

**ADDRESS OF THE CHIEF JUSTICE, THE HONOURABLE
MR. JUSTICE CLINTON BERNARD, T.C., AT THE
OPENING OF THE 1987-1988 LAW TERM IN THE HALL OF JUSTICE, KNOX
STREET, PORT- OF –SPAIN, ON MONDAY, 5TH OCTOBER, 1987**

The new Law Term has arrived. As customary, it has been ushered in, *inter alia*, with the traditional Church Service. With regard to the latter it will be observed that there has been a departure from custom. This relates to the venue at which the Service was held. For the first time the service has been conducted under the auspices of the Methodist Church. For the future it is my intention to invite each of the established religious bodies to take turns to, so to speak, “host” the Church Service from time to time at one place. Taking all things into account. e.g., the nature of the service, location, accommodation, the ideal place for this is, in my view, the Holy Trinity Cathedral. I propose to put the idea to the respective bodies and if there is consensus, the practice will be introduced as from next year. I would now like to take this opportunity to thank the Methodist hierarchy in general, and the Superintendent Minister, Reverend Phillip Saunders, in particular, on behalf of all concerned, for their magnanimous gesture blended as it were by the sterling performance of the choir and the inspiring homily of Reverend Watty. The Judiciary wishes to thank them all, as well as all other members of the religious bodies, for their prayers and blessings. We also thank all those who at great personal sacrifice to themselves have graced the occasion with their presence.

The start of a new Law Term necessarily invites reflection on the period past. I accordingly now seek to honour this expectation. Some listeners will recall that in the address which I delivered at the opening of the new Law Term last year – Friday, October 3, 1986 – to be precise, and which, with respect, I would describe as my “blue-print” for the future, I had chronicled a number of goals which I had proposed for the administration of justice in this country. Following my address I proceeded in the course of time in pursuit of these goals, among

them being the question of bail and backlog. I shall enlarge upon these two latter items in the course of this address. It must be remembered that in pursuit of goals for the administration of justice, a Chief Justice is not expected to do so with fanfare and publicity. Consistent with this policy numerous efforts were made by me from time to time to bring the goals to fruition. I am happy to record here some of the things which have been achieved during the time that has elapsed.

I have been officially advised that on 9th July, 1987, Cabinet had agreed to advertise for tenders under the Design Finance and Construct System for the construction of new Magistrates' Courts at Arima and Princes Town. The design for the proposed new court at Arima is expected to take into account expansion to accommodate an assize court there. Repairs to the Chaguanas Magistrates' Court are progressing apace. The Port of Spain Magistrates' Court is now permanently located at NIPDEC House. These new structures, I am sure it will be agreed, will enhance the dignity of the courts and will certainly provide the kind of atmosphere and accommodation that are so necessary for the proper administration of justice. A good illustration of this is, of course, the Port-of-Spain Magistrates' Court at NIPDEC House, which is a far cry from what previously obtained at St. Vincent Street. I expect that the Executive will, in due course, through its accredited representative, meet with me to discuss the future of the existing site on St. Vincent Street. I can see this building being the site for the proposed Family Court. Incidentally, I would add here that for the proper streamlining of the administration of justice and for speeding up of the judicial process there is pressing need for the establishment of this court as well as the Small Claims Court.

The question of amendments to the procedure for preliminary enquiries is under active consideration by the Attorney General. This matter, however, involves a larger question. That has to do with the desirability for a complete revamping of the law relating to the procedure in preliminary enquiries with a view to speeding

up the process. In this connection, I have had the benefit of meeting and holding discussions with the President of the Law Association, and I expect to pursue the matter further in the not too distant future with all parties concerned.

A Jury Amendment Act has been drafted, and I am informed that it will be introduced in the next session of Parliament. I expect that the legislation will take into account the improvements which have been proposed.

Special courts have been set up to deal with offences relating to narcotics and firearms in accordance with my express promise.

Legislation has since been passed for the hearing to private of cases involving certain types of sexual offences. Following my representations to the Executive, steps are also being taken to amend all other relevant laws to regulate the procedure for the hearing of these same offences at all levels.

A Practice Direction has since been issued in relation to the following matters:

- (a) The mode of dress of attorneys;
- (b) For hearing of constitutional cases in the open civil court other than the Motion Court. The primary aim of this direction was for the purpose of effecting the speedy determination of the particular issue.
- (c) For the hearing of applications for judicial review in the open civil court other than the motion court. The object of this Direction was for the same purpose as that expressed at (b) above.

