

**ADDRESS OF THE CHIEF JUSTICE, THE HONOURABLE
MR. JUSTICE CLINTON BERNARD, AT THE OPENING
OF THE 1986-1987 LAW TERM IN THE HALL OF
JUSTICE, KNOX STREET, PORT OF SPAIN, ON
FRIDAY OCTOBER 3, 1986**

Today marks the beginning of an interesting era in the judicial firmament of Trinidad and Tobago. Having had the benefit of spiritual consolation and rejuvenation just a few minutes ago for myself I harbour the thought that this judicial era will be a challenging one for a number of reasons. For the present, I will call to mind only two of them. For one thing, notwithstanding our constitutional self proclamations, it may be one in which there will still remain that insatiable thirst on the part of some to continue to cultivate a particular foreign oak in a country such as this comprised as it is of multi-racial and multi-religious people each of whom has its own peculiar and diverse culture and norm. And these will do so but not without the unrelenting resistance of others who, on the other hand, see the horizon of our country in a different light, and will by their endeavours and outpourings strive to cause their fellowmen to have more confidence in, and respect for their leaders, their institutions and, of course, their written and historical self proclamation.

THE COMMON LAW OF TRINIDAD AND TOBAGO

In speaking as I do here, I desire to allude to the remarks of Denning, L.J. as he then was, in the case of Nyali Ltd. v. Attorney General of Kenya (1955) 1 A.E.R. 646 at 653 B to D. This is what he said in relation to a provision vis-à-vis the application of English common law in Kenya subject to such qualifications as local circumstances permitted:

“The next proviso says, however, that the common law is to apply ‘subject to such qualifications as local circumstances render necessary’. This wise provision should, I think, be liberally construed. It is a recognition that the common law cannot be applied in a foreign land without considerable qualification. Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect to retain the tough character which it has in England. It will flourish indeed but it needs careful tending. So with the common law. It has many principles of manifest justice and good sense which can be applied with advantage to peoples of every race and colour all the world over: but it has also many refinements, subtleties and technicalities which are not suited to other folk. These offshoots must be cut away. In these far off lands the people must have a law which they understand and which they will respect”.

THE JUDICIARY AND THE PROFESSION

Next, I would like to remind the country of the importance of the Judiciary in our democracy. It is a separate Organ of the State and an independent Institution under the Constitution. It is in the interest and welfare of our democracy that this is so and that it should continue to be that way and, above all, appear to be that way. Due respect and regard for the Institution in all its forms and by all and sundry is a sine qua non of and the guarantee for a peaceful and healthy democracy. Let us be clear about this in our minds: the Judiciary is the medium for safeguarding and preserving our democracy. History records that few, if any, developed or developing

societies that have reneged in this regard have survived as a democracy as we know it to be. Those who have ears to hear, let them hear.

Perhaps, it may as well be good here for me to remind members of the profession of what I said at the welcome ceremony held in my honour on Monday 13th January, 1986, with regard to the administration of justice and the Rule of Law. This is what I said then:

“The proper administration of justice and the Rule of Law and confidence of the public in them are the basic pillars upon which a proper working democracy is founded. They are the guarantees against chaos and anarchy. Hence, all of us – the profession, the Bench and the country at large – must in our individual ways wake up and strive with all our might and resourcefulness to restore the administration of justice here to its former pristine glory. History and our children will not forgive us if we have reneged in our efforts in this regard.

What is needed now are reforms, accommodation and increased manpower. I propose to deal with the first and the last very briefly at this stage as I intend to make a fuller statement on these and others after I have held discussions with the proper parties concerned. To start with, I would like to remind the profession again that we are not only at the beginning of a new era but that we are now at the crossroads. The profession and the Bench must forget the past and look with hope to the future. There must be an improvement in the relations between the two at all levels. Mutual respect, tolerance and understanding must be the norm. At all times we must bear in mind that the institution comes first and as such before all others, no matter who they may be. The public is always a spectator to our daily affairs and cannot have any confidence, or at the very least would tend to lose confidence, in a system where counsel or solicitor or litigants for that matter treat the hallowed sanctum of the Courts as a marketplace or judges, or magistrates, or the rules with scant or no respect or regard.”

Let me also quote here an extract from the Penang Seminar on Innovations in Legal Education for Another Development held in Malaysia in February 1985 which, to my mind, is relevant to the topic. It was to the following effect:

“4. **The Legal Profession**

- (a) Lawyers are instrumental in maintaining, fostering and servicing the inequities of the present legal system. Their practice of law is largely governed by materialistic goals rather than concepts of justice. Opportunism and self-interest often prevail over social obligation and needs of the poor and disadvantaged.

- (b) Such legal services as are available to the poor and disadvantaged tend to be confined to legal aid for adversarial litigation. The poor and disadvantaged also need information as to their rights, legal advice representation in negotiating with authorities and assistance in other forms of dispute settlement.

- (c) The corruption of values of the legal profession is perpetuated primarily by the colonial-based legal education process, which is geared primarily to litigation and lucrative areas of practice, failing to examine social issues or to diversified legal solutions appropriate to the problems faced.”

