

## OECS Seeks ACLI Expertise

### *Plan to Implement Biodiversity Conventions*

by John C. Knechtle

At the request of the Organization of East Caribbean States (OECS) and the United Nations Environmental Program (UNEP), the ACLI provided consulting services to OECS in the development of framework legislation to implement several multilateral environmental agreements (MEAs) dealing with biodiversity.

The OECS, which came into being on June 18, 1981 when seven Eastern Caribbean countries signed the Treaty of Basseterre (so named in honor of the capital city of Saint Kitts and Nevis where it was signed) agreeing to cooperate with each other, now has nine members consisting of Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Anguilla and the



*Among the participants in the UNEP-OECS-ACLI Program were: Norman Davis, tutor, Norman Manley Law School (NMLS); Akilah Anderson, student at NMLS and legal director, Jamaican Environment Trust; John Knechtle, president of ACLI and professor at Florida Coastal School of Law (FCSL); Tim Frantz, FCSL student; Keith Nichols, Program Officer, Environment & Sustainable Development Unit, OECS; and Judy Daniels, consultant*

British Virgin Islands are associate members of the OECS.

The ever-increasing number of MEAs makes it difficult for countries with limited human, financial and technical resources, to have a clear understanding of their obligations under each instrument, to receive the

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## ACLI CLC Presents at AG's Office of T&T...



*ACLI member institutions participated in the Caribbean Law Clinic at Hugh Wooding Law School in Trinidad & Tobago. Posing with the members of the Trinidad and Tobago Attorney General John Jeremie's Office are representatives of Hugh Wooding Law School, Eugene Dupuch Law School, Florida Coastal School of Law, Nova Southeastern University Shepard Broad Law Center, Norman Manley School of Law, and Stetson University College of Law. See related story on this page.*

## ACLI Caribbean Law Clinic

### *Hugh Wooding Law School Hosts Students*

By Jane E. Cross

The American and Caribbean Law Initiative (ACLI) held the Caribbean Law Clinic ("CLC") for fall 2005 in Trinidad and Tobago on November 17-18, 2005. The CLC was hosted by Hugh Wooding Law School in St. Augustine. Approximately 20 students from Caribbean and American law schools participated in group presentations of research on three legal problems prepared by the Solicitor General's Department of the Office of the Attorney General of Trinidad and Tobago.

When many of the CLC participants arrived in Port of Spain on Wednesday, November 16, 2005, the Republic of Trinidad and Tobago was celebrating the qualification of its national football team, the Soca Warriors, to the World Cup finals in Germany next summer. The carnival-like atmosphere continued on Thursday, November 17, 2005, which was declared a national holiday to celebrate Trinidad and Tobago's first entry ever into the World Cup finals.

In the midst of the celebrations, the students in the CLC met at Hugh Wooding Law School on Thursday to discuss the legal problems from the Solicitor General's Department. To preserve confidentiality, the problems em-

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## ACLI Summer Law Conference on Trade

### *July 6-8, 2006, Nassau Bahamas*

By Jane E. Cross

**Nassau, Bahamas** -- The American and Caribbean Law Initiative (ACLI) will be holding its second Summer Law Conference from Thursday, July 6 until Saturday, July 8, 2006. The conference, entitled *Trade and Legal Aid: Tools for Economic Development and Independence*, will be cosponsored by the Northeast People of Color (NEPOC) and hosted by Eugene Dupuch Law School. The conference will present seven discussion panels based on the conference theme and will

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# President's Column

## *ACLI: Ready for the Next Evolution*

The American & Caribbean Law Initiative (ACLI) was founded on August 29, 2000 when the Principals and Deans from Norman Manley Law School (NMLS), Florida Coastal School of Law (FCSL), Nova Southeastern University Shepard Broad Law Center (NSU), and Texas Southern University's Thurgood Marshall School of Law (TMSL) along with the Senior Assistant Attorney General of Jamaica, representatives from the City of Jacksonville, and the former Dean of Howard University School of Law, participated in a founding convocation at FCSL. A memorandum of understanding was signed creating the American and Caribbean Law Initiative.

In 2001 the Council of Legal Education (CLE), which oversees legal education in the Commonwealth Caribbean, approved the ACLI in order to anticipate the involvement of its other two law schools. Also in 2001, the ACLI affiliated with the Caribbean Community (CARICOM).

In 2002 the Eugene Dupuch Law School (EDLS) in Nassau, Bahamas joined the ACLI and began participating in the Caribbean Law Clinic and in 2003, the Hugh Wooding Law School (HWLS) in Trinidad & Tobago joined completing the involvement of the CLE law schools. In 2004, Howard University School of Law and Stetson University School of Law joined the ACLI. In November of 2005, the Cayman Islands Law School joined the ACLI.

The mission of the ACLI is to advance the common interest of its members in the growth and development of the Caribbean Basin by facilitating collaborative relationships and by strengthening its legal development and institutions. The ACLI seeks to achieve its mission through several programs.

**Caribbean Law Clinic (CLC)** - Each semester the attorney general of a Caribbean nation or of Florida or Texas refers legal problems to the Caribbean Law Clinic for students from the participating law schools to research under faculty supervision. The CLC serves as a legal resource the requesting government can turn to for timely research and analysis. The research typically involves the law of the host country, international law, or the law of a particular country and the memoranda address the possible ways to resolve the legal problems. Areas addressed

so far in the CLC include criminal law, constitutional law, privatization, foreign investment, environmental law, maritime law, contracts, commercial transactions, and international law.

The clinic includes traveling to the office of the attorney general from which the legal

work originates to present completed work to the staff of the attorney general's office, as well as any ministry participating in the CLC. Students from participating law schools first meet to



*John C. Knechtle*

discuss their findings and recommendations and decide how to present them the following day. During the trip, time has also been spent meeting with government officials to learn about the Jamaican, Bahamian, or Trinidadian legal system, visiting courts, legislative bodies, prisons, and legal service providers such as legal aid clinics, as well as the local law schools.