I am happy to report (and I do so with a deep sense of gratitude to our Librarians, Mrs. Ethel Celestain who, unfortunately, will be leaving us at the end of the current year) that during the previous court vacation with the co-operation of the

Registrar General and, more particularly, with the help of Mrs. Glenda Rigaud, Technical Officer, Microfilming Unit of that Department (to whom I am also extremely grateful) our library personnel had embarked on a system of microfilming. As a result of this exercise one copy of each judgment of the High Court from 1975 to 1985 has been microfilmed. The library is now in the process of microfilming judgments of the Court of Appeal from 1975 to 1985. I am informed by Mrs. Celestain that this will be an ongoing exercise and that after the completion of the Court of Appeal judgments, it is hoped to place on film judgments of the courts from 1974 backwards. This process will free up the printed book and allow users to view the judgments on the Microfilm/Fiche Reader Printer. Print outs, if required, can be obtained for a small fee of one dollar per page. The Microfilm/Fiche Reader Printer is a recent acquisition of the Law Library and the Microfilmer is due in the next four weeks.

On behalf of the Judiciary and on my own behalf I wish to thank Mrs. Celestain and all the members of her staff who were involved in this project for their dedication and hard work.

I desire also to take this opportunity to wish Mrs. Celestain bon voyage. We will all miss her. We extend to her our best wishes for her continued good health and a long and happy retirement.

I have been informed by the Honourable the Attorney General and Minister of Legal Affairs that my appeals with respect to Section 14 of the Constitution, are being actively pursued. This section has been the cause of unnecessary proliferation of litigation. It has been thoroughly abused and it is about time that the abuse be put an end to.

Pursuant to the provisions of the Legal Profession Act, the members of the Disciplinary Committee of the Law Association have been appointed by me

following consultation with the Council of the Law Association. Also, the members of the Legal Aid and Advisory Authority have been appointed.

I had also proposed the establishment of County Courts, the introduction of which, I am sure it would be agreed, will go a long way to improving the machinery of justice. To this end, I had been in constant communication with the accredited representative of the Executive of the former Government as well as that of the new Government. Correspondence passed between us as late as the 9th July, 1987. It appears from correspondence passing between us that the Executive is in sympathy with the proposal. However, I have been informed that financial constraints have not permitted this proposal to be implemented at this point of time. Nevertheless, I trust that as soon as circumstances permit the Executive will take steps to implement this proposal.

This then is a global picture of some of the improvements that have been achieved or pursued in such a short space of time. To some they may appear to be of little consequence. If that be the thinking, then I respectfully beg to differ, for they are, in my view, matters of some substance and worthy of record.

And now with regard to the work of the Courts during the previous term. It will be recalled that in my speech at the opening of the last Law Term, I indicated that for obvious reasons I intended to maintain the assault on the criminal matters. I am happy to record that consistent with this policy in the Court of Appeal, 42 criminal appeals had been listed. Of these 35 were determined. Of the remaining number that had not, these were due, among other things, either to requests for adjournments or applications for legal aid which had not yet been processed by the Legal Aid and Advisory Authority. I am happy to record also that the Clerk of Appeals has reported to me that the way things are going in this area, by the end of the current year the Court will be dealing with the 1987 appeals.

Obviously, because of the priority that was being accorded to criminal appeals, only 216 civil matters, 13 petty civil matters and 131 motions were listed for hearing. Of these 113 were determined, comprised of 30 civil, 6 petty civil and 77 motions. In addition to all this, 294 magisterial appeals were listed for hearing in Port-of-Spain. Of these 157 were determined. Next 69 magisterial appeals were listed for hearing in San Fernando. Of these, 33 were determined. Again, among the reasons why some of the matters were not determined, were requests for adjournments and applications for legal aid which had not yet been processed.

Having regard to the situation in Tobago, there was no pressing need to sit there, more particularly since an assault was being made on the pending matters in Trinidad.

The picture in the Court of Appeal can be regarded as heartening, bearing in mind that during the then term and for perfectly justifiable reasons, the Court of Appeal was operating well below its normal strength-that is to say with only four Justices of Appeal, and not its full complement of seven.

In the Port-of-Spain High Court 1,139 civil matters were listed. Of these 375 were determined. 1,171 matrimonial suits had been listed. Of these 824 were determined. In the Master's Court 4,184 were listed. Of these 1,541 were determined. In the Matrimonial Chambers 2,313 were listed. Of these 727 were determined. In the Criminal Court 637 were listed and 125 of these were determined. In San Fernando 1,128 civil cases were listed. Of these 399 were determined. A total of 559 divorce suits were listed. Of this number 357 were determined. In the Matrimonial Chambers 961 were listed, of these 359 were determined. In the Chamber Court 1,113 were listed, and of these 453 were determined. In the Master's Court 2,195 were listed. Of these 1,219 were determined. In the Criminal Courts there, 289 matters were listed. Of these 61 were determined.

