social justice with adequate means of livelihood for all.

## **CONTEXT II- THE DOORKEEPER**

13. Let me tell you a story which I shared with my class...
14. Frank Kafka, in "Before the Law", an interesting parable of the world that you are about to enter with multiple messages for your life with and in the law.

"Before the Law stands a doorkeeper on guard. The door is open and the doorkeeper to one side. To this doorkeeper there comes a man from the country and prays for admittance to the Law. But the doorkeeper says that he cannot grant admittance at the moment. The man thinks it over and asks can I come in later. "It is possible," says the doorkeeper, "but not at the moment." The gate remains open. The man stoops to peer through the gateway.

The man has not expected this the Law, he thinks, should surely be accessible at all times and to everyone, but as he now takes a closer look at the doorkeeper in his fur coat, with his big sharp nose and long, thin, black Tartar beard, he decides that it is better to wait until he gets permission to enter. The doorkeeper gives him a stool and lets him sit down at one side of the door. There he sits for days and years. He makes many failed attempts

to be admitted.

The doorkeeper frequently has little interviews with him, asking him questions about his home and many other things, but the questions are put indifferently, as great lords put them, and always finish with the statement that he cannot be let in yet. The man, who has furnished himself with many things for his journey, sacrifices all he has, however valuable, to bribe the doorkeeper. The doorkeeper accepts everything, but always with the remark: "I am only taking it to keep you from thinking you have omitted anything." The man curses his bad luck, in his early years boldly and loudly; later, as he grows old, he only grumbles to himself.

At length his eyesight begins to fail, Now he has not very long to live. Before he dies, he summons his strength to ask one question he has not yet asked the doorkeeper. He waves him nearer, since he can no longer raise his stiffening body. "What do you want to know now?" asks the doorkeeper; "you are insatiable."

"Everyone strives to reach the Law," says the man, "so how does it happen that for all these many years no one but myself has ever begged for admittance?" The doorkeeper recognizes that the man has reached his end, and to let his failing senses catch the words, roars in his ear: "No one else could ever be admitted here, since you made this gate only for you. I am now going to shut it."

15. There is, of course, the immediate reminder of our duty as the "doorkeepers of justice" to provide access to justice to all. To provide security and all freedoms that preserves the dignity of a complete human being. It reminds us of the many suffering litigants waiting on the law and being deprived of justice by the laws delay or its inefficiency or its unjust application of the law.
16. But there is a deeper meaning to Kafka's parable. If we asked Kafka about why have a doorkeeper he might respond "What door??" Have we created our own obstacles to achieving truth, justice, the rule of law or fulfilling our fundamental right to peaceful coexistence? Are these obstacles made by ourselves, imprisoned by our past by systems that

have been rigidly designed, that are as unaccommodating as the dreary doorkeeper? <sup>6</sup>

17. Ultimately, we may unwittingly be the victim of our own obsession where we lose our sense of purpose. We strive so hard to be that brilliant lawyer sharpening our adversarial swords, bringing to our aid every conceivable legal weapon but do we feel fulfilled that law has served its purpose. We have created all these rules to access our world of rights and are exasperated being unable to obtain justice.
18. Re-shaping the identity of our Caribbean legal systems, legal profession and legal education with a focus on peace building begins with history and tradition.

### **PART I HISTORY AND TRADITION**

19. History and Tradition are an important axis to understand the need for fashioning this new identity.
20. The crest that is boldly emblazoned in the Legal Education Certificates show two characters from the country side, a man perched on a fork and a woman bearing the fruit of the land. A law and the rule of law made by the people and for the people, for our society, a Caribbean construct of an indigenous idea or a synergy and a mastery of self over circumstances. A frigate bird flies atop, I thought the frigate bird, an unusual symbol, it is a bird of prey that does not find its own food but steals the food from the mouths of other sea birds with their own catch..what a chilling symbol for new lawyers.... But the frigate bird is an immortalised symbol in our Caribbean literature...The cry of the frigate bird, the majesty of her wings tips at the inverted injustice and the ability to soar over turbulent seas. Embolden on your sheets of paper, your crest then is but a symbol and an identity of Caribbean humanism...a reminder of your ability to keep law relevant grounded productive and constructive. What doorkeepers are being constructed, what barriers are being placed in our way to rallying to such an identity...
21. Indeed in **Hadeed** a preliminary question emerged<sup>7</sup> on whether the question of the alleged

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<sup>6</sup> Rabindrinath Tagore has a similar theme in his poem "Prisoner" A prisoner working so feverishly with pride on a unbreakable chain only to discover when he is finished that "When at last the work was done and the links were complete and unbreakable, I found that it held me in its grip."