### **ACLI Law Conference -**

The ACLI organizes law conferences on topics of imminent concern in the Caribbean as a means for lawyers, government officials, judges, and legal educators to learn from their diverse experiences, share knowledge, and build relations between and among their respective legal systems. The ACLI held its first law conference, "Caribbean Market Forces; Emerging Trends in International and Comparative Law," from July 23 - 24, 2004 in Ocho Rios, Jamaica at the Renaissance Jamaica Grande Resort. There were six panels and over 90

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# ACLI Caribbean Law Clinic

## *Caribbean Law School Students Trek to Texas*

Staff Reports

**Houston, TX**— The Thurgood Marshall School of Law of Texas Southern University hosted the 2006 Caribbean Law Clinic (CLC) on March 22-25, 2006. This was the first year the CLC was held in a United States venue. Law students from the Caribbean as well as students from the consortium of United States law schools that make up the ACLI, will be participating in the clinic as a result.

The Caribbean Law Clinic offers students the unique opportunity to collaboratively work on legal issues referred by various attorneys general. Historically, each semester, the attorney general of a Caribbean nation, the Bahamas, Jamaica, and Trinidad and Tobago to date, or of Florida or Texas refers legal problems to the Caribbean Law Clinic for students from the participating law schools to research under faculty supervision.

"This year, the legal issues comprised problems with international implications or concerns," said Victoria Dawson, professor and organizer of the clinic at Thurgood Marshall.

Since the issues involve ongoing, live-client

legal problems, more specific information could not be gathered. The CLC serves as a legal resource that the requesting government authority can turn to for timely research and analysis.

During the trip, time is also spent meeting with government officials to learn about the legal system, visiting courts, legislative bodies, prisons, and legal service providers such as legal aid clinics, as well as the law schools.

The Caribbean Law Clinic provides students with an opportunity to develop professional skills including problem solving, legal research and analysis, factual assessments, legal writing, and formal oral presentation.

The research typically involves the law of the host country, international law, or comparative law and the memoranda addressing the possible ways to resolve the legal problems. Areas addressed so far in the CLC include criminal law, constitutional law, human rights, privatization, foreign investment,



*Thurgood Marshall School of Law*

government ethics, family law, environmental law, maritime law, property, contracts, and international trade and business law. The clinic includes traveling to the office of the attorney general from which the legal work originates to present completed work to the staff of the attorney general's office, as well as to any ministry participating in the CLC. Students from participating law schools first meet to discuss their findings and recommendations and decide how to present them the following day.

## *Caribbean Law Clinic Experience...in the First Person*

By Imani Boykin, Esq.

**Jacksonville, FL** -- I participated in the Clinic in the Spring of 2005. What an experience!!! I researched a property issue -- whether a property owner who has offered a right of first refusal to the manager of a commercial property can refuse to honor the right when the owner received a third party offer that included more property than included in the right.

Of course, the answer was a resounding NO!!!

A property owner who has offered a right of first refusal on any property, whether residential or commercial, must honor the right of first refusal and cannot disregard his or her obligation, as a matter of public policy, solely based on the third party offer being larger than the property under contract.

I presented to the Attorney General of the Bahamas in Nassau. I was pretty fortunate

since the AG could not attend the morning session -- the other groups presented to the AG's staff.

The experience impacted my legal experience by allowing me to have hands on

*"I presented to the Attorney General of the Bahamas in Nassau."*

international experience, an area of the law in which I am interested, and allowed me to fine tune my research skills in an area with which I was not familiar. I met a number of fine individuals -- students and professors -- from other law schools in the nation, had an

opportunity to work with them, and network. The Caribbean Law Clinic at Florida Coastal School of Law is an excellent opportunity for any student and could lead to other great opportunities in practice. I am trying to find a way to work in the Bahamas now!!!

*"Advancing the common interest of its members in the growth and development of the Caribbean Basin by facilitating collaborative relationships and by strengthening its legal development and institutions."*

# Social Transformation of States in OECS Discussed

Staff Reports

**S**ocial Development experts from Ministries of Finance and Planning, Community Development and Social Transformation in Organisation of Eastern Caribbean States (OECS) Member States (MS) are considering a Road Map for the development and enhancement of Country Poverty Assessments in the subregion.

This is the main outcome of a recent workshop in Castries organized by the OECS Social Policy Unit. The proposed Road Map is a methodology that facilitates the

preparation, execution and follow-up for Country Poverty Assessments (CPAs) and the utilizing of the outputs of the assessments to inform Social Policy in the OECS. The Road Map (RM) also embraces capacity building within the OECS Member Countries in executing the CPAs.

The parties involved are considering the preliminary outline of the RM which will be further finalized and submitted to the OECS Member States and Development partners for implementation.

It is expected that both the Member States and the Development Partners will consult the

RM to enable the establishment of priorities and resource mobilization efforts on the recipient and donor sides, respectively. Funding Agencies, namely the Caribbean Development Bank (CDB) and United Nations Development Program (UNDP) are also part of the Road Initiative. Preparation of a Procedures Manual (a blueprint) for the conduct of CPAs in the OECS was recommended.

The proposed Procedures Manual is to contain all the actions necessary for the preparation, execution and follow-up regarding Country Poverty Assessments in the

OECS MS. The CDB has indicated its willingness to provide support for such an initiative.

The meeting discussed country experiences at the various stages of the assessment, namely, the preparatory activities for CPA execution, the execution of and post CPA and follow-up, in relation to the process, problems and challenges, opportunities and solutions. Other issues discussed included the methodology; the role of the Technical Assistance Agencies; relationships among consultants, MS and funding agencies and the responsibilities of the various players. The

challenges faced by the funding agencies in supporting several CPAs at the same time were also discussed.