THE ADVOCATE AND HIS ROLE

Finally, may I end this part of my address by saying that the forensic duty of the advocate can be described in no better way than in the following hallowed words of Crampton, J. in R. v. O’Connell (1844) 7 Ir. L.R. 261:

“This Court in which we sit is a temple of justice; and the Advocate at the Bar, as well as the Judge upon the Bench, are equally ministers in that temple. The object of all equally should be the attainment of justice; now justice is only to be reached through the ascertainment of the truth, and the instrument which our law presents to us for the ascertainment of the truth or falsehood of a criminous charge is the trial...; the trial is the process by which we endeavour to find out the truth. Slow and

laborious, and perplexed and doubtful in its issue that pursuit often proves; but we are all – Judges, Jurors, Advocates and Attorneys – together concerned in this search for truth: the pursuit is a noble one, and those are honoured who are the instruments engaged in it. The infirmity of human nature, and the strength of human passion, may lead us to take false views, and sometimes to embarrass and retard rather than to assist in attaining the great object; the temperament, the imagination and the feelings may all mislead us in the chase – but let us never forget our high vocation as ministers of justice and interpreters of the law; let us never forget that the advancement of justice and the ascertainment of truth are higher objects and nobler results than any which in this place we can propose to ourselves. Let us never forget the christian maxim, ‘that we should not do evil that good may come of it.’ I would say to the Advocate upon this subject – let your zeal be as warm as your heart’s blood, but let it be tempered with discretion and with self-respect; let your independence be firm, uncompromising, but let it be chastened by personal humility; let your love of liberty amount to a passion, but let it not appear to be a cloak for maliciousness.”

And in regard to the notion of some that counsel was the conduit pipe of his client and no more, this is what the learned judge later said:

“Such, I do not conceive, is not the office of an Advocate. His office is a higher one. To consider him in that light is to degrade him. I would say of him as I would say of a member of the House of Commons – he is a representative, but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law – he will not wilfully misstate the facts, though it be to gain the cause for his client. He will ever bear in mind that if he be the Advocate of an individual, and retained and remunerated (often inadequately) for his valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice.”

GREETINGS

Let me at this juncture say what a privilege and pleasant duty it is for me on behalf of the Judiciary and my own behalf to thank Their Excellencies, members of the Diplomatic Corps and other distinguished guests as well as members of the profession and of the public for gracing us with their attendance at the church service and joining us in

communion with and devotion to the Great Leveller. I extend many thanks also to them for attending this sitting.

THE MAGISTRACY

When I took up office in early January of this year, as a follow-up to my stated projections, I thought it necessary that I should visit most of the Magistrates' Courts in order to see for myself the conditions under which magistrates and staff function. I made many visits together with my Administrative Secretary, Mr. Ralph Doyle. We visited Port-of-Spain Magistrates' Courts, Tunapuna Magistrate's Court, Arima Magistrate's Court, Siparia Magistrate's Court, Princes Town magistrate's Court and San Fernando Magistrates' Courts. The conditions that obtained at most of these courts appalled me. Not only was the workload in some of these courts too much for a single magistrate but, in addition, the physical conditions which obtained at some were quite depressing and not up to required standards. As a consequence, I took immediate steps to see what remedial action could be undertaken to alleviate the situation. Thus, in places where this could be done without difficulty, I caused an additional magistrate to be assigned to those courts. This was done in Siparia, Chaguanas, Point Fortin and, in the light of the information that was available to me, I also assigned an additional magistrate to the district of Tobago. Unfortunately, all has not been well with the situation in Tobago and I have taken the necessary steps to address that matter to the appropriate quarters.

Next, in order to increase upon the output of work in the Magistrates' Courts, Legal Notices Nos. 20 and 21 of 1986 were issued by me under and by virtue of the powers vested in me in section 4 of the Petty Civil Courts Act and section 9 of the Summary Courts (Sittings) Order, 1986, I fixed appropriate times of sittings of these courts from morning to afternoon with a break for lunch. In this regard I am happy to say that not only has there been improvement in the hearing and determination of magisterial matters but also that I received the fullest support and cooperation of the magistrates in this exercise.

I am happy also to say that following the representations which I made to the Executive through the Attorney General, the Port-of-Spain Magistrates' Courts were removed to NIPDEC House in order to facilitate the carrying out of renovations to the existing premises on St. Vincent Street. But that is not all. I am indeed pleased to announce that following my representations, tenders have been invited for the construction of new Magistrates' Courts in Tunapuna, Arima, St. James, Gran Couva and Princes Town and for extensions to be done to the Port-of-Spain Magistrates' Courts. I have been advised that the matter is moving with such expedition that tenders have since been received for the purposes of selection; and hopefully, the Magistracy will be supplied with premises befitting its role and station in the society in the not too distant future. However, Rome was not built in a day. I, therefore, exhort the citizenry to be patient and to continue to give me their support and cooperation in this regard. In this connection it should be borne in mind that the Judiciary does not provide the funds. It has to depend upon the Executive to furnish them for any purpose affecting the Institution. If for any reason, therefore, the Executive is unable to do the necessary funding, no blame of any kind can be attached to the Judiciary.

In the month of July I met with the magistrates. I had met with them earlier in the year which was shortly after my assumption to office. The purpose of the first meeting was to have a discussion on various aspects affecting the Magistracy. The second meeting was in turn held for the purpose of having an overview of the situation since my elevation. At this latter meeting one of the matters which I raised was my concern about the behaviour of people in Magistrates' Courts and their precincts. At that meeting I drew the attention of magistrates to the judgment of the Court of Appeal, of which I was President, in Daniel Brown v. P.C. Trevor St. Louis ex parte the Magistrate St. George West – Magisterial Appeal No. 9 of 1985 on the question of contempt of court at magisterial level. I invited the magistrates to familiarize themselves with the judgment and to make use of it for the purpose of dealing with persons who disrespect the court.

