

Setting My Misguided Critics Straight

The Gleaner

I refer to the recent Gleaner article titled 'Abuse of power? DPP under fire for stopping trial before judge could rule on no-case submission' (March 13, 2016) and letter to the editor by Dujon Russell (March 17, 2016) treating with the same subject matter.

The basis of my decision has benefited from a detailed report from the assistant director of public prosecutions, who had conduct of this case. This matter involved allegations of breaches of the Law Reform (Fraudulent Transactions) (Special Provisions) Act 2013 (popularly called lotto scam legislation).

The allegations are that a male person was seen in an ABM by police personnel who were on patrol in a particular area between 4 a.m. and 4:30 a.m. The further allegation is that the male person had a white towel over his head, which drew the attention of the police, who went to the ATM and held the person.

When searched, he was allegedly found in possession of more than 30 cloned debit and credit cards and a number of receipts that matched some of the card numbers, as well as \$150,000 in cash. This male person, along with the towel, cards, receipts and cash, was removed by the police and taken to the police station where he was placed in custody. He was subsequently arrested and charged.

The prosecution always has the legal duty of disclosure. Before the case commences, we must serve counsel for the defence with all of the material we intend to rely on to prove our case, as well as any other material that may have come into our possession in relation to this case which

may be relevant. Defence counsel who has received this material has no similar duty of disclosure to the prosecution.

However, having read the material that the prosecution has served on them, and being privy to instructions received from their client if there is other material they would deem necessary for the defence of their client, they are at liberty to make a request of us to source that material if it exists.

In this case, the prosecution duly served the statements of witnesses, video footage and still images relative to the time 4 a.m. to 4:30 a.m. from the ABM on defence counsel Hensley Williams. Up to the commencement of the prosecution of this case, no further request was made by defence counsel, whether verbally or in writing, for us to source any additional video footage. Indeed, even when the Crown called its ninth and last witness, no such request had been made.

A VERY STRONG CASE

After the prosecution closed its case and during defence counsel's no-case submission, he indicated that he had not been served with the other 231/2 hours of video footage he says would benefit his client's case. Although the prosecutor indicated the irrelevance of this material and the impossibility of sourcing this material at that time, Mr Williams still maintained that based on the defence, he would wish to have sight of the 231/2 hours of activity in that said ABM.

The prosecution considered this to be a very strong case in light of the sequence of events previously outlined. Clearly, the other 231/2 hours would not be relevant in proof of this case against this individual as it pertains to clients of the financial institution on their lawful and personal business.

To source that sort of material involving citizens, in such a case where it is clearly irrelevant, may necessitate the prosecution or the defence getting a court order compelling the financial institution to provide this footage, if it still exists, which could take several months.

I accepted the assistant DPP's recommendation that the interest of justice would be best served by entering a nolle prosequi, which would pause the matter for it to be recommenced after we have made every attempt to source the material to assist the defence.

This power to enter a nolle prosequi is a quasi-judicial function of the DPP under the Constitution and the Criminal Justice Administration Act and is always subject to judicial review by anyone who disagrees with this decision or who has been negatively affected. In a given year, I consider and make decisions for up to 600 requests islandwide from defence and prosecuting counsel from all the courts.

In Sunday's publication, defence counsel indicated that no explanation was given to him or the accused as to the reason for stopping the case. Both the assistant DPP and I were absolutely shocked by this statement, which is totally contrary to what actually occurred. The assistant DPP consulted with both Mr Williams and the judge in chambers, outlining the prosecution's reasons for entering the nolle prosequi. The judge had no issue with this proposed course and appreciated our position.

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Rights are useless without responsibility



The Observer

Dear Editor,

Every month seems to be an awareness month nowadays — children's rights, women's rights, and the lot. We all can appreciate and accept the fact that everyone has inalienable rights, some would go so

far as to say God-given rights, but what about responsibilities?

The talk of people's responsibilities oftentimes gets lost during these discussions, but we do this at our peril, as rights and responsibilities go hand in hand.

For example, we have the right to freedom of speech in this and most nations, and have had it for years. However, the responsibility of the people is to ensure that censorship is called out and that people can speak freely without fear of conviction, for once censorship is allowed in one facet it's only a matter of time before all subjects are politically taboo.