Member States listed securing adequate resources such as retaining well trained persons, financing and appropriate infrastructure support and technology among the common challenges noted in conducting the CPA.

Participants stressed the validity of getting the parliamentary opposition on board the assessment process if political legitimacy is to be guaranteed and for consensus to be maintained at that level.

Head of the OECS Social Policy Unit Ezra John Baptiste is emphatic that bringing other stakeholders on board is even more important for national ownership of the process, the outcome and the follow-up. He says in this regard, "there is a role for the development partners with respect to coordination which has been lacking for some time now." To date, all of the OECS Territories except Montserrat have either conducted at least one, or are currently conducting a Country Poverty Assessment.

## ACLI Summer Law Conference '06

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provide four work in progress sessions on a variety of topics.

The opening day of the conference, Thursday, July 6, will be devoted to the theme of "Caribbean Trade, Sovereignty and Development: Recurrent Tensions." For this day, the following four discussion panels are being planned:

- Environment, Tourism and Land Use;
- U.S. - Caribbean Migration: Realities of Brain Drain and Remittances;
- Financial Services in An Age of Terrorism; and
- CSME: Imperatives of Sovereignty and Regional Harmonization.

The second day of the conference, Friday, July 7, will feature the theme of "Delivering Legal Services to Ensure Equal Rights and Justice." Based on this theme, the following three discussion panels have been proposed:

- Current Crisis of Legal Aid Service Delivery;

- Sustainable Legal Aid Development; and
- Critical Race Theory Perspectives on Legal Aid Services.

NEPOC will coordinate four work in progress sessions that will take place on all three days of the conference.

These sessions pair a moderator with an article author and will provide an opportunity for authors to present a draft of a scholarly work to an audience. In addition, NEPOC will be hosting an award ceremony, a brunch with keynote speaker and a mentoring rap session. If you would like to provide names and addresses for the conference mailing list or to distribute conference information, please contact Jane Cross at [crossj@nsu.law.nova.edu](mailto:crossj@nsu.law.nova.edu) or at (954) 262-6014. Conference updates can be found at: [www.nsu.law.nova.edu/caribbean](http://www.nsu.law.nova.edu/caribbean).

*Jane E. Cross is an associate professor and director of Caribbean Programs at Nova Southeastern University Shepard Broad Law Center. She is secretary, an executive committee member, and a board member for the ACLI.*

# ACLI Case Notes

## Criminal Law-Death Penalty

A number of interesting cases have dealt with the question of whether the death penalty is proper, and if so under what circumstances. In Trinidad and Tobago, the death penalty has generally been mandatory for a person convicted of murder. This sentence has been maintained despite the fact that murder is based on English common law which allows one to be classified as a murderer if it is established that the defendant had an intent to cause serious bodily injury. The policy behind the breadth of the murder characterization is that one who intends to cause serious bodily harm cannot complain if a death results. This approach has remained even in the presence of a manslaughter alternative, a crime carrying discretionary sentencing for imprisonment up to life but no presumption or allowance of the death penalty. Despite the view that murderers must receive the death penalty, many individuals have been successful in procuring life sentences or some lesser period of incarceration.

The question thus arose whether, in the context of the contemporary legal system of Trinidad and Tobago, Offenses Against The Persons Act 1925 conformity could be said to permit the reduction of the fixed penalty of a mandatory death sentence to a discretionary one. A majority of the Lords of the Committee of the Privy Council answered those questions in the affirmative, primarily based on prior decisions by the Privy Council finding a mandatory death sentence to be cruel and unusual punishment within the meaning of the 1976 Constitution of Trinidad and Tobago and the interpretation that Sections 4, 5, and 6 of the Constitution contain broad enough language to accommodate modifications of the 1925 Act. The Council majority supported their finding by virtue of other Commonwealth nation decisions, and further indicated that international obligations arising from Trinidad and Tobago's membership in the Organization of American States and its ratification of the American Convention on Human Rights dictated that discretionary sentencing was proper. A strong dissent was delivered in the matter based on a more restrictive reading of the Constitution and an intense belief that this was a matter for Parliament if any change was in fact necessary.

***Balkissoon Roodal v. The State (Trinidad and Tobago) [2003] UKPC 78 (20 November 2004).***

In Jamaica, six appellants raised the question of whether they had a right not to be executed prior to the Inter-American Commission on Human Rights or the United Nations Human Rights Committee issuance of reports on their respective petitions. They also raised questions regarding information disclosure and argued that their treatment during incarceration was inhuman

and degrading, and further supported the assertion that they should not be executed. The appellants were all convicted of murders occurring between 1991 and 1994 and already had numerous appeals dismissed. All requested consequential relief to annul or defer their executions. The Privy Council recognized the option granted to condemned individuals to seek recommendations of outside bodies to assist in determinations of whether the prerogative of mercy should be exercised. However, it was noted that the human rights bodies met infrequently and were without sufficient staff, thus giving rise to timing issues, especially in light of Jamaica's requirement to carry out death sentences within five years after the conviction and sentencing.

Four of the appellants had been imprisoned in excess of five years and the other two were only months away from reaching that time. The Privy Council decided that the appellants were therefore entitled to have their sentences committed to life imprisonments. The Lordships stopped short of finding that their treatment in prison gave rise to grounds for not executing the appellants, primarily due to a lack of adequate evidence. They did note that such allegations are serious and require investigations beyond mere affidavit evidence. A dissent harshly criticized the majority for raising the level of the advisory process and reports generated by outside bodies to a legal process requiring honor by the courts and simultaneously generating a new level of expectation amongst prisoners. The majority felt the outcome was more consistent with international obligations and an implicit concept of due process (read into the constitutional obligation of fairness), where the dissent focused more on the need for a certain degree of stability in regards to the applications of the law, although realizing the lack of any legal principles requiring binding precedent.