<sup>7</sup> **Dianne Jhamilly Hadeed v The Attorney General of Trinidad and Tobago** et al CV2018-02726 (the referral judgment)

interference with her right to practice law breached fundamental commitments of free movement and the right to establishment under the Revised Treaty of Chaguaramas and should be referred to the CCJ. That judgement recognised the important role of the CCJ interrogating and interpreting Caribbean community rights, setting the boundaries of conduct for us in the Caribbean to treat each other with respect and to develop a structure within which we, as a Caribbean people, can harmoniously co-exist. Again, the relevance of both the CCJ and the CLE is its focus on an end product of social justice and peace for our Caribbean nation. How is it that the CCJ is not yet fully embraced within our jurisprudential future? It is perhaps that the message of the goals of community and the needs of community have been lost by a people bred on the ISM and insularity created by adversarial thought processes.

22. A barrier to achieving a common identity is the tragedy of our historical treatment of conflict. Our Caribbean has emerged through centuries of violence, oppression, hate and envy. Under the systems of slavery and indentureship, the sense of belonging to our past or to respond to our genetic codes of self was rewarded with torture and death. This was the story of the colonization of the First Peoples. It was the continued story of the colonization of Africans and later East Indians. Remarkably, but not surprisingly, strong communities took centre stage as the counter foil to the privileged class.
23. Conflict, historically, was dealt with by autochthonous systems of the First Peoples- The Africans and Indians before we were anglosaxonized into an adversarial judicial system which is alien to our communal DNA. The Elder system of the African community and the Panchayat of the East Indian community were their own traditional forms of dispute settlement systems. The 'Len hand' and 'gayap' were equally communal systems of development through promoting peace.
24. In these indigenous systems the importance of community took centre stage. The legitimacy "to belong" was the motivation to change and transform. By way of example, I have often cited a story of the panchayat in a village called Orange Valley in Trinidad. Mr. Gopee, one of the wealthiest men in the village, gave his brother a lot of land to build his home together with his family. When he died, Mr. Gopee told his sister-in-law, the grieving wife Mrs. Subachan, that she must leave the land and that she was a squatter. The panchayat intervened

and convened a meeting in an open area; most of the village came out. Both parties told their side but Mr. Gopee declared to the villagers “I want no part of her. My brother is dead. That woman is not my family now”. The panchyee asked Mr. Gopee to consider what his sister-in-law had undergone and think about it and report back to them the next day to say how he will settle this in the interests of fairness. Mr. Gopee shouted out “This panchayat cannot do me nothing! Mr. Binda you could go to France!” (an expletive in those times).

25. Mr. Gopee went to a solicitor who had obtained a judgment that he was the owner of the land. At the next meeting of the panchayat a Superintendent Peters attended armed with the judgment and informed the Panchyee that their convening of the panchayat was a contempt of the Court! The Panchyee told the Superintendent “Officer why must I stop this meeting. This is the entire community you see before you, they came to attend the regular meeting of the panchayat and we will start at 6:00p.m you may sit on the perra (a wooden stool) and look on”. One of the African villagers stood up and said to Superintendent Peters “If you arrest Mr. Binda, you have to arrest all the villagers of Orange Valley”. Chaos broke out and the Panchyee as the respected elder was able to calm the riotous voices and save Superintendent Peters from further embarrassment. Mr. Gopee was unrelenting and the panchayat had to express their opinion, which was binding, on all. This was their judgment: “Nobody in the village must talk to you from six o’clock today everybody will stop talking to you. No water will be distributed to you. You will do no shopping in this community. We will ask the cane factory to dismiss you.” An action committee was appointed to carry out the decision. At the next meeting of the panchayat Mr. Gopee stood in front of all the villagers and said “I am begging all of you in the village to forgive me for what I have done. Please I ask you to withdraw the restrictions put on me. Anything you ask of me I will do it.” He agreed to assist Mrs. Subachan to complete the repairs to her home and according to Mr. Binda’s account by the following week Mr. Gopee was his smiling self and back to normal.
26. These stories of disputes being settled by a community Elder or Panchyee demonstrated a number of important factors for achieving peace in the community: respect for the elders and the communal system, a strong desire of members to belong to the community, a deep sense of recognition that members were better off in healthy relationships with one another. I have

culled from these experiences and the stories of the panchayat<sup>8</sup> the following principles in achieving peace in small communities:

- (a) That parties see the value in co-existence.
- (b) Parties are prepared to forego the past than remain stuck in it. (unlike a system of precedent which perpetuates the past).
- (c) The picture of peace varies with each case. Although the same is said in the legal system that each case is different, the predictability of results which it strives for based upon transfixed principles of law or equity condemns parties' futures to often unrealistic results.
- (d) Though choices may be made by community members through fear of unwanted outcomes being imposed by the Panchyee, a system of boundary setting was vital to maintain the peace that was wrought.
- (e) There is a deep sense of trust in the leader or the facilitator of these discussions not only of their moral authority but in recognizing that their future is also invested in peaceful co-existence. To the extent it lies in contrast with the notion that Judges are neutral in the sense that they are to be seen as removed from society or above it and to judge DOWN. Unlike the Panchyee or elder, the authority figure in the legal system humanizes the face of justice.
- (f) Peace means a state of rest. An acceptance of responsibility for joint futures. A state of harmony.

27. In the anglosaxonized legal systems of the Caribbean such a communal approach is alien to the search for justice. The challenge for our transplanted legal systems is the cultivation of this sense of 'belonging to the community' in an adversarial world. While persons come to the doors of the Court voluntarily to seek a solution to their disputes, this desire is more individually driven rather than community driven. More destructive to that sense of community than constructive. In such a system the predominance of individual rights obscures a view of peace which accommodates communal rights and security.

28. Indeed, it is this sense of belonging to a community which is vital to the life of CARICOM or

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<sup>8</sup> See R Binda's account of the disputes settled by the Panchayat in his autobiography "Courage in Caroni "

a Caribbean nationhood and indeed a CCJ. Ironically a sense of community is not fostered by our traditional legal tools. If we cannot build from the bottom up almost atom by atom a culture of community, our efforts of regionalism are more challenging than we thought. The more we speak of the rule of law in the Caribbean without re-examining the underlying community that gives law relevance, the more we make the attainment of a Caribbean unity further and further beyond our grasp.

29. The attainment of peace itself is not as an ethereal or illusory concept; it is a state of being representing our highest form of collective union embodied as I have shown in our preamble to our constitution. The importance of peace is underscored by the recent study on peace.

30. The Institute for Economics and Peace helpfully explains the importance of peace indicators in a society which are essential for its stability development and sustainability.<sup>9</sup>

“Positive Peace can be seen as providing the necessary conditions for adaptation to changing conditions, a well-run society, and the nonviolent resolution of disagreements....Positive Peace can be the guiding principle to build and reinforce the attitudes, institutions and structures that pre-empt conflict and help societies channel disagreements productively rather than falling into violence.”<sup>10</sup>

31. The report goes on to explain that Positive Peace is measured by the Positive Peace Index (PPI). It provides a baseline measure of the effectiveness of a country to build and maintain peace. It also provides a measure for policymakers, researchers, and corporations to use. “Positive Peace factors can be used as the basis for empirically measuring a country’s resilience, or its ability to absorb and recover from shocks. It can also be used to measure fragility and to help predict the likelihood of conflict, violence, and instability.”