Another example is the right to a clean environment. It is widely accepted that people need clean water and air; therefore, clean air and water are basic human rights. However, the responsibility falls on the citizen to ensure that they don't dump garbage in gullies or on the side of the road, and that they ensure that cars are environmentally friendly.

Another example is freedom of religion; long viewed as a core right. This too can also only be upheld through the responsibility of the people who must ensure against theocracy and the domination of one religion to the point that other religions are seen as heretic.

These examples, I feel, show that rights, while important, can be easily overturned or abused, and that is where responsibility of the citizen comes into play.

People have a right to vote, but politicians abuse power; the responsibility is then on the voter to hold them accountable. Rights are useless unless we the people are as responsible, irresponsibility and dereliction of duty breeds contempt and slowly erodes rights.

So, while demanding that our rights be met and upheld, let us not at the same time shirk our responsibilities. Let's hold politicians to account, whichever stripe they wear. Let us scold the person dumping garbage all over the place and let us expel those who wish to shut us up. For if we abandon our responsibilities we can be safe in the knowledge that all our hard-won rights will disappear.

Alexander Scott

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Justice Ministry Expected To Complete Relocation Exercise Today

The Gleaner

Last week, the ministry of Justice's offices at the NCB South Towers in St Andrew were closed by public health authorities due to air quality issues.

The Justice Ministry is advising members of the public that it expects to complete its relocation to 61 Constant Spring Road in St Andrew today.

Last week, the ministry of Justice's offices at the NCB South Towers in St Andrew were closed by public health authorities due to air quality issues.

The Justice Ministry says after completing the relocation exercise today, it will be opened for business on Monday.

However, the ministry says the public will continue to experience some inconvenience at the new location.

The Justice Ministry's offices in St Andrew were ordered closed by public health authorities after the staff complained of an unbearable odour which previously caused them to evacuate the building.

The Kingston and St Andrew health Department says the Michael Lee Chin-owned AIC Group which operates the NCB South towers has a maximum of 30 days to address the issues.

Paul Ashley: Redefine The ‘Rejected Ballot’

The Gleaner

Jermaine Barnaby

A constant feature of our elections has been the controversy over the validity, or otherwise, of the ballots cast.

Such occurs in the final count done by functionaries of the Electoral Office of Jamaica (EOJ) and the recount done by the resident magistrate. The basis of the controversy stems from the disparity in the criterion applied by the officer of the EOJ and that applied by the resident magistrate in determining rejected ballots. The functionaries of the EOJ are duty-bound to apply that stated in the Representation of the People Act (ROPA).

The resident magistrate, while assessing whether the statute has been faithfully complied with, is obligated to take into consideration existing case law in which that particular point has been adjudicated.

DEFINITION BY ROPA

Part 1, Clause 2 deals with interpretation: “Rejected ballot paper’ means a ballot paper which has been handed by the presiding officer to an elector to cast his vote but which, at the close of the poll, has been found in the ballot box unmarked or so improperly marked that in the opinion of the presiding officer or returning officer, it cannot be counted.” But the presiding officer, or the returning officer, does not enjoy unfettered discretion in coming to such a decision.

ROPA outlines in its Direction To Electors the specifics to be followed in casting a vote: “Each elector may vote only at one polling station and only for one candidate. The elector will go into one of the compartments and, with a black lead pencil there provided, with a cross within the white space containing the name of the candidate for whom he votes, thus X.”

The example provided shows an X marked to the right of the party symbol. Note that there is no box in which to put the X, and EOJ functionaries were instructing voters to put their mark either to the left or right of the name of the candidate they intend to vote for.

The Directions to Electors is, in substance, replicated in Section 35(3), which deals with the general mode of taking ballot: “The elector, on receiving the ballot paper, shall forthwith enter one of the polling compartments and there mark his ballot paper by making a cross with a black lead pencil within the space containing the name of the candidate for whom he intends to vote, and he shall then fold the ballot paper as directed so that the initials and the numbers on the counterfoil can be seen without opening it, and hand the paper to the presiding officer, who shall, without unfolding it, ascertain by examination of the initials and numbers appearing thereon that it is the same paper as that delivered to the elector and if the same he shall subject to the provisions of Section 38 forthwith in full view of the voter and all others present remove and destroy the counterfoil and deposit the ballot in the ballot box.”