***Neville Lewis, Patrick Taylor and Anthony McLeod, Christopher Brown, Desmond Taylor and Steve Shaw v. The Attorney General and Another (Jamaica) [2000] UKPC 35 (12th September 2000).***

Arguments similar to those raised in Jamaica had previously been addressed by the Privy Council on the basis of an appeal from the Bahamas. The appellants there had been imprisoned for five and a half and six and a half years respectively. The Privy Council recognized the Organization of American States Constitution and the Commission established in that regard as being international treaties failing in the power to change the laws of the land. It was also noted that pretrial delay and detention while awaiting execution could not ordinarily be regarded as cruelties in addition to the death sentence that would give rise to prohibition of execution.

***Higgs and David Michell v. The Minister of National Security and Others (Bahamas) [1999] UKPC 55 (14th December, 1999).***

## COMMENT

The cases highlight the differences between the nation states in regard to commuting death sentences from both administrative and legal points of view. Each involved conflicting opinions regarding the rights granted by the Constitutions of the particular countries, thus calling into question the value of having unified views based on one overriding Constitutional document. One of the dissenting opinions stated that a particular constitution must be analyzed in a manner consistent with and cognizant of the impact on the family of Commonwealth Caribbean constitutions. The creation of a single constitutional document, as well as one high court reasonably bound to a consistent interpretation and application of that document would prevent the appearance of inconsistency. It would also eliminate any circumstances giving a perpetrator heightened expectations of lenient sentencing depending upon the place where he/she is convicted of murder.

From an administrative standpoint the role of government ministries in commuting death sentences to life imprisonment was also highlighted. Appointed government ministers actions were far more directly influential in the Bahamas and Trinidad and Tobago, than in Jamaica where the Jamaican Privy Council takes on the important task of accepting information and making recommendations. One may question whether these administrative differences also indicate a need for more consistency in matters of such great importance.

## Constitutional Law

### CARIBBEAN COURT OF JUSTICE

The Judicature (Appellate Jurisdiction) (Amendment) Act 2004, the Caribbean Court of Justice (Constitutional Amendment) Act 2004 and the Caribbean Court of Justice Act 2004 were not passed in accordance with the procedure required by the Constitution of Jamaica and are therefore void.

On September 30, 2004 the Governor-General of Jamaica gave assent to three bills which effectively abolished the right of appeal to Her Majesty in Council and substituted a right of appeal to a new regional court of final appeal, designated the Caribbean Court of Justice (CCJ). The Governor-General's actions sought to give effect domestically to an international agreement establishing the

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# ACLI Case Notes

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CCJ, signed by a number of Commonwealth countries in Barbados, on 14 February 2001, and further amended in Jamaica on 4 July 2003.

Although, it was found that the goals of the three bills were acceptable it was decided that the steps taken to achieve those goals were inappropriate. The effect of the bills on the Constitution was deemed to allow for the possibility of the establishment of the CCJ in a present agreed upon form that might be later amended and ratified by contracting states. These actions could subsequently set forth changes in Jamaican domestic laws by affirmative resolution as opposed to the normal process for changes in the judiciary set forth in the Constitution.

***Independent Jamaica Council for Human Rights (1998) Limited and Others v. (1) Hon. Syranga Marshall Burnett and (2) The Attorney General of Jamaica Judgment of the Lords of the Committee of the Privy Council, Delivered the 3rd of February 2005.***

## Civil Law

### DOMESTIC RELATIONS: MARITAL PROPERTY

**A** wife will maintain her legal right under the Civil laws of St. Lucia, to a half-share interest in property of the community, despite signing away such a right if it can be shown that her husband engaged in actual undue influence or undue influence can be presumed in regards to the acts that led to the husband's designation as sole owner of the property in dispute.

Ms. Marie Egger aged 55, married a 57 year old Austrian named Herbert Egger in Switzerland on 9th June 1982. Each had been married three times before. At the time of their marriage, Ms. Egger was a wealthy, educated woman with a large house in Switzerland, worth two million Swiss Francs. She was the parent of three grown children and she was also an alcoholic. After their marriage Ms. Egger sold the property in Switzerland netting 725,000 Swiss Francs, a sum which Mr. Egger took and placed in a black leather bag he always carried.

Mr. Egger, who inherited property from his former wife, had sold that property as well. Over the next few years following the marriage, the couple lived briefly in Austria before moving to St. Lucia. Mr. Egger had his wife sign documents transferring her power of attorney to him on several occasions and proceeded to purchase

numerous properties solely in his name. From arrival in St. Lucia in January 1984 to May 1989, the husband acquired five separate properties, paying a total of \$525,206.00. Mr. Egger thereafter instituted divorce proceedings in Austria which ended July 11, 1991 and included a settlement agreement purporting to waive any property claims by either party. Ms. Egger brought an action seeking to enforce her property rights, asserting that she trusted and confided in her husband who breached that trust and confidence by unduly influencing her to represent that the properties were bought with his separate funds and were solely owned by him.

The court noted that actual undue influence requires on occasion proof of outside coercion, some unfair and improper conduct overwhelming, cheating and on occasion some personal advantage obtained by a donee placed in some close relationship with a donor.

It was noted that presumed undue influence arose where the duty of the donee was to advise its donor or even manage the property of the donee. While Ms. Egger was deemed to have failed her burden of proving actual undue influence, presumed undue influence was found to be present due to the relationship of the parties and her execution of the documents giving him power of attorney.

The finding was further supported by Mr. Egger's failure to detail a source of separate funds used to purchase the properties. The court stated that the relationship of husband and wife did not as a matter of law raise a presumption of undue influence, but that a wife had to go further and show that she reposed trust and confidence in her husband, complying with his wishes and not independently evaluating the circumstances.

As those circumstances were present in the facts at bar, the court found in favor of Ms. Egger, declaring the properties to be jointly owned by the parties, ordering that Mr. Egger prepare the necessary documentation for confirming the same and enjoining him from any further dealings with the properties in any manner other than for purposes of establishing Ms. Egger's interest in them.