On my return to Trinidad in the month of August, it was drawn to my attention that a body of persons behaved in an unseemly manner at the Couva Magistrate's Court. I

would like to take this opportunity to express my abhorrence at the behaviour of such persons. Members of the public are entitled not only to audience in the court but they also have a right, if they wish, to attendance at and to listen to the hearing of matters. But that right is no licence for misbehaviour or any form of disrespect in the courts either in terms of insulting or abusive language to the Bench or counsel or solicitor or witnesses or any other kind of unseemly behaviour. The courts of our country, as I have stated on previous occasions, are hallowed places and the citizens of our country are in duty bound to treat them with respect. Proceedings in courts are to be conducted with dignity and decorum. The magistrates have a duty, as do the police, to ensure that the administration of justice is administered from day to day without unruly behaviour or unseemly demonstrations. I sincerely trust that I will not have the occasion to remind members of the public of the necessity for us to conduct ourselves as responsible people; nor do I wish ever again to remind magistrates of their duty to act decisively and firmly with those persons who are in contempt of court. Behaviour of the kind constitutes a blot on the Rule of Law and the due administration of justice. It must not be allowed to happen again. Disrespect for our institutions and of our leaders is an acknowledgment and self-confession of contempt for ourselves.

ACHIEVED REFORMS

A number of social and judicial reforms have been introduced by or tabled in Parliament. The Judiciary has played an influential role in this regard. Passing reference may here to be made to some of these.

The Unfair Contract Terms Act has been enacted. It is designed to protect the consumer against unfair terms in contracts relating particularly to the purchase of goods. (Quammie v. Trinity Motors).

The Offences Against the Person (Amendment) Act, I am advised, has introduced the concept of diminished responsibility in our criminal law and provides for a wider defence of provocation in murder cases (Mason v. R.; Barry v. the State).

The Sexual Offences Act which codifies the law in respect of sexual offences particularly against women, children and handicapped persons has also, I am advised, been amended to provide for the hearing of rape cases in private. I am particularly heartened by this. Our women and girls will now be spared the indignity of having to disclose their alleged horrible experience in the full glare of the public.

I think, however, that Parliament should not stop there but that it should also amend the law for in-camera hearings in other sexual offence cases, more particularly those relating to the crime of incest which has now reportedly become a scourge in our society. I trust too that Parliament would ensure that appropriate penalties are fixed for such crimes. And may I add this: in the case of Farfan v. The State the Court of Appeal took the liberty after due investigation to advise that factually a term of life imprisonment is not really what it states. On the average, an accused person serves between 13 to 15 years. It is my respectful view that if Parliament wishes to legislate for a term of life imprisonment, the legislation should specifically provide that such term is not to be less than a fixed number of years. If this is done, the courts, in my view, would be better able to impose terms of imprisonment appropriate to the nature and circumstances which attended the crime in question. Moreover, a more realistic sentencing policy will devolve as a result.

The Family Court Bill has been tabled. The legislation seeks to establish a separate Family Court to deal with cases and problems relating to problems relating to the family in a more pleasant and congenial atmosphere.

A Small Claims Court Bill, for which the Judiciary takes no claim, is also proposed. This legislation seeks to establish a special court to deal with claims under \$2,500. It is proposed that in respect of some matters lawyers be debarred from representing the parties to the proceedings unless the parties themselves agree.

The Workmen's Compensation (Amendment) Act has been enacted and transfers the jurisdiction in Workmen's Compensation matters from Judges of the High Court to Masters of the High Court. The intention of the amendment is to relieve the Judge in

Chambers of his already heavy list and to have these matters determined by the Masters with a view to speeding-up the hearing and determination of them.

I am advised that a Bill has been tabled relating to the Defence of Alibi. I am advised, also, that it has been passed in the Senate and is now awaiting debate in the House of Representatives.

The Summary Courts Act has been amended to provide for magistrates to give written reasons on an appeal against their decisions. (*Frederick v. Williams*).

The Legal Profession Bill has been passed in Parliament and is now awaiting assent and proclamation. It provides, inter alia, for the fusion of the legal profession and the regularization and discipline thereof.

I look forward to the proposed amendments to the Agricultural Small Holdings Tenure Act and about which I have been recently advised that a Bill in terms is in the pipeline. (*Guptar v. Ramjohn*). I also look forward to the regularization of the existing law relating to corporal punishment. (*R. v. Thomas*) and (*Farfan v. The State*).

While on this score, two more things come to mind. The first has to do with the Industrial Relations Act. My experience with regard to its operation leads me to the view that a hard look should be taken of its provisions relating to appeals to the Court of Appeal. In this connection, the provision in the Singapore model may be a useful precedent.

THE CHIEF JUSTICE

No doubt, some may say, as has been said in recent times, that the Chief Justice ought not to express a view in matters of this and like kinds but should, as a rule, be a silent spectator. With great deference to those who espouse this philosophy, I regret that I do not subscribe to this view. As the Head of one of the Organs of the State, the Chief Justice, in my view, is entitled to and is indeed under an obligation to comment on any

matter affecting the due administration of justice. I venture to think that the public expects that of him.