32. It is the creation of a peaceful environment which allows for the re-focus of time, energy and resources to nation building and the development of our global humanity. There are growing humanitarian crisis of migration, climate change, biodiversity which call upon our collective effort. For the Caribbean three humanitarian crisis are on our agenda: 1) the refugee and migration crisis of Venezuela and Cuba 2) global warming and 3) violent crimes. When mired in our silos of conflict, none of these crisis which are multidimensional can even be

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<sup>9</sup> Institute for Economics and Global Peace Index 2019

<sup>10</sup> Global Peace Index 2019 page 68



addressed adequately if at all. Trinidad and Tobago and the Caribbean ranks between 83 and 93<sup>11</sup> on the Global Peace Index. (I have noted our slide over the years)<sup>12</sup>

33. Even though this report treats with peace through a macroeconomic lens, at its core are lessons for our Caribbean legal systems that as an institution which sets the boundaries of acceptable human conduct, there is a need to focus on peace-making initiatives. The time to do so is now when the development of peace is at a critical low in our society.
34. Without peace it will not be possible to achieve the levels of trust, co-operation or inclusiveness necessary to solve these challenges, let alone empower the international institutions and organisations necessary to help address them. Without an understanding of the factors that create and sustain peaceful societies it will not be possible to develop the programmes, create the policies or understand the resources required to build peaceful and resilient societies.

## **PART II-LEGAL EDUCATION AND IDENTITY- A NEW APPROACH TO CONFLICT**

35. Against this backdrop then what do we make of our legal education. The Council of Legal Education Agreement deals with a common desire of Caribbean nations to develop a scheme of legal education and training best suited to the needs of the Caribbean. It revealed the nations' awareness of the impact of law as an instrument of orderly, social and economic change in the young independent nations of the Caribbean. The mandate of our Law Schools is to indigenise our legal world, adapt to our Caribbean selves, to make sense of our human condition. The Barnett Report underscored fundamental principles of social reform through law induction of the students to the study of law as a "liberal and liberating subject"; an inculcation of an appreciation of law as an instrument of social change and economic development; imparting of the skills required of an understanding of the role of the lawyer in the Caribbean community; and creation of an integrated legal profession in the Commonwealth Caribbean armed with the capacity to deal with the complex challenges facing developing countries in their common struggle in a competitive and technological age. Nothing that I have said this evening is alien to or in contradiction to the basic tenets and beliefs of our goals of fashioning a Caribbean legal education system and profession.

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<sup>11</sup> Trinidad and Tobago is at 93.

<sup>12</sup> In 2017 Trinidad and Tobago was ranked 97 and in 2018 the country was ranked 84.

36. There are no doubt complex issues facing our developing countries. Climate change, Artificial Intelligence, migration, alternative energy...It is easy to see why conditions of peace is relevant to devising a new legal education system and legal system to promote our peaceful development. It is not a focus on peace as a process but peace as a product of our endeavour.<sup>13</sup>

37. Legal Education then can be transformed into acknowledging basic features of harmonious co-existence and peacebuilding:

- a) **The client is not a statistic:** Treating the disputants as not mere statistics. The temptation with heavy case lists is to deal in the “numbers game”. While time and efficiency is important, it is critical that disputants do not view their lives as being “counted”. Caring and offering to help must be our focal point.
- b) **Creating the environment for peace:** This will involve examining techniques for creating the environment and psychology of peace building.
- c) **Creating empathy:** Learning through body language and expression to build trust, empathy and rapport with the disputants. Non-threatening gestures are important. rapport building.
- d) **Building hope:** Many litigants when they enter the court system feel hopeless, many feel already crushed and victimised by the other party and by their unfortunate circumstances of their life of conflict. Building hope is an important criteria of leadership. Reassuring litigants that they are not alone and that their conflict is not

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<sup>13</sup> I begun in the **Hadeed** judgment and certainly reflected in the Barnett Report<sup>13</sup> and other reports, to identity areas of reform of the educational system which included<sup>13</sup>:

- The present demands for spaces in the laws schools and the curriculum and practical training needs for the benefit of an improved legal profession.
- The certification of further schools by the CLE to assist in any increase in demand or the qualitative assessments of a suitable courses for those who have undertaken external degree qualifications inclusive of LPC or BVC.
- The certification of chambers and development of an evaluative course of assignments approved by the CLE leading to an assessment of competence.
- Expansion of the law schools to increase the intake of students if necessary.
- Introducing a policy based on a Merit System for admission to the law school to all holders of UWI and non-UWI graduates of comparable degrees in law.
- Distance Learning Arrangements- Attending law school through “electronic means”.
- Certifying private institutions by the CLE to administer the LEC program.

No doubt, other legal educational reform from other jurisdictions have called upon less costly.....

unusual builds hope that positive outcomes can be generated even if they are initially sceptical. Building hope and creating a healing attitude becomes infectious if the judge is the eternal optimist!