***St. Lucia: In the Court of Appeal, Civil Appeal No. 17 of 2002 Between: Marie Madeleine Egger and Herbert Egger (2004: February 19, April 26)***

## Contract Law

### RECTIFICATION; MISTAKE

**R**ectification is a discretionary, equitable remedy that is not appropriate for cases of alleged

*mistake premised on a vendors plea that they believed a fictitious price inserted in an agreement of sale was presented to accommodate the purchaser's fiscal arrangements and shareholder obligations in another country and that the vendor could rely on the oral assertions of an agreed to price discussed between the parties on an earlier occasion.*

The Appellants and Respondents executed a written agreement for the sale of certain property located at Seafather Bay. Testimony regarding the oral and written negotiations prior to execution of the sales agreement indicated an agreed to price of \$3,300,000 U.S. The Agreement for Sale and Purchase of Real Estate provided that the property was being sold for \$1,090,000 U.S. exclusive of interest.

There were other contractual provisions included related to interest and what ultimately turned out to be a contrived amortization schedule attached to the agreement. Some time after the agreement was signed and in force, the sellers sought to have the agreement rectified, alleging mistake and accusing the purchaser of having fraudulently inveigled them into executing an agreement containing an artificial price.

The trial judge permitted the relief requested. On appeal the court noted that the law did not allow rectification on the grounds of mistake put forth by the seller. The court questioned why the sellers, having full capacity, signed a document containing express terms contrary to their understanding and expectations.

The court stated that the mistake was perhaps in the sellers understanding of whether the terms of contract would be executed fully or possibly a miscalculation of the numbers involved. The court cited authority indicating a reluctance to grant rectification in most situations because of the negative impact such a finding would have on the certainty and ready enforceability of contractual obligations in the field of commerce.

***Anguilla: In the Court of Appeal, Civil Appeal No. 8 of 2003 between: [1] Hotel De Health (Caribbean) Inc. [2] Robert Talbot and [1] Ronald Webster [2] Cleopatra Webster (2004: December 19, 2005: February 14)***

***Darryl C. Wilson is a professor at Stetson University College of Law and is the case notes editor of the American and Caribbean Law News.***

## Commentary

# Caribbean Economic Stability Under Threat

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of the concerns of everyone who lives in the region, is climate change. It threatens many Caribbean nations, whether it be through a rise in sea levels, the increased frequency of tropical storms and hurricanes, or the growing reluctance of insurers to provide the cover needed for industry in general and tourism in particular to continue.

Despite this, the region continues to take its climate for granted and has not given the issue the high policy perspective it deserves. After its people, it is climate that is the Caribbean's most important resource, supporting almost every aspect of the regional economy. Beaches, coastal ecosystems, the region's flora and fauna are all vulnerable to a process that is being driven for the most part by industries in nations beyond the region.

The implication is that the Caribbean needs to consider exploring the ways in which all small states introduce the issue of global warming into their regular dialogue with Europe, the U.S. and others. More specifically it argues for greater importance being given in all bilateral and multilateral exchanges on political and economic issues to the impact that carbon emissions from the

world's developed and advanced economies are having on the future economic viability of the region's premier industry, tourism.

### ACCESSIBLE DEBATE

Also missing is any accessible debate on tourism in services negotiations in Geneva and an explanation about how these issues might affect the everyday lives of the hundreds of thousands who work in the industry from chefs to taxi drivers and bar owners. While the Caribbean Regional Negotiating Machinery has been working on technical position papers on services, there is a striking lack of public rhetoric in the region or in Europe about how the tourism sector's interests are to be defended or promoted. It is almost impossible to find any public reference to tourism in the context of an Economic Partnership Agreement with Europe, the Doha Development Round or in the Caribbean's broader political relationships with developed or advanced nations.

A higher public profile on tourism would also offer the opportunity for the region to change the nature of the development dialogue by making it clear that increased tourism demand

will affect economic and social policy in relation to housing, transport, health care and a range of other issues that impact on both the domestic population and visitors alike.

Security in the context of tourism should also be a central political issue. Whether it is increasing levels of crime, terrorism, or the safety of all at the time of the Cricket World Cup, a secure environment and a prospering tourism sector are symbiotic.

In all of this the region's hoteliers are far from blameless. For too long, some of their number have wished to ignore the policy environment within which they operate. However, this is changing.

In developing earlier this year a single Caribbean position on tourism, the Caribbean Tourism Organisation (CTO) and the Caribbean Hotels Association (CHA) have recognized the key role they have to play.

The recent decision taken by the two organizations to bury past differences and to sign a joint accord marks a vital step in the direction of the region having a

single position on tourism.

The agreement signed between the CHA and the CTO recognizes that the tourism industry in the Caribbean functions best when both the private and public sectors work toward a common set of goals, despite there being differences in style and focus between the two.

More importantly the agreement, which has been endorsed by Caribbean tourism ministers for CTO and for CHA by all leading private sector entities in the Caribbean hospitality sector, proposes in part the establishment of a joint Annual Caribbean Tourism Summit to bring the needs of Caribbean tourism to the attention of the leaders of the Caribbean. It also suggests where appropriate, that there be regular exchanges between the two organizations on policy issues and where appropriate coordinated advocacy by the two bodies in Europe and the United States.

### SUCCESS OF TOURISM

A recent study for the European Centre for Development Policy Management pointed out that success of tourism in the Caribbean, in general,

has not been a planned achievement or as a result of a strategic option. In a majority of the Caribbean countries and its states, tourism has emerged accidentally as an economic saviour when the traditional agro-export sector failed to retain its position in the global market place.

This approach has to end if the industry that is now vital to the region's economic survival is to be sustainable.