Another point needs to be stated here. The Chief Justice is by convention and by the provisions of the Constitution solely accountable to the country for the due and proper administration of justice. He is the one who is to answer to the country in the event of any breakdown, dissatisfaction or disaffection – real or imagined – in matters concerning his administration. Responsibility and accountability are complementary to each other. The one cannot effectively go without the other. In other words, they are like Siamese twins. In addition, it must be remembered that the Chief Justice is the captain of the judicial ship. Of course, there are those who are appointed to advise, counsel and assist him in his onerous task. However, in the final analysis he remains solely accountable for the ship in the eye of the public. Thus, his views in matters must carry great weight given the realities of the situation.

THE PRIVY COUNCIL

The next thing has to do with appeals to the Privy Council. There have been protagonists for and against its retention over the years. Such persons like the late Sir Hugh Wooding and within recent times Lord David Pitt, a Member of the House of Lords, and a distinguished West Indian, other prominent Caribbean figures and nearer home, a leading member of the Inner Bar, have expressed their views in the matter publicly. Some including those to whom I have just alluded, have advocated strongly for an indigenous final appellate tribunal of some sort as, for example, a British Caribbean Court of Appeal. But the fire has been further intensified for as late as the 23rd September gone, I was privileged to hear the Prime Minister of Barbados, the Hon. Errol Barrow – himself a distinguished member of the Inner Bar there – at the graduation exercise of law students propounding a like cause even though he confessed to his reservations on the issue at one time. I consider that it will be impolitic of me to use this occasion as a forum to enter into a discourse on this issue although, of course, I am entitled to and in fact do harbour my own feelings in the matter. So out of a counsel of prudence I refrain from much discourse on the topic (at least at this stage) except to repeat what I said in the case of

I.T.L. v. Percival Bryan and repeated in public in my welcome address in San Fernando that I consider that the provision in the Constitution for appeals to the Privy Council in civil proceedings involving directly or indirectly a claim to or any question respecting property or a right of the value of \$1,500 is ridiculously low and is, to my mind, a sad reflection upon our loud claims to and/or boasts of our constitutional attainments. Rather, it is, in my view, an outward and unvarnished manifestation of a lack of confidence both in our acclamation and ourselves. Small wonder that as a nation we are laughed at by some and described as transients by others. It seems to me that consistent with our advanced status an appeal in these matters should, at least for the present, be on a question of law alone and only where the particular property or right is of the value of \$30,000 and upwards. For myself also I find it difficult to comprehend why matters relating to contempt of court should go further than our local Court of Appeal. After all it is elementary knowledge that no one could understand and appreciate the behavioural patterns and idiosyncrasies of a tribe of people better than the indigenous members of that tribe. Moreover, what may not be considered contumelious conduct or behaviour elsewhere may, in the context of the lifestyle and patterns of another country, well be so there.

THE DEBTORS ACT

I also look forward to attention being given to the amendment which I requested after consultation with my colleagues and the representatives of the Law Society to the Debtors Act whereby the jurisdiction in matters relating to judgment summonses be allocated to the Masters instead of a Judge of the High Court as obtains at present. A change of this kind will also provide the Judge of the High Court with more time to deal with other pressing matters. I appreciate, of course, that this may well involve a question of constitutionality. But there is nothing to prevent the law-makers making valid what would or may otherwise be considered to be unconstitutional.

THE JURY SYSTEM

I would like at this juncture to make a few remarks about the Jury Act. I entertain the view that the minimum qualifying age for jury service is too low and ought to be

increased, to say, age 25. I am also unhappy about the salary qualification for jury service, which at the present time stands at not less than \$500 per month. I feel that a more realistic approach to the age and salary qualifications for selection for jury service will allow for a more mature type of juror. Also, for myself, I am not sure that for all practical purposes it was wise to increase the age limit to 65. In any event, I find it difficult to appreciate why certain categories of people are specifically exempted from jury service. Perhaps, it was feasible at the time but I can see no justification for continuing to exempt certain categories of persons, for example, employees of the Postal Services and Customs from their obligation to this particular and important civic duty.

THE TRINIDAD AND TOBAGO LAW REPORTS

I may mention here that efforts have been made to bring the Trinidad and Tobago Law Reports on stream. For this purpose dialogue was started and is still continuing with Messrs. Butterworths & Co., the usual publishers of the West Indian Reports. It was hoped to have the first edition of the local reports available for the beginning of the new term. However, certain matters, I am informed, are yet to be ironed out before this long-overdue legal reference is realised.

Law reports are, as is well known, useful and necessary tools for the lawyer and the court. I shall spare no effort in order to ensure the achievement of this goal.

ADMISSION TO PRACTISE

I have been exploring, in consultation with the various Associations and the Law Society, the advisability of introducing a new form of admission to practise. The idea is, and the Associations and Law Society are in sympathy with it, that following the award of certificates by the Council of Legal Education, the graduates should later be admitted to practise sometime before the opening of the term in the Convocation Hall at which the families of the graduates, Judges of the Supreme Court and practitioners will be invited to participate. The feeling is that this will be a more convivial atmosphere for the initiation of these new practitioners into the fraternity. Of course, there will be the odd case for admission at some other time. Such bases will be taken care of in the normal way.

SILK

I also have grave reservations about the present practice with regard to the appointment of Silk. I entertain the view that these appointments should be made by the Chief Justice after consultation with the duly accredited representatives of the Association and the Attorney General. A matter of the kind is, in my opinion, essentially one for the Judiciary and no other entity.