Case law on the mark to be employed is in abundance. Indeed, a tick, dot, asterisk, even a smudge has been adjudged valid. The overarching principle being that once the intention of the voter is unambiguous, all technicalities surrounding the nature of the mark utilised must be set

aside. This contrasts sharply with the statutory requirements of ROPA that the functionaries of the EOJ are obligated to follow.

Recommendation: The law, in this case ROPA, needs to be amended so that both the functionaries of the EOJ and the resident magistrate are ad idem on the criterion to be applied in rejecting a ballot. The overarching principle governing the validity of a ballot is the unambiguous intention of the voter. That ought not to be dependent on the status of the individual presiding over the count.

- Dr Paul Ashley is an attorney-at-law. Email feedback to columns @gleanerjm.com and ash1tech@gmail.com.

Access to justice for poor people

[ALL WOMAN](#)

[Margarette MACAULAY](#)

Dear Mrs Macaulay,

I appreciate your advice as given in a recent letter in respect of the husband abroad who was seeking to take away his wife's child. It was as usual excellent, but you have not addressed the question of affordability. More specifically, what is your advice to the wife who does not have the funds to initiate the proceedings on her own behalf?

Too often it is the poor who cannot find justice in our courts. Please let me hear from you and please publish a set of outlines and rules to follow for these people who have been wronged but who cannot afford the services of an attorney.

— Dr Jephthah Ford

Dear Dr Ford,

I have to extend my thanks to you on two counts. The first is that you have been a constant and faithful reader of my column and I thank you for this and, secondly, that you have taken the trouble to write to me about a lacuna in one of my previous articles. Many people who are faithful readers speak to me about my articles and their usefulness and some even go further and talk about matters of concern which they wish me to deal with. They do not, however, as you have done, write to me about these concerns. I really thank you for this.

You have made a very valid and important point which is, as it is referred to in law and in international human rights law, the issue of access to justice by the poor, the majority of whom happen to be women all over the world. You are correct in that in my recent letter I did not deal with the issue of affordability and therefore access to justice for the wife.

You have asked what would be my advice to a wife who does not have funds to initiate proceedings on her behalf, and for people who need to have access to justice but cannot afford to pay for the services of an attorney.

Well, Dr Ford, I am sure that you are aware that on the matter of legal aid for persons in difficult financial circumstances, the provisions for this in Jamaica are not as they should be. In fact, if I recall, the assistance now given in criminal cases and even in the most serious ones when representation of an accused is an absolute necessity, is less than it used to be in the years when I was a defence attorney in the criminal court. The reason given is, of course, the lack of resources.

When it comes to civil matters, within which the circumstance of the wife in the letter you referred to falls, there is no regime in place for applications relating to custody, care and control and maintenance of children in the Supreme Court. And people who retain attorneys for these matters enter into contracts (every time an attorney agrees to accept a retainer and fees are fixed and are discussed or fees are to be paid as billed periodically, a contractual relationship is formed between the attorney and client). The level of fees charged is personal to each attorney

depending on their experience and the complexity and length of the matter. The only stricture is that the fees ought not to be exorbitant, but ought to be reasonable in all the circumstances.

Attorneys' bills or fee sheets are subject to be taxed by the taxing master, the registrar of the Supreme Court if the matter was in that court, or the Resident Magistrate if the matter was in that jurisdiction and was a civil matter.

Matters of custody, care and control and maintenance can also be heard in any of the Family Courts in the island. All these proceedings in the Family Court are free of charge as far as court costs are concerned. This court was set up to deal with the issue of access to justice for the poor and those in difficult financial circumstances, the majority of whom are, one must underline, women, so that the need for representation by attorneys was not an absolute necessity. The concept was that it would be an informal court which would assist with the preparation of the applications within the courts' offices by clerks of the court, and for the service of the documents on the respondents without any financial input by the applicant.

Again, the concept was that the parties would appear in person to 'speak' with the judge about the matter, who would take time to resolve, if possible, what was recognised as emotional, family, private matters. You would recall that the proceedings in the Family Court are held in camera so that the parties can speak openly about their private familial problems. If the 'talk' with the judge does not resolve the matters, then a hearing can be fixed by the judge for evidence to be taken and a resolution made by him or her. In these circumstances no question of fees to be paid to an attorney would arise, which was in keeping with the original concept.