Caribbean nations, with the help and support of CHA and CTO and other representative bodies from the services sector, need to ensure that all of those who have to speak on behalf of the region's interests are well briefed and fluent in the concerns of their sector and tourism in particular. Otherwise what little competitive advantage that the region has will be lost rapidly to those who have understood that the rhetoric and the international rules of the game have changed.

*David Jessop is the director of the Caribbean Council and can be contacted at [david.jessop@caribbean-council.org](mailto:david.jessop@caribbean-council.org)*

## Q & A About the Caribbean Law Clinic Organized by Member Schools

*By Timothy Frantz,  
Student  
Florida Coastal  
School of Law*

**Q:** What year did you participate in the Clinic?

**A:** I participated in the clinic in the Spring of 2005.

**Q:** What topic did you research?

**A:** The effect of the 2000 Financial Laws of the Bahamas on

the issues of banking secrecy and attorney client privilege.

**Q:** Who did you present your findings to?

**A:** Attorney General Alfred Sears

**Q:** How do you think your clinic experience impacted your legal education?

**A:** It was a great experience which taught me a great deal about the practical

aspects of international law since it was a real problem facing a real client.

# OECS Seeks ACLI Expertise to Implement Biodiversity Conventions

*continued from page 1*  
benefits under them, and to make the legislative and institutional changes they require. Clustering of MEAs is a way to efficiently promote compliance with the agreements in a manner

that ensures coordination and consistency.

Thus at a 2003 UNEP Workshop in Kingston, Jamaica, the OECS and other small island developing states (SIDS) identified the

need to cluster their MEA commitments into a single coherent law. They chose to focus on biodiversity first because of its importance to their economies through tourism, fishing, and other activities.

Member states of OECS have adopted one or more of the following six biodiversity conventions: Convention of Biological Diversity (CBD), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), the Specially Protected Areas and Wildlife (SPAW) Protocol to the Cartagena Convention, the World Heritage Convention (WHC), the Convention on International Trade in Endangered Species (CITES) and the Convention on Migratory Species (CMS). However, the member states have not implemented them as required by the conventions.

The ACLI, working through faculty and students at Norman Manley Law School and Florida Coastal School of Law worked with Ms. Judy Daniels, a consultant in Atlanta. The first task was consolidating the key elements from the six biodiversity conventions that need to be incorporated within national legislation.

Under the tutelage of Principal Keith Sobion, Danielle Archer and Judith Carter, students in their final year at Norman Manley Law School, provided comments on this first piece. For the second piece, Tutor Norman Davis from Norman Manley Law School and Akilah Anderson, a student at Norman Manley who is also the

Legal Director for Jamaica Environment Trust, a Jamaican environmental NGO, commented on the Regional Framework Biodiversity Act, as did Professor John Knechtle and Florida Coastal School of Law student Tim Frantz. Norman, Akilah, John and Tim all traveled to St. Lucia for the November 10, 2005 OECS's Regional Workshop on Harmonized MEA Biodiversity Legislation. At this day-long workshop each provision of the Regional Framework Biodiversity Act was discussed and a number of revisions made. The act has now been finalized.

The second phase of this UNEP-OECS-ACLI collaboration, which remains to be funded, consists of drafting local legislation to implement this framework act in each OECS country. The framework act identifies each area that needs to be examined but now each country needs to see what it already has done, how that dovetails with the requirements of the MEAs as identified in the framework act, and then making the necessary legislative and institutional changes. This will involve examining not only legislation, but administrative responsibilities for each aspect of the MEAs.

## President's Column

### *ACLI: Ready for the Next Evolution*

*Continued from page 2*

conference participants who gave the conference excellent reviews. Media coverage was thorough. Due to the success of this first conference, the ACLI will hold its second law conference in Nassau, Bahamas with the Eugene Dupuch Law School from July 6 - 8, 2005. All are welcome to attend and if you are interested in presenting, please contact Professor Jane Cross at [crossj@nsu.law.nova.edu](mailto:crossj@nsu.law.nova.edu)

**Publications** – The ACLI has published its work in a variety of venues. The law reviews of the ACLI member law schools have published speeches and articles written by attorney generals, deans and professors of the member law schools. Papers presented at the 2004 ACLI Law Conference were published in both U.S. and Caribbean law journals. Law journals have already committed to publishing the papers from the 2005 ACLI Law Conference.

This is the inaugural issue of the American & Caribbean Law News, the newsletter of the ACLI. This newsletter is designed to achieve several goals, including keeping the membership informed of ACLI events, informing members of recent developments in Caribbean law, and provide a forum for members to analyze legal issues and events affecting the Caribbean.

**Dual Licensure** – The ACLI is currently finalizing a proposal that will create a dual degree program between U.S. and Commonwealth Caribbean law schools which will provide dual licensure for its graduates.

**Faculty Exchange** – The ACLI has created a Faculty Exchange Pool in which faculty members can teach at an ACLI member school for a year, semester, or a shorter time period as a way to enrich their teaching experience.

**Consulting** – The ACLI board, realizing the cumulative expertise of its members, has entered into consulting contracts with international institutions working in the Caribbean. This area could expand substantially with increased membership.

**Membership** – Although law schools started the ACLI, from its inception the ACLI anticipated growing beyond law schools and law faculties to include law firms, businesses, NGOs, and individual members as well as expanding beyond the English speaking Caribbean to the Spanish, French and Dutch speaking Caribbean.