APPOINTMENTS

Mr. Justice McMillan has been confirmed as a Judge of the Court of Appeal and Mr. Clebert Brooks has been appointed to act as a High Court Judge with effect from 1st October, 1986. On behalf of the Judiciary and on my own behalf I extend sincere congratulations to them. I take the opportunity here also to formally announce the retirement from the Bench of Mr. Justice Guya Persaud and Mr. Justice George Collymore. On behalf of the nation and on my own behalf I salute them for their dedication and service to the country and wish them both in their retirement continued good health, long life and God's blessings.

THE PREVIOUS LAW TERM

It is customary that at these sittings an account is given to the work done in the Supreme Court during the previous term. I do so now.

In this connection it will be more intelligible if a breakdown is given in respect of the divisions. Many actions were filed during the relevant period though not listed. For the benefit of the layman there is a notable distinction between the expression "filing" and "listing". Actions may be filed though not listed for a number of reasons, for example, lack of personnel, time, adjournments and accommodation, among other things. It should also be noted that the listings referred to herein include matters that had been filed before the period under review.

I have always maintained, and indeed it is well known, that the people of this country are amongst the most, if not the most litigious-minded in the Caribbean. The records bear this out. During the period under review 7,244 actions were filed in the Port of Spain High Court Registry, 3,365 actions were filed in the San Fernando Sub-Registry, 333 were filed in the Tobago Sub-Registry and 768 appeals were filed in the Court of Appeal Registry.

In the Port of Spain High Court 11,289 civil matters were listed for trial. Of these 5,128 were determined leaving an arrear of 6,161. In the criminal jurisdiction 444 were listed for hearing. Of these 96 were determined leaving an arrear of 348.

In the San Fernando jurisdiction 9,420 civil matters were listed for trial. Of these 4,566 were determined leaving an arrear of 4,854. In the criminal jurisdiction 158 matters were listed. Of these 29 were determined leaving an arrear of 129.

In Tobago 406 civil matters were listed. Of these 181 were determined leaving an arrear of 225. In the criminal jurisdiction 15 matters were listed. Ten of these were completed leaving an arrear of 5.

I come now to the Court of Appeal: 427 civil, 33 criminal and 306 magisterial matters were filed making a grand total of 766. In the matters that were listed 419 civil, 10 criminal and 197 magisterial were determined making a grand total of 626 matters completed during the period under review. All these statistics speak for themselves. I shall elaborate upon this later in my address.

With regard to Tobago it must be borne in mind that a Judge sits there only periodically. As regards San Fernando the accommodation is most acute. Notwithstanding, from the record the Judges who sat in San Fernando during the relevant period are to be commended for their output in spite of the numerous problems with which they were faced.

In the Court of Appeal of the magisterial matters that had been listed, 13 of these remained outstanding at the end of the term in Port of Spain and in San Fernando only 6. This was so notwithstanding the fact that only the last week in every month is, as a rule, set aside for magisterial and criminal appeals.

With regard to outstanding judgments 26 in the High Court and 10 in the Court of Appeal remained to be delivered at the end of the term.

I may mention also that the record reveals that 587 civil matters were set down for hearing on the General List in Port-of-Spain and 1,955 for San Fernando. This clearly shows that during the period under review there were matters that were ready for hearing. However, due to the lack of judicial manpower and other personnel, it was not possible to have these matters listed.

I may mention too that in order to deal with the many civil matters that were being listed, it was necessary to increase the number of civil courts at the expense of the criminal courts. The time has come, however, with our limited judicial personnel to review the situation in the light of the state of the criminal list. As a consequence, I have provided for an increase in the sittings of the criminal courts in Port of Spain and San Fernando for the time being. The position, of course, cannot continue in this way. The need for an increase in judicial personnel to deal with the volume of litigation in this country is clear. Indeed it is an imperative. I shall develop the point further in the course of this address.

SOME FURTHER REFORMS

There are many more areas of reforms which I have in mind and which, in my view, can go a long way to speed-up and improve upon the judicial process. I shall now refer to some of them. I propose in due course, after consultation with the Chief Magistrate, to create a special court in Port of Spain and in San Fernando to deal exclusively with all firearms, ammunition and drug related cases. In the Supreme Court with a view to relieving the Judge in Chambers and, more particularly, because of the increase in the volume of matters of the kind now being initiated, I propose to have all constitutional matters and matters of public law heard in the open civil courts. Any necessary

amendment to the rules of court dealing with such matters will be addressed. Nobody who has had business in the Chamber Court will deny that the sitting Judge there has, with the passage of time, our constitutional development and the increased importance given to the public law, now been saddled with many and some of the most abstruse matters of constitutional and public law. This is time-consuming and laborious. Not unnaturally, little time is afforded the Judge for attention to many other pressing matters. The time has come for revision in this regard.

Like one of my predecessors, Sir Issac Hyatali, T.C., I entertain the view also that Country Courts should be introduced in this country with limited jurisdiction in civil and criminal matters. Such courts will not only relieve the High Court of matters but, in addition, they will be beneficial in two major respects. Firstly, their introduction will, apart from speeding-up the judicial process, assist in reducing the backlog. Secondly, they can be the preparatory ground for future High Court Judges as well who may come both from the Magistracy and elsewhere. Such courts, in my view, can be set up in Port of Spain, Arima, San Fernando and Tobago. As regards accommodation, to start with, the court houses to be constructed at St. James and Arima will be ideal for this purpose. I can see no problem where Tobago is concerned; nor do I envisage any either in the light of the plans for San Fernando.