In Tobago 23 criminal matters were listed. Of these 13 were determined. In the Civil Court there, 48 matters were listed, but only 19 were determined. In the Civil Chamber Court there, 138 matters were listed. Of these 49 were determined. In the Matrimonial Chamber Court 84 matters were listed, but only 18 of these were determined. A total of 99 divorce suits, motions and judgment summons were listed. Of these 44 were determined.

I have been advised that quite apart from the work load, many of the matters that were listed for hearing and not determined, were due to a number of factors, for example, requests for adjournments, application for legal aid, the state of affairs in the Legal Department (over which, incidentally, the Judiciary has no direct control), non-availability of witnesses, lack of time, bomb threats, electrical outages, and breakdowns in the existing cooling system. The last three occurred like a recurring decimal. While all of this is so, I am satisfied that something more needs to be done to address the problem, more particularly with regard to the criminal matters and the state of affairs in general in Tobago. Among the things that are passing through my mind are the desirability of extending the hours for the daily sitting of the Criminal Assizes, and the practicability of assigning a Judge in Tobago for a longer period than now obtains. In addition, if and when the Executive takes steps which they have promised to do early, to allow for the appointment of retired Judges, the problem here will be more vigorously addressed. I will enlarge upon one or other of those areas later in this address.

I desire to officially record that Mr. Justice Narine has since retired from the Bench. Mr. Justice Edoe and Mr. Justice Davis have been elevated to the Court of Appeal. Dr. Aeneas Wills, S.C., Mr. Anthony Lucky, Mr. Roger Hamel-Smith and Mr. Lloyd Gopeesingh have been appointed Puisne Judges. I would like to take this opportunity on behalf of the people of Trinidad and Tobago to welcome the new Judges. In this connection, I would like to pay special thanks to

both Dr. Wills and Mr. Roger Hamel-Smith. Their decision to serve their country in this capacity, at great personal sacrifice, underlines the desire and determination of some who are prepared to put country before self. Besides it puts the lie to the meanderings of some people. I am particularly heartened to see that they have responded to the call which I made in my previous address. My one regret is that Mr. Hamel-Smith will not be taking up his appointment right away. He will be doing so shortly after he has attended to particular matters. I look forward to other suitable persons following in the footsteps of these gentlemen. I see an interesting transformation - taking place in our society before our very eyes, and our country needs the best talent available at this point in time to assist in its future development. A lot needs to be done, and the Judiciary will obviously be required to play a most important part. In the long run it will be to the historical credit of those who have played a part in the move forward.

Before the end of the previous term I held certain discussions with the President of the Law Association. These discussions took place as late as 3rd August. Among the matters that we discussed were the question of adjournments, physical improvements to certain Magistrates' Courts, the recording of evidence in the High Court, the submission of skeletal arguments in the Supreme Court, the recruitment of additional judicial personnel, the procedure in committal proceedings, the establishment of County Courts, and the hours of sitting of the Supreme Court. Of course, these are matters that I had already highlighted in my address at the previous sitting. Nevertheless, I am particularly heartened by the response and interest in these matters by the Law Association acting through its President, more particularly since they had been demonstrated so soon after the passing of the Legal Profession Act and the consequent appointment of the Council of the Law Association. This is a good sign, and I look forward to mutual exchanges of this kind. Some of the matters which we discussed, of course, are already under control, as for example the physical improvement to the

Magistrates' Courts, the establishment of County Courts, judicial personnel, skeletal arguments and recording of evidence.

With regard to the question of skeletal arguments the mechanics would have to be carefully worked out, and therefore if all goes well, it ought to be operational in the Court of Appeal sometime in the new year.

With regard to additional judicial personnel and the question of the recording of evidence, it is a matter of record that the Honourable Attorney General has, in addition, publicly confirmed the Executive's intention to put these matters in place, all things being equal, at the earliest possible opportunity. As a follow-up of this, the Head of the Civil Service held discussions with me on Friday, 2nd October, 1987, with regard to the necessary priorities for recording evidence. The picture looks very encouraging.

The question of adjournments is, of course, a matter within the judicial discretion of the presiding Judge. Consequently, the Chief Justice has no direct control over matters of the kind. I would expect, however, that the Judges of the Supreme Court will continue to exercise that degree of control that is expected of them.