This year the ACLI board adopted a membership policy to implement this original design and created the following four classes of members: law school and law faculty members (called educational institution members), law firm and business members, non-governmental organization members, and individual members. The synergies of all these individuals and groups have tremendous potential for helping the ACLI achieve its mission. I hope the ACLI's mission resonates with you and if so, that you will consider joining. Enclosed is a membership application form. To learn more about the ACLI, see its website at [www.FCSL.edu/acli/](http://www.FCSL.edu/acli/)

**John C. Knechtle is a professor and director of International Programs at Florida Coastal School of Law. He is also the president of ACLI.**

## Feature

# Caribbean Law Clinic at Hugh Wooding Law School

## *The Clinic Was Held on November 17-18, 2005*

*Continued from Page 1*

played fictional names for the parties and the jurisdictions involved. The first set of questions concerned the seizure of vehicles that were improperly registered in the State of Timberland and were imported from and



*CLC participants from Stetson University College of Law flank Tutor, Elsworth Johnson, from Eugene Dupuch Law School.*

possibly stolen in the State of Oceania. The second set of issues addressed access by disabled persons to the Chambers of Integrity and the exclusion of disabled



*CLC students prepare to present to members of the Attorney General's staff in Trinidad and Tobago.*

persons from jury service in the twin-island Republic of Utopia and Osigiliath. The final set of issues explored the use of the Cross of Ashanti as a national award and whether its use was subject to or in contravention of the Constitution of the State of Ashanti.

To prepare for their presentations at the Attorney General's Office, the students gathered in groups based on the questions they had researched, discussed their research, and prepared a joint presentation

on their respective sets of questions. After the students' initial meeting, each group staged a mock presentation for the law professors who attended the CLC. During the evening, the student groups met to finalize their presentations for the next morning.

The participating students, professors, principals and deans were welcomed on Friday, November 18, 2005, at the Office of the Attorney General by Sharon Blackburn, Permanent Secretary to the Ministry of the Attorney General and by Carol Hernandez, Deputy Solicitor General. Attorney General John Jeremie was unable to attend due to some last minute commitments. At the opening of the meeting, John Knechtle, President of the ACLI, expressed his appreciation to the Office of the Attorney General, Hugh Wooding Law School and the CLC participants and coordinators.

After the introductions, the three groups of student presenters provided half-hour presentations on their combined legal research. Before each presentation, all of the groups included a brief introduction to provide their names and law school affiliations. For each group presentation, three to five students reviewed portions of their research results and answered any questions from the staff that was present. After the presentation, the Office of the Attorney General treated the CLC participants to lunch.

In the afternoon following the presentations, the students were scheduled to visit the Halls of Justice and the Family Law Courts. Those visits were canceled or made brief due to flooding in the southern portion of Trinidad. As a result, the students were able to relax and go shopping by

early afternoon. That evening the students went to a local night club,



*CLC students include: first row, from left: Wilnar Paul (Stetson), Gail Mitchell (Norman Manley), Mary Teruya (FCSL). Back row, from left: Renard Penn (Eugene Dupuch), Joel Edmond (Hugh Wooding), Westmin James (Hugh Wooding), Jincey Lumpkin (FCSL).*

Zen, to celebrate their well-received presentations.

On Saturday, November 19, 2005, many of the CLC participants took a bus tour to Central and South Trinidad. The tour's first stop was the Pointe-A-Pierre Wild Fowl Trust which houses a wildlife reserve with two lakes and on roughly 25 hectares of land within a



*CLC participants outside of the Trinidad and Tobago Hall of Justice.*

major petrochemical complex (PETROTRIN). The group next

*Continued on next page*

## Feature

# Caribbean Law Clinic at Hugh Wooding Law School *The Clinic Was Held on November 17-18, 2005*

*Continued from Page 9*

visited the Shiva Mandir Hindu Temple in the Sea built by Siewdass Sadhu in Waterloo, Trinidad and restored by the government of Trinidad and Tobago in the mid-1990s. The final stop was a Hindu temple with a 75 foot statue of the Hindu God Hanuman. After the tour, the Florida Coastal law students hosted a Barrister's Ball for the CLC participants at the Normandie Hotel.

Much of the success of the CLC was due to the dedicated work of faculty and staff at Hugh Wooding Law School. As a result, special thanks is owed to Principal Annestine Sealey, Tutor Gerry Alleyne, Registrar Kathleen Rochford and Tutor Cheryl Jerome Alexander. In addition, Professor Jane Cross from Nova Southeastern University Law Center assisted in the

coordination of the CLC. Other persons contributing to the success of the CLC included Principal Miriam Samaru, Tutor Tonya Bastian Galanis and Tutor Elsworth Johnson from Eugene Dupuch Law School; Professor John Knechtle and Professor Brian Foley and Faculty Assistant, Clare Raulerson, from Florida Coastal School of Law; Principal Keith Sobion, Tutor Tammy

Brian, and Secretary Maureen Lindo from Norman Manley Law School; Professor Carol Aina (visiting from Norman Manley Law School) from Nova Southeastern University Law Center; Dean John Cooper and Professor Darryl Wilson from Stetson University College of Law; and Director Mitchell Davies of Cayman Islands Law School. Students attended from all of the

schools mentioned above except Cayman Islands Law School, which recently joined ACLI.

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*"Advancing the common interest of its members in the growth and development of the Caribbean Basin by facilitating collaborative relationships and by strengthening its legal development and institutions."*

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## Getting Out of a Rut in T&T

### *U.S. Law Professor Feels the Caribbean Rhythms*

*By Brian J. Foley, Asst. Prof. Florida Coastal*

In the past three years, I have moved house three times, started two new jobs, and worked up 10 new course preparations (Property II, Civil Procedure I & II, Business Organizations I & II, Evidence, Criminal Law, Criminal Procedure, Advanced Criminal Procedure, and Federal Courts). I have published in the area of International Law (use of force). But I was in a rut.

I just didn't know it – until I got involved in the Caribbean Law Clinic.

It was a last minute thing. In October, my colleague John Knechtle asked me to accompany him and work with this semester's group of students. I was working hard, teaching an overload. The way I thought about whether to go, and my acceptance, was that I could "see no reason not to go." (Really, I'm not usually like that!)