- e) **Future oriented:** At its core the discussion must be future oriented focusing the party's attention on their futures and their desires in the years to come in a life without litigation. Allow them to paint those pictures and visualise how that can be achieved.
- f) **Acknowledging history:** The mirror image of futures is of course history. The judge must acknowledge and understand historical realities while lessening the disputant's chains to their hostile past.
- g) **Family, Culture, Tradition and Religion:** Be culturally sensitive and pay homage to family, traditions and religious aspects of the disputants in a multi ethnic society such as ours. Within these customs are tell-tale pathways to peace which must be memorialised and developed by the parties.
- h) **Co-opting help:** Be keen to circles of assistance. Determine who and what other means of assistance may be required to take the parties out of conflict from expert assistance (Part 33 CPR) to the consultation of psychologists or religious leaders. The co-chairing of sessions with such persons with moral authority can also be a method of building trust and creating effective forms of dialogue.
- i) **Recognising the problem and explanations:** Be keen to have parties identify the key problem areas and the rivalling explanations. In this process the parties must be able to identify areas which will require judicial determination such as making determinations of rights but must be done within the context of building positive outcomes.
- j) **Revolving door litigation and the search for permanent solutions:** With a focus on peaceful outcomes, be careful to be aware of multiple disputes, revolving door litigants and satellite litigation. At times a permanent solution may involve third parties who are not parties to the action. The Judge must lead the conversation to deal with such realities head on with attorneys and their clients to check in on their

motives for peaceful results.

- k) **Valuing peace as a substantive outcome:** Treating the quality of relationships with clients, valuing the importance of a return to wholeness for the client, helping clients listen to their inner wisdom and higher intelligence.
- l) **National Development and Community building:** It is the simple blocks that make the building. With each disputant being exposed to the therapy in our rooms we begin a process of national healing and nation building. We end satellite litigation. We bring an end to spiralling violence spawned by unsatisfied legal outcomes. We begin the process of peace mapping. In a recent case, an oppression remedy action, the parties openly acknowledged that the issues that were being litigated affected more than just themselves, it affected their family, their business their employees and their families in those businesses. The ripples of their private conflict they acknowledged impacted negatively countless many others an effect which they never intended.

### **PART III-CHANGING ROLES**

38. In the seminal work of Richard Susskind in “The End of Lawyers” he admonished the legal profession to begin re-tooling itself to accommodate the downsizing of firms, the evolution of legal services, the reliance on technology to remain relevant to the increasing demands of our society, to create simplicity in the provision of legal services. In Phillip Howard’s book “Life Without Lawyers” (you do see the trend here) he lamented the lack of legitimacy of a legal system which creates distrust and individualism fracturing and not healing a nation’s development. In Julie Macfarlane’s work “The New Lawyer” the bedrock of traditional legal thinking buttressed by traditional legal training she saw as a rights based orientation, a confidence that courts produce just results, and a mind-set that lawyers should be in charge. Such a belief system results in inefficiency and the disempowerment of the disputant. In his article “Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court” Forrest S. Mosten theorises that rather than the myopic adversarial approach to problem solving, a peace-making approach can lead to greeter client satisfaction, because it is fuelled by a positive motivation of trying to help clients heal, improve harmony and prevent future strife.