The practice has developed that some parties retain attorneys to represent them in the Family Court. In such circumstances the judge would ask the other side who is appearing in person whether they have or intend to retain an attorney to represent them. Some do and some do not. Remember, each person has the right to appear by a legal representative if they so choose. There is in the Supreme Court in relation to divorce petitions, the office of an Official Referee who is charged with appearing for persons in difficult financial circumstances who need a legal representative to act for them. This officer does so free of charge. I know, however, that this facility is not used very often.

So, Dr Ford, I really cannot provide any outlines or rules to follow to people who have been wronged and who cannot afford to pay for the services of an attorney. Persons who need assistance can and should approach attorneys and enquire whether they would agree to do a matter pro bono. Many attorneys in fact, on their own initiative, when they are aware of the difficulty the client is undergoing financially, often decide to do the matter pro bono or at a very reduced rate to merely cover their expenses

Until such time as Jamaica can afford to set up a real and comprehensive legal aid regime to ensure universal access to justice for all, I am afraid that persons in need have to try and make approaches to lawyers and to the officers of the respective courts to seek assistance.

Margarette May Macaulay is an attorney-at-law, Supreme Court mediator, notary public and women's and children's rights advocate. Send questions via e-mail to allwoman@jamaicaobserver.com; or write to All Woman, 40-42 1/2 Beechwood Avenue, Kingston 5. All responses are published. Mrs Macaulay cannot provide personal responses.

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The contents of this article are for informational purposes only and must not be relied upon as an alternative to legal advice from your own attorney.

Schools' Challenge dispute



The Observer

Camperdown, KC lodge complaints; court action being contemplated

The Gleaner

GRANT... there does not have to be a challenge to a question for the sitting judges to make a ruling

This year's Schools' Challenge Quiz has been plunged into controversy as two teams — Kingston College and Camperdown High — have lodged complaints about the outcome of matches that resulted in their ouster from the competition.

Yesterday, Camperdown coach David Fuller confirmed to the Jamaica Observer that they were seeking legal advice and suggested that the matter could end up in court.

That information was corroborated by William McLeod, chairman of the school board. "Yes, that's one of the options," he responded when the Sunday Observer asked for a confirmation.

Cop arrested for alleged involvement in drug trade

The Observer



KINGSTON, Jamaica — Constable Chadrick Bowen was arrested by the Major Organised Crime and Anti-Corruption Agency (MOCA) on Thursday.

The policeman was arrested after a ruling by the Director of Public Prosecutions (DPP) and was charged with attempting to pervert the course of

justice.

According to MOCA, the charge was brought in relation to allegations of his involvement with the illicit drug trade operating out of the Norman Manley International Airport.

He is attached to the Detention and Courts Division of the Jamaica Constabulary Force.

Woman accuses boy of breaking into her home, but he says she lives on “capture land”

The Observer

with Tanesha Mundle



A woman who was arrested and charged for stabbing a young man claimed he is a known housebreaker and she stabbed him because he broke into her house while her 14-year-old daughter was home alone.

“Mi wake up everyday at 5:00 am, and it was on Ash Wednesday mi go shop and leave her a sleep and him jump mi fence and go inside and buck up on mi daughter.

“When mi go up there mi neva ketch him, so mi go down a him yard and stab him,” she said further.

“You can’t do that, you can’t take the law into your own hands,” RM Pusey told Linton.

Linton told the court that Nicardo Wright, who was charged with trespassing, is known in her community for breaking into people’s homes.

“Him shub cart and bruk into people’s house,” she said.

But this was strongly denied by Wright.

“So tru dem know mi shub cart and always pick ackees dem always a call me name and nah call the gunman dem name,” he said.

The magistrate then told Wright: “You can’t be hustling off people’s property, you just can’t feel that you have a right to walk onto people’s yard; it’s prisonable for three years.

“I am not into this thing called hustling; find something else other than stealing and trespassing,” she said.

“Every time something happen in my name dem call, and the property that dem live on is ‘capture land’,” Wright said, sparking laughter from the court.

However, the magistrate said that that was not his concern.

“Miss, mi never touch anything or go into the house, mi just go in the yard,” he said.