John got me a copy of the issues the students were working on. His enthusiasm started rubbing off on me, and then I started working with two of the three pairs of students involved here at FCSL. Their enthusiasm and diligence energized me. The issues, assigned by the Attorney General of Trinidad and Tobago, were vibrant and interesting.

What intrigued me most was learning about the Trinidad and Tobago legal system, and the legal systems of Caribbean countries. The courts look far and wide outside of their own precedents and see what they can learn from other countries' courts. This is a far cry from U.S. courts' practice! As many readers know, some U.S. judges are downright hostile to U.S. courts using foreign law. It's our loss.

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In Port of Spain, I joined the other professors in helping students prepare for their presentations to the Attorney General on Friday. It was fun to see the different styles and hear the different concerns. It was wonderful to see the students presentations slowly sharpen during the afternoon; they were excellent the next day at the AG's office. The new-to-me atmosphere of Trinidad and Tobago was full of life. As we rode in from the airport, people in passing automobiles honking and waving the T&T flag from their cars and out their windows. What exuberance, what love of country! I thought. (I also thought I'd found a country more nationalistic than my own.) Of course, we learned later that people were celebrating T&T's soccer victory over Bahrain, a victory that earned T&T a 2006 World Cup berth. That said, first impressions last forever. Trinidad and Tobago is one of the rare places where people of different races and religions live in harmony. On our last full day, we went on an excursion to a wild fowl preserve, where our tour guide painted my stripes on my face with a red-staining plant, in the style of T&T's first inhabitants. Later that day, I walked through a Hindu funeral, where two bodies burned, on separate pyres, the plumes of smoke rising up and arching out to sea. I don't think my face paint struck anybody as anything other than culturally diverse. (At least no one kicked me out, which is, I admit, a weak standard.)

Last but not least, the trip helped me write my Advanced Criminal Procedure final – it was delivered outside my hotel room door: the newspapers were addressing the discussions in Parliament about criminal law reforms. So the directions on the exam my students are taking today start off as follows: "The Attorney General of the Caribbean island nation of Tropicana (a fictional name) needs your help. She wants to propose a Crime Bill in Tropicana's Parliament and would appreciate your comments on these proposals..." The Caribbean Law Clinic dragged me out of a rut, lightened my teaching load, opened my mind to new possibilities, and made me proud of all the law students who participated. I've been recommending the Caribbean Law Clinic to all my students.



*Brian J. Foley*

## ACLI MEMBERSHIP APPLICATION

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Complete this order form and return it with your payment to **ACLI Member Services, Attn.: Prof. John Knechtle**, 7555 Beach Boulevard, Jacksonville, Florida. Phone: (904) 680-7700; Fax: (904) 680-7771. Payment may be made by check drawn on a U.S bank or money order in U.S. funds.

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**Individual Members.** Receives ACLI Newsletter; invitations to select ACLI events.

**Non-Governmental Organization.** Receives ACLI Newsletter; correspondence on projects and initiatives requiring assistance throughout the Caribbean as applicable.

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# News from the Region

## Political and Economic Developments

### **OECS leaders want Venezuela to stop activity on Bird Rock**

**CASTRIES, Saint Lucia** - The Organization of Eastern Caribbean States (OECS) says it is "particularly concerned" over the recent increase in activity on "Bird Rock", situated within the territorial waters of two of its member states and the subject of a long-standing claim by Venezuela.

### **BANANAS - Envoy says latest WTO ruling brings more uncertainties for banana sector**

**BRUSSELS** - The Windward Islands Special Envoy on Bananas, Edwin Laurent, says the recent World Trade Organization (WTO) ruling against the European Commission proposed banana import tariff could lead to the possible collapse of the industry in the islands.

### **ELECTIONS - Saint Vincent opposition party critical of voter registration process**

**KINGSTOWN, Saint Vincent** - The main opposition New Democratic Party (NDP) said it had written to the Supervisor of Elections, Rodney Adams, condemning the registration of voters in private homes in East Kingstown.

## Commentary

## Caribbean Economic Stability Under Threat

By David Jessop, Special to the ACLI News

**HUGE AMOUNTS** of Caribbean time and political capital are being spent on the fight to obtain better transitional arrangements for the region's sugar and banana producers.

Despite this, there is now an inevitability about the associated process of change and within a relatively short period the last vestige of trade preference will be swept away.

It is a development that will require Caribbean governments and Europe to pay close attention to the successful delivery of a measured transition away from traditional agriculture and, just as importantly, to fostering newer industries and diversify their scope. Without this it is hard to see how in the longer-term the region's social and economic stability can be retained, and sustain the positive perceptions necessary for the services sector to thrive.

In this there is still a long way to go. The Caribbean is singularly unprepared

for changing the nature of its dialogue with Europe and others. The enduring political focus is on export agriculture. Familiarity, very often based on personal background and a language with which many ministers and officials feel comfortable, continues to divert much of the public sector from rethinking how to broaden the region's international objectives in a way that embraces the challenges facing the services sector.

### **CLIMATE CHANGE**

As a consequence, close enough attention is not being paid to the policy issues that impact on tourism, the sector that now underwrites almost every regional economy.

This is manifested in the absence of any sustained political discussion in the region, in Brussels or Geneva, or within the ACP group on issues that affect tourism.

Paramount among the big issues affecting the industry to say nothing

*continued on page 7*



The American and  
Caribbean Law Initiative  
7555 Beach Blvd.  
Jacksonville, FL 32216  
[www.fcsl.edu/acli/](http://www.fcsl.edu/acli/)

**Join the ACLI today: Membership Form Enclosed!**

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**Don't Miss ACLI Summer Law Conference  
Nassau, Bahamas, July 6-8 2006!**

**Theme:**

**Legal Aid and Trade: Tools for Economic  
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*"Advancing the  
common interest of its  
members in the  
growth and  
development of the  
Caribbean Basin by  
facilitating  
collaborative  
relationships and by  
strengthening its legal  
development and  
institutions."*