ARIMA

With the planned development in the East, the population of Arima and its environs has increased phenomenally over the years. Many committal matters come from the Eastern Countries to Port of Spain. In addition, selectees for jury service come to Port of Spain from as far as Toco. In my view, having regard to all these prevailing circumstances the case for a separate Assizes at Arima is well made out.

BAIL

The case for the introduction of a new Bail Act and one with teeth is most pressing. I am informed that one is in the pipeline. I had alluded to this and, in particular, the role played by professional bailors, among other things, in my welcome address in court and in

numerous letters to the appropriate authorities. Only recently I received from the Prison Authorities a report pointing to the abuse of the bail system by a number of professional bailors. This came about following an incident in the Court of Appeal and a directive from me as a result. A research was conducted in this regard by the Prison Authorities for the period January 1985 to June 1986. The records reveal that certain sureties who stood bail for accused persons were themselves defendants and/or convicted prisoners before the courts. Frequent advice to this effect was given to regular Justices of the Peace concerning the status of these sureties but, notwithstanding, that advice was ignored. Added to this, some sureties were allowed to continue to stand bail for accused persons for amounts in excess of the value of their property. There is evidence also that persons who obtained bail were shortly thereafter apprehended for alleged commission of serious crimes while still on bail. I do not think that it is necessary for me to say anything further other than to re-emphasize the point that there is pressing need for the introduction of suitable legislation to deal with this menace; and furthermore from the evidence I am convinced that there is a case for reviewing the system with regard to the appointment of Justices of the Peace.

APPEALS FROM MAGISTRATES

Another innovation which I think will assist the judicial process has to do with the procedure regarding appeals from magistrates. It seems to me that one way by which the Court of Appeal may be spared more time to deal with more complex matters could be by allowing appeals from magistrates to go to a court comprising of two or more High Court Judges with a further and final right of appeal to the Court of Appeal on a question of law only. I do not consider that this proposal is novel for formerly, and before there was a separate Court of Appeal, appeals against decisions of magistrates went to a Court of Appeal comprising of two or more first instance Judges. Besides, a practice of the kind will certainly prepare the first instance Judge for a different slant of work to which he will later on be exposed.

I hate to repeat myself but it is imperative that I do so here if only to pinpoint a matter which, to my mind, is of great significance.

A. SECTION 14 OF THE CONSTITUTION

B. JUDICIAL PERSONNEL ET AL.

When I took up office, I took the opportunity to highlight two things: they were (a) the provisions of s. 14 of the Constitution and (b) the need for increase in the number of Judges in the High Court and in the Court of Appeal and the recall of retired Judges. I pointed out in public that s. 14 of the Constitution was being abused. I reminded the Executive of the decision in the constitutional case of one Kitson Branche which was decided since 1977 and the views which I expressed therein and which were endorsed by Sir Isaac Hyatali, T.C., former Chief Justice in the Court of Appeal to the effect that s. 14 of the Constitution should be amended to put an end to the practice whereby matters were being relitigated under the guise of constitutionality and constitutional redress. I also called in public for an increase in the judicial personnel and for an amendment of the Constitution providing for the reintroduction of the provisions of the 1962 Constitution to allow for the recall of retired Judges, if necessary. The aim of these two exhortations was to prevent abuse of process and the waste of judicial time in the first case mentioned (s. 14) and reduction of the backlog in the other cases. I followed-up these appeals later by letters to the appropriate Executive authority. In one dated 7th February, 1986, I pointed out that from the records made available to me I had inherited a backlog consisting of 791 magisterial appeals, 52 outstanding criminal appeals, 1,031 outstanding civil appeals, 490 criminal cases, 967 outstanding criminal committal cases in Port-of-Spain, 576 criminal committal cases in San Fernando, 70 outstanding criminal committal cases in Tobago, 6,421 outstanding High Court civil actions in Port-of-Spain and 5,821 outstanding High Court civil actions in San Fernando. I then went on to say this:

“I am sure that you will agree with me when I say that the picture is not only disturbing but frightening. I am convinced that it is in the interest of the country as a whole that, among other things, early steps should be taken by the Executive in regard to the following matters:

- (a) increase in the number of Judges both at High Court level as well as the Appeal Court level;

(b) the early enactment of legislation dealing with bail.

With regard to (a) above, I have already discussed with you the desirability of re-introducing the provisions of the 1962 Constitution for the recruitment of retired Judges to assist in the business of the Court at both the High Court and the Court of Appeal levels. Also, I am inclined to the view that the complement of the Judges should be increased and that consideration should be given to the proposals once put forward by Sir Isaac Hyatali, T.C., a former Chief Justice, with regard to the establishment of County Courts. As regards the latter, legislation had in fact been drafted and is no doubt still in the hands of the Drafting Division of the Attorney General's Ministry.

Next, what I think is vitally important is the urgent necessity for the enactment of a bail legislation. It seems to me, and I will strongly advise, that the legislation should contain provision for the refusal of bail in instances such as, for example, those cases involving trafficking in narcotics, the commission of robberies of any kind particularly those committed with violence or those involving aggravating circumstances such as the use of a firearm, firearm charges and rape.

I mention these as illustrations because investigations have revealed that it is in these instances in particular that the accused absconds after he has obtained bail. Not only do instances of this kind create a backlog but they tend to render the administration of justice a mockery.”