39. Graduates, peacemakers...your rebellion tonight is made that much easier by two developments. First, a growing sensitivity to judiciaries to the diversity of the human family and the development of our society and natural resources. The recent judgment of Rampersad J in **Jason Jones v The Attorney General of Trinidad and Tobago** CV2017-00720 celebrates the dignity in our diversity. To a limited extent so did **Maurice Tomlinson v The State of Belize** [2016] CCJ 1 (OJ) in the CCJ. In India, the recognition of the Ganges river as having a judicial personality with inherent fundamental rights.<sup>14</sup> The willingness of Courts to arbitrate political decisions.
40. Second the emergence of problem solving techniques in mainstream legal practice. In our jurisdiction, the Drug Treatment Court, the Children's Court, the use of mediation and Judicial Settlement Conferences (JSCs) are judicial innovations that focus on underlying human problems and social conflict.
41. At the HWLS you to are leading the charge. The HWLS must be commended for equipping you with problem solving skills of introducing an ADR programme conducted by Ms. Giselle Yearwood Welch. I am extremely proud to see your students' attentiveness in the programme. I would be even happier if it is a compulsory course. The underpinnings of mediation, of compassion, consensus and collaboration provides, in my view, the clue to peacebuilding and morality in our legal relationships.
42. In a colourful explanation of mediation allow me to refer to the famous American mediator, Kenneth Cloke:
- “Mediation is the search for the invisible bridge that connects every living being with every other. It is a poem made of intention and vulnerability. It is a reweaving of souls. It is an opening through which we are able to glimpse the other naked and divine. It is a synchronisation of heartbeats. It is a fierce life and death struggle of each person with himself and herself. It is gentle responsive exploration of the space between us, it is a breach of the myth of what we know to be true leading to transformation and transcendence?
43. The principles of compassion, collaboration and consensus imbedded in the mediation system are transferrable skills. Think of the possibilities of making such ADR philosophy

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<sup>14</sup> See **Lalit Miglani v The State of Uttarakhand and others** Writ Petition (PIL) No.140 of 2015 and **Mohd. Salim v The State of Uttarakhand and others** Writ Petition (PIL) No.126 of 2014

mainstream practice of the law where we harmonise the competing perspectives of litigants to bring about an acceptance of a just outcome and create a holistic treatment of the human problems presented by litigants with a view to achieving not simply dispute resolution but dispute reconciliation.<sup>15</sup>

44. The transference of these mediation skills and peace sensibilities into main stream legal work allows us to alter our roles from being adversaries and a manager of adversarialism to collaborator and equal partner in pursuing reconciliation. It fits neatly into your existing codes of ethics as it does with the recent research conducted by the JEI in **“Exploring the role of the CPR Judge”**. We have developed nine (9) standards of procedural fairness as the core features of the CPR judge’s work ethic which when carefully examined, sets up in large measure a perfect framework for a Peace Jurisprudence.
45. I leave you then with my definition of Peace Jurisprudence. The process by which the law places the concept of peace as an outcome beyond simply the legal resolution of a dispute. It recognises that judges and attorneys have an important role of leadership in creating the environment for positive peaceful change in the lives of disputants. To this end, the law must be carefully analysed for its impact on the social realities of disputants and legal processes must engage individual’s needs, outcomes collaboratively determined. Judging and lawyering must be seen and felt to be more humane. It is a combination of mediation, holistic, restorative justice and therapeutic jurisprudence practices. It is steeped in our historical desire for communal based approaches to conflict.
46. With this approach, outcomes are not imposed from “on high” which rubs against the grain of our historic insensitivity to authority. Parties become re-invested in their future. Outcomes

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<sup>15</sup> “Therapeutic jurisprudence asks all judges to recognize they can be important agents of change, and to acknowledge that their words, actions, and demeanour will invariably affect the people who come before them in the courtroom. Judges who recognize their potential impact, and who consciously strive to develop the interpersonal skills and empathy that are the foundation of therapeutic judging, are likely to become confident, more effective judges with improved outcomes.” -Problem Solving in Canada’s Courtrooms- A guide to Therapeutic Justice  
I have thus far experimented with these techniques.

- Letters/memo to the client.
- The MED-LIT-MED: The last chance to settle
- The Formula of an apology
- Exemplary damages and a public fund
- Non-binding recommendations
- Court supervision of the execution of orders

become more realistic and achievable. Judges are perceived as guides and not masters.<sup>16</sup>