The magistrate then told him that was trespassing and ordered him to pay \$15,000 or serve six months in prison, while Linton was ordered to pay \$25,000 or serve six months in prison.

Man breaks lover's ARM over alleged affair with schoolboy



Covering the Courts
with Tanesha Mundle
The Observer

A woman whose partner broke her arm after accusing her of having an affair with a schoolboy told the court that a woman had to intervene in the

attack with a pot cover to get the accused to let her go.

“A pot cova him get lick out a, ah suh him stop,” the complainant said when she appeared in court on Tuesday with one of her arms in a cast. “A three lady haffi tek him off me,” she explained.

Noel Gayle was arrested and charged with assault occasioning bodily harm following reports that he used a piece of wood to hit the complainant on her arm, causing it to break, during a domestic dispute at their home.

The complainant told the court that she she was at home packing her things to leave when Gayle attacked her.

She said the attack started while they were travelling in his car on their way home after Gayle told her that he heard that she was involved with a schoolboy, but she did not “pay him any mind”.

But before they got home, she said: “Him stop the car and tek mi out and drag mi inna dark corner, and a when mi baby bawl out him let mi go.

“When mi reach home me start pack mi things and him lock the door and start lick me inna me head.”

The woman then complained to RM Pusey that she no longer wishes to associate with Gayle but he has been pursuing her.

“Him see mi and call mi and a put argument to mi,” she said. “And from mi hand bruck a \$1,500 him gi mi fi di baby and him see mi caa work.”

“How much for a pack of Lasco?” the magistrate asked.

She then warned Gayle that he could get in trouble for interfering with a Crown witness and should stay away from the complainant.

“Is me bring her go deh and she pick side with di people dem,” Gayle said in his defence.

“So yuh ago bruck her up and three people have to take you off her. There are certain things in life, if you can’t deal with it, stay away,” she advised Gayle before extending his bail for him to return to court on April 8.

Man steals neighbour’s panties after claiming she told him she loved him



Covering the Courts
with Tanesha Mundle
The Observer

A man who appeared before the Corporate Area Resident Magistrate’s Court last week for breaking into his neighbour’s house and stealing her possessions including her panties, claimed he did it because she asked him to feed her dog for a month while she was away and did not pay him.

Dwayne Nelson also told Senior Resident Magistrate (RM) Judith Pusey that the complainant, whom he claimed had professed her love for him, had hurt his feelings by ignoring him when she returned from overseas.

The 33-year-old unemployed resident of Topper Hill in Red Hills, St Andrew, was arrested and charged with burglary and larceny after he broke into the complainant's home on March 1. The court heard that the complainant was at her home around 9:30 pm watching television when she heard a loud noise upstairs.

The complainant went to check and found Nelson inside her bathroom, and when she called out to him he left.

The complainant reportedly checked and found that her, chain, a cellular phone, colognes, watches, and some underwear were missing and called the police, who arrested Nelson. On Thursday, when the matter was first mentioned before RM Pusey, Nelson admitted to stealing the items, but claimed he did it to recover money he had spent on food for the complainant's dog.

"The lady that made the statement, how I get to go over the house, is that she did leave go weh for a month and leave me to feed her dog," he said.

"So what I did is like a reprisal 'cause mi spend mi money and feed di dog and she nuh give mi back mi money," Nelson added.

Furthermore, he said: "I did feel less than a man 'cause after she came back and mi feed her dog, she don't talk to me."

The prosecutor then told the court that Nelson, when he was cautioned by the police, told them that the complainant had told him that she loved him.

"You and her involved?" the magistrate then asked Nelson, who replied: " No, but she tell me like she love me."

The magistrate, as a result, scheduled the matter for the following day in order for the complainant, who was absent, to attend court.

On Friday when she attended, Nelson told the court that he was guilty for stealing the chain, but that he found the phone outside. He did not address the other items.

He, however, maintained his claim that she had asked him to feed her dog for a month and had not paid him back the money he had spent.

The prosecutor then told Magistrate Maxine Ellis, who was standing in for RM Pusey, that Nelson had told the police that the complainant had professed her love for him and explained to her that the matter was scheduled on Friday for the complainant to attend court and address Nelson's claim.

But the magistrate said that that her explanation was not really necessary as Nelson had already pleaded guilty.

The End