To date, nothing has been done either in respect of an appropriate amendment to s. 14 of the Constitution, the increase of Judges and/or the recall of retired Judges. What is clear

is that while the society was being restructured and reformed and advancements in various areas were being instituted, nothing really concrete was done in the area of the Judiciary to meet with these advanced social changes. Hence the bottle-neck! I have no desire to embarrass or offend anyone but the truth must be told. I am in duty bound to give the country an account of the stewardship of the Judiciary and the country is entitled to know about it. I will develop this question about the complaints with respect to backlog in a moment.

It is in the context of the aforementioned revelations that I must perforce say something here about the situation regarding the San Fernando circuit. For many years the appeals of those concerned with this circuit for improvements there have been loud and clear. In keeping with the numerous endeavours of one of my predecessors, namely, Sir Isaac Hyatali, T. C., I too, did all that was possible to call attention to the need for early remedial action of some sort, both as regards increased accommodation in general and also as regards the necessity for preventive measures to curb the nightly visits of certain unfortunate people on the compound, the evidence of whose nocturnal perambulations were a common sight. Some of my appeals have not been in vain. I am happy to say that the Southern Assembly of Lawyers, as a gesture of their goodwill, have provided a podium for use in an extra court. Besides only recently another source has, also as a gesture of its goodwill to the nation, undertaken its own expense renovations to the existing structure which will now allow for two additional courts – one for a High Court Judge and the other for a Master. But that is not all. Tenders have been invited by Government for extension work to the existing building. I am advised that they have been received and, if all goes well, these works will be undertaken in the not too distant future. I desire to take this opportunity to extend my profound gratitude on behalf of the nation as well as on my own behalf to the Southern Assembly of Lawyers and to the other source for their demonstration of goodwill. By their demonstration they have shown and appreciated that all of us are in this together and unless we all appreciate this factor, we would either swim together or drown individually. By the way, I visited the San Fernando Supreme Court building on Monday last. I am convinced from the physical assault which I saw had been made on this old colonial edifice that the majority of the

citizenry are committed to the cause and now more than ever have resolved to swim together!

BACKLOG

This brings me to the question of what is indisputably a major clog in the administration of justice, namely, the backlog of cases. This problem is not unique to Trinidad and Tobago. Indeed, it may be described as a universal judicial curse and complaints in this regard are like a recurring decimal everywhere. No English speaking jurisdiction has escaped this scourge. Countries with far more sophisticated and technological systems have been experiencing the problem as is evidenced by the innumerable committees and commissions that have been set up to see what can be done to remove the bottle-neck, simplify procedures and streamline the system as a whole. I harbour the view that one cannot speak about it in realistically critical terms here unless it is co-related to the question of the litigious tendencies of our people (which manifestly is, notwithstanding the misgivings and criticisms of some, an indication of the public's confidence in its Judiciary and of its independence), manpower, improved procedures and accommodation. To adopt any posture otherwise is to indulge in the antics of the proverbial ostrich. The work of a Judge today is hard and gruelling. It is not like yesteryear when the work was mostly confined to criminal and civil matters, most of which could be described as more or less of the run of the mill type. This observation, of course, is not intended to cast any reflection upon the immeasurable contribution and scholarship of some of our past jurists. But facts are facts and the realities of life must be faced and stated. Judges today have to deal with a greater volume of work involving complex matters, for example, constitutional, family, banking, revenue, insurance and public law, to name a few. Most of these were unknown quantities in the courts of yesterday. Despite this, however, there has been little, if any, corresponding increase in manpower and improved accommodation. Lest I be misunderstood it does not mean, however, that an assault has not already been launched to deal with the problem as was clearly evidenced by the statistics which I have already detailed herein. I propose to maintain this attack. In this connection the blitz will now be directed to the criminal jurisdiction, hence the increase

in the number of criminal jurisdiction, hence the increase in the number of criminal courts to five.

Another procedure which I have in mind for dealing with the problem is by way of skeletal arguments. Such a procedure can be introduced in the first instance in the Court of Appeal on a trial basis and if it is successful be later established on a permanent basis in the Court of Appeal and extended to the civil courts in the more important cases. I propose in due course to enter into discussions in the matter with the accredited representatives of the Association and the Judges with a view to determining the desirability of introducing this method in the future.

THE JUDGES

I would like to add a few words about a complaint which I understand has been voiced by some people. It is the mistaken belief of some that Judges have nothing to do in vacation. Indeed, it is felt by some that the vacation period is too long. That is the view of the uninformed and the misguided. Judges do a lot of work in vacation during which time, among other things, they take the opportunity to write outstanding judgments. Some also preside over the vacation courts. It must be remembered as well that Judges too are human and, therefore, like all other people, are entitled to holidays.

One of the first things I did on coming into office was to call attention to the problem of backlog. The country will recall that I had often said and I repeat again here that this problem could be tackled with some degree of success if there was an increase in manpower, improved procedures and accommodation, among other things. Moreover, the outmoded fashion whereby Judges are by the rules of court required to transcribe the evidence of witnesses in long hand is also one of the cancers. This can be easily remedied by the introduction of tape recording of the evidence while at the same time allowing for the Judge to record such evidence as he deems necessary. I propose to continue to pursue the matter in consultation with the Rules Committee and the appropriate Executive authority responsible for transcribing personnel, software and funding.