47. Interestingly, in a survey conducted with disputants, 95% felt the need to have voice and feel respected; 90% want to access our Courts to achieve peace but do not want a judgment. They are accessing our courts for help. They are accessing legal services for healing. A new approach to legal education will see the development of procedural consensus, collaborative dialogue, risk assessment, conflict mapping all with a view to improving each parties chances of positive results and to provide a forum within which parties feel respect, given a voice and build trust in the institution of justice.
48. So a relevant area for legal education to promote peace in our Caribbean society will be to focus on problem solving skills. Carrie Menkel-Meadow saw this as being sensitive to procedural and substantive fairness, peace, decision making, leadership facilitation and management of people groups and complex information, creativity, counselling and governance. It also includes building and designing collaborative institutions to address modern problems. Therapeutic Justice, Restorative Justice Models, Holistic Lawyering, Collaborative Law Practices. In such practices lawyers operate in a collaborative, collegiate environment. Their retainer ends if the dispute is unresolved and a party files a claim. They each sign an agreement with the other to pay respect and dignity for the other party, to have open and direct communication, to give voluntary and full disclosure of relevant documents, to commit to the healing of the family and clients, to use interest based negotiations to meet the needs of both parties. It should also prepare students beyond the text of a Code of Ethics to lawyering with an ethic of care.
49. With these undercurrents of abandoning the adversarial system, adopting a collaborative approach, feeling free to express one's humanity and observing the tenets of procedural justice, there is a greater case of an evolved judicial system that is relevant and carries a greater moral force.
50. Already you are seeing the results. This has begun to change the minds of students of the approach to problem solving. An extremely vital building block for the humane lawyer. An

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<sup>16</sup> As peacemakers, we become the maestros of the orchestra as the parties dance the conflict at our table. Listening is our highway to solutions, our treasure hunt for answers to the validation of their souls. A practitioner who can tap into the language, the underlying cries for help of one to another, has the best capability to assist them on their path out of pain and into understanding."- Nan Waller Burnett *Calm in the Face of the Storm*

example of a recent experience of a student in a JSC training:

“At times during our role-plays we had to take off our problem-solving hats and portray some roles that were intended to demonstrate various situations that may present themselves at JSCs, in order to prepare the Registrars to handle them in the future. We had roles such as the unprepared attorney, the silent client, the emotional client, the poor client, the disabled client and the client who brought the whole village to the JSC, including his demanding wife and interrupting grandmother. In this regard, I must applaud some of my fellow volunteers who seem to have bright careers ahead not only as lawyers but also as actors and actresses.

The feedback sessions taught us, among many other things, that self-assessment is key to growth and improvement and that even if a total settlement seems unattainable, all is not lost; there may be smaller issues that may be worked through at the JSC, which will make a follow-up session, or the next Court hearing, more fruitful and productive.

Upon reflection, I appreciate being given the opportunity to share the skills that I learned at the HWLS from Mrs Yearwood Welch at the Mediation Advocacy class and from the ADR Specialist Clinic. I am also thankful for the new knowledge that I gained from this exceptional and unique experience.”

“At the JSC training, I got a glimpse of the future of our litigation landscape. I envision that there will be less need for trial advocacy and more need for mediation advocacy. Since the Judge/Registrars are well versed in the law, this better assisted the parties in negotiating legal issues. This also meant that the Judge/Registrars were able to ride the waves of any legal questions and where needed, give assistance by way of an evaluation on the merits of the case. These nuances distinguished this process from that of mediation. I most appreciated the Judge’s/Registrars’ desire for fairness for each party. Personally, as a member of the Laventille community, I sometimes feel like "the caring and peace and desire to restore" has left our society. This process has honestly inspired a feeling of hope and that beyond the cliché of "our justice system can bring about social change", justice is indeed in good hands.”

51. Trials then, in the traditional system, in my view, represent a failure to constructively resolve disputes and I make no secret of it. As presently constituted from most cases in the civil



bench with a preponderance of land disputes and relational disputes, it is far removed from a humane form of truth interrogation of justice and can indeed constitute cruel and unusual punishment. In my view, in most cases, it is a projection of an act of revenge. As a model of efficiency, no system of justice can try all the cases that has been filed. Indeed, to do so will lead to backlogs and discontent. What is needed is a proactive collaborative approach to case management and conflict resolution design. Pre-trial procedure must be focused on four objectives: early information exchange, issue identification, reality testing and problem solving. In my view, the Judge must be free to humanely act as the collaborator to help parties to arrive at a reconciliation. In such a system procedural disputes are a misnomer.

52. In our criminal justice system, equally, attorneys are collaborators working with the law to achieve humane results. Dealing with problems of re-victimisation, fear and anxiety are equally valuable services to reduce the levels of violence in our society.

#### **PART IV- THE CHALLENGES AHEAD AND THE DRAFT AGENDA FOR THE COUNCIL**

53. Of course any project that promotes peace hits the stumbling block of an underappreciation of its value and connectivity to identity, community and futures let alone our legal structure. Our first challenge, dear graduates, is to convert others to this new approach. This, I dare say, can only be accomplished through a dedicated pursuit of the law with an ethic of care and with a focus on the humanism of our practice.
54. For the Council, if one is to embrace this idea, the future is bright. May I leave with you a draft agenda for discussion and debate:

- ✚ Having the law school become certified as a mediation agency.
- ✚ Converting advocacy courses into mediation advocacy and collaborative dialogue courses.
- ✚ Institutionalising peace jurisprudence as an approach to legal education. You may begin with an experiment into this new world of healing, a Peace Jurisprudence Clinic, a "healing hub" of the law school curriculum. In this hub, students will be exposed to the synergies of therapeutic jurisprudence, restorative justice, holistic lawyering, psychology, emotional dialogue exchange, relationship building. This will take the form of both lectures and practical workshops. The students will be

presented with dynamic case scenarios which will train them to recognize and address the important issues of their disputes in connection the underlying emotions of the parties. In developing a humanistic approach to their legal career, the students will learn to appreciate the importance of achieving peace within their clients and themselves so that they are able to make peace with the eventual outcome of their disputes. In this pursuit of a peaceful outcome, there is no victor and loser. There is only an amicable solution which is beneficial to all parties. Who knows at the end of the two year course, the student who best exhibits and exemplifies the qualities of a Peacemaker, will be awarded the "Peacemaker Award."

- ✚ Working with the LATT and the Judiciary in developing The Peace Project- A project designed to build awareness of dialogue and collaboration, to map our conflict and to design appropriate conflict design systems for national, **inetrloan** and regional disputes. Imagine His Excellency, the Honourable Mr. David Granger and Mr. Irfan Ali or Mr. Juan Guaido and Mr. Nicolás Maduro being facilitated in dialogue through your Peace Project.
- ✚ Create Post sentencing and Post Judgment Clinics where you can assist those in need to understand and negotiate their future after decisions have been made impacting their lives.
- ✚ Use of technology and development of Online ADR skills.
- ✚ Increase access to this brand of Caribbean education through MOUs with appropriate institutions and private schools.
- ✚ Collaborate with the LATT to develop mandatory CPD programmes and indeed a possible idea to facilitate foreign based trained attorneys is to ensure that such CPD programmes include the core facets of peace jurisprudence.
- ✚ Declare your communities in which your law school operate as Zones of Peace and open dialogue with your community, listen to the voices of need and continuously engage in a recalibration to ensure that your courses, your curriculum, your approach aligns with human justice. Issues such as vagrancy, public health, environment faced by your unique communities can be fed back into your legal education.

## CONCLUSION

“A just society cannot be achieved simply by maximising utility or by securing freedom of choice. To achieve a just society we have to reason together about the meaning of the good life and to create a public culture hospitable to the disagreements that will inevitably arise”- Michael J. Sandel (Justice: What’s the Right Thing to Do?)

55. A peace jurisprudence may yet be that pathway to the jettisoning of the adversarial system for a collaborative method for the focus on reconciliation rather than resolution, ultimately, leading to a society embolden and confident enough to finally repose full trust in itself the innate power to heal one’s own wounds.
56. Susskind referred to an imminent biologist on four stages of human’s acceptance of new ideas. Stage 1 “that is total heresy”. Stage two “that is interesting but quite unimportant”. Stage three “that is worth investigating”. Stage four “why did we not do this before”. I hope in the short time I have had we are at stage four of acceptance of the need to refashion our approach to dealing with human conflict as lawyers and judges. As you ponder on your future remember that a future is not a never arriving moment nor a fleeting thought or a mirage in the morning mist...the future is today...today is yesterday’s tomorrow, you live in the now what can you do, dear graduates, in your assertion of self-identity for sound justice and the attainment of that peaceful co-existence a fundamental human right....Above all else remember your role as a change agent in the law in our society in our quest to build a better tomorrow. Liberate yourselves from your own fears and insecurities. Be bold. Be compassionate. Make our law relevant, revealing and healing. Make your life fresh and fulfilling pivoted on values of Compassion, Collaboration and Consensus.

Justice V Kokaram

5<sup>th</sup> October 2019