In the final analysis, however, the problem can only seriously be addressed if there is adequate accommodation and increased manpower. As regards accommodation there is enough to go by in Port of Spain and Tobago. The position is not the same in San Fernando for the present. With regard to the question of manpower, I wish to re-emphasize what I have said before to the effect that one of the means by which the administration of justice can be speeded-up is by increasing the complement of Judges in the High Court and the Court of Appeal as well as by the re-introduction of the 1962 provisions allowing for the recall of retired Judges to assist in both High Court and appellate work if and when the business of the court so requires. I am pleased to know that this view which I have expressed so often has struck a supportive chord in the breast of His Excellency the President of the country. I appeal to the Executive to consider this proposal sympathetically and, of course, with the utmost urgency.

Until the remedial action which I have suggested is resorted to, it will be idle folly and unfair to Judges of this country who I know for a fact put their best foot forward for complaints or criticisms to be directed in this regard.

DISCIPLINE

I turn now to the question of discipline. The last decade or so has seen the repeated degradation at all levels of the legal profession. There is open advertisement and unethical behaviour both in and out of the courts. Recently, the President of the Law Society spoke about the evils that now beset the profession and, inter alia, adverted to the divisiveness that now exists. I wish to adopt and endorse what he said on that occasion and further to say that the profession is now visibly fragmented. There are cliques which pursue their own interest thereby causing further fragmentation in the profession. What, unfortunately, those who so indulge fail to realise is that the casualty in all this is the legal profession and the administration of justice of which they form an integral part. I am happy to say that when the Legal Profession Act comes into force many of these problems will be addressed. In addition, the courts will continue to have the inherent jurisdiction to discipline legal practitioners whose conduct or behaviour fall short of what

is required of them. Make no mistake about it, although it has only been sparingly used in the past in the most extreme circumstances, we in the Judiciary owe a duty to the nation to ensure that dishonest and unscrupulous practitioners are weeded out of the profession and, the Judiciary, in appropriate circumstances, will not hesitate to use its coercive powers in this regard. This warning about our coercive powers, I desire to say is not confined to the legal profession alone. It applies equally to all others. The remarks of Lord Atkin in *Ambard v The Attorney* about the right of any to criticise the Judiciary are legion and need not be repeated here. The right to criticise is recognised but it must not be reckless, uninformed or malicious. This is not intended to be a threat but merely an effective and timely reminder to ensure that the Rule of Law and the administration of justice do not fall into disrepute. The court will act positively in the interest of all those who cherish and respect our liberties and freedoms. I desire to give fair notice and warning of this at this point in time.

DRESS

It will not be inappropriate for me to deal here with the question of dress. Consistent with my wish that the Judiciary should set the tone for the country, I recommended to the Judges and we all agreed to the introduction of new robes for ourselves which would distinguish the Bench from the Bar and which, more particularly, would be symbolic of our determination to forge a new image, a more indigenous concept and pride in our young nation. It is in this setting that these new robes in the national colours and in which we are adorned today for the first time have their roots. I expect that practitioners will themselves continue to uphold the dignity and decorum of the Court by ensuring that at all times they too appear in Court properly attired in the conventional manner. Proper dress in Court will be insisted upon and strictly enforced. The Practice Direction is a dark jacket and sober trousers for male and black or grey attire, preferably the former for females in open court at all times. Sober attire is desirable for both genders in the Chamber and Master's Courts.

SERVICE ON THE BENCH

This is a proper stage for me to add a few more pertinent remarks. I believe that the crown and goal of a successful lawyer's career should be a period of service on the Bench. There are some among the profession who only pay lip service to this idea and who really are not serious or have no inclination to pursue this role. But let us not delude ourselves. The ultimate quality of our jurisprudence lies not only in the skill, scholarship and wisdom of the practitioner in advising and representing his clients in court but, indeed, it lies pre-eminently in the quality, integrity, independence and learning of the Judges. I trust that among those who hear me today there will be many of all ages who at the appropriate moment will opt for this honourable and noble role. As I have said before, dedicated service to one's country – particularly service as a Judge or a magistrate – can never be quantified in dollars and cents. It has its rich reward in another place.

APPRECIATION

Mr. Attorney, I desire to express my profound gratitude to you for the immeasurable assistance which you have lent me in bringing into fruition so many of the things to which I have alluded in this address. Incidentally, I would like to suggest that consideration be given to the enactment of legislation which would, given suitable safeguards, permit the police the right to detain persons suspected of involvement in a crime for a particular period having regard to the prevailing circumstances including the state of our existing law. This may be considered by some to be too far-reaching a step. However, I consider that a balance in the criminal process, particularly in the age of organised crime, is an absolute necessity today in any orderly society. While I fully appreciate the need to protect the private individual's interest, equally it cannot be gainsaid that it is also in the public interest that crimes be detected and punished. Individual freedom, in my opinion, must be viewed against the background of the protection of the public at large. All right-thinking members of the community will, I am sure, fully appreciate the need for this.

I desire also to express the thanks of the Judiciary to all those persons who played special parts at the church service at which we were all present. In particular, I wish to thank all the leaders of the religious organisations who offered their prayers for the Judiciary, His Lordship Bishop Abdulah for his inspiring address and the Rev. Fr. Hezekiah for his blessing.

JUDICIAL CONSCIENCE AND OBJECTIVITY

Inspired by their prayers and offerings with trust in the Lord and resplendent as we are in our new robes, I would end by adopting the words of Lord Mansfield, C.J. in *R. v. Wilkes* to the following effect:

“I will not do that which my conscience tells me is wrong,.....to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right; though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow....Once for all, let it be understood, ‘that no endeavours of this kind will influence any man who at present sits here’.”

I now formally declare the opening of the new law term. The sitting is adjourned to Monday 6th October, 1986.