The President of the Association did raise with me, as I said, the question about the sittings of the Supreme Court, and at a later date -- 6th August--did confirm the view of his Council that the sittings of the Civil Courts in Port-of-Spain should be from 9.00 a.m. to 1.30 p.m., with a short break in the mid-morning. This period of sitting is akin to what had obtained prior to the removal of the Port-of-Spain Magistrates' Courts to their existing site at NIPDEC House. I agree with this recommendation in principle. However, I am not too sure whether in the long run it is the best move in terms of the profession as a whole. In the connection, I wonder whether it would not be better in all the circumstances to reschedule the sittings of the Courts in the following way:

- (a) The Court of Appeal-9.30 a.m. to 2.00 p.m., with a short break of up to half an hour in the mid-morning.
- (b) Port-of-Spain, San Fernando and Tobago Civil Courts and Master's Court- 9.30 a.m. to 2.00 pm. With a short break of up to half an hour in the mid morning.
- (c) Criminal Assizes-Port-of-Spain, San Fernando and Tobago-9.00 a.m. to 12.00 noon and 1.00 p.m. to 2.30 p.m.

In making these projections I have borne particularly in mind the plight of those attorneys-at-law who practise in the civil courts of the country, but who themselves have a magisterial court practice. A case in point is the position of the attorney whose practice requires him to attend upon the Magistrates' Court at NIPDEC House. Of course, these are merely my projections. I intend, as usual, to have meaningful discussions with the representatives of the Association as well as with my colleagues, and as soon as we have arrived at a consensus, the new sittings of the Supreme Court will be announced. That there will be new sittings of the Courts, there is no doubt. I eagerly look forward to an early determination of this matter.

The question of the review of the procedure in preliminary enquiries into indictable offences had already been taken up with the previous Attorney General, and will be actively pursued. I look forward to the Association's promised input in this matter.

Before passing on I wish to observe that on previous occasions I have had cause to publicly state that while, following the independence of this country, there have been marked social improvements, little, if anything was done by way of judicial improvements to meet with the changing times. It appeared to me, and I stated it

publicly, that there seemed to have been a stiff upper lip on the part of the powers that be to judicial pleas. I have no doubt that if the reforms which have been called for so often, and which are documented, but which, incidentally, it appears have been ignored in the past, are implemented, more particularly the plea for the recall of retired Judges, there will be a marked improvement in the business of the courts. Why it was seen expedient to do away with the provision in the Constitution for the recall of retired Judges whenever the business of the courts so required, is to me frankly a puzzle. I have never been able to appreciate the reason or the logic for this, and the sooner it is reintroduced the better for all concerned.

As I said earlier, I trust that the discussions which had been initiated between the Law Association and myself will be an ongoing process. For myself, I hope that they cover, among other things, matters such as the listing of cases, injunction applications, floating judges, the Chamber Courts (Civil and Matrimonial), forum shopping, discipline and the role of the profession in general and with particular reference to these matters.

BAIL

Recent events compel me to raise the question of Bail again. In this connection and, more particularly, in view of the reaction of some people to incidents that have recently taken place in this country, it is necessary that I should document certain particular facts. I assumed office as Chief Justice of this country on the 1st January, 1986. Because of my concern about the increase in the spate of crimes, the nature of their commission and my awareness of the strictures of the common law and our Constitution, I took immediate steps to bring the matter to the attention of the Executive Authority with a view to steps being taken to deal with the problem. In this connection, on the 7th February, 1986, I wrote to the former Prime Minister expressing my concern. This is what I told him.

“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.”

A copy of this letter was sent to the then Honourable Attorney General with whom I had also had similar discussions which included the position with regard to professional bailors.

On the 26th February, 1986, the then Honourable Attorney General wrote to me. This is what he said:

“The second topic deals with the early enactment of legislation pertaining to Bail. We have been discussing the same, and I share your anxiety over the present system. As indicated previously the Law Commission has prepared a draft Bill on the matter, a copy of which has already been forwarded to you. As you know, I am unhappy with the draft, not only because it does not address the concerns raised by you in your letter, but also because it does not address the questions of:

- (a) Professional Bailors, and
- (b) Persons who allegedly commit crimes after they have been granted Bail.”

Following our exchange of letters the Attorney General and I were in constant communication. He, like myself, was anxious to have the legislation enacted. The fact of the matter, however, is that the draft Bill was not suitable. Nothing concrete in this connection having been done I took the liberty in my address last year-that is to say twelve months ago-to point out publicly that there is pressing need for the introduction of a new Bail Act. This is what I said:

“The case for the introduction of a new Bail Act and one with teeth is most pressing. 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 took bail for accused persons were themselves defendants and/or convicted prisoners before the courts. Frequent advice to this effect was give 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 crime 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 of reviewing the system with regard to the appointment of Justices of the Peace.”

Meantime the Elections came. Following the Elections I reopened the matter with the present Attorney General. This was on the 20th February, 1987. In that letter I repeated to him all that I had said in the past. For the record this is what I told him among other things:

“When the Law Commission had supplied your predecessor with its draft of the proposed Bail Legislation the latter took the opportunity to refer it to me for my comments. In my reply thereto I expressed the view to your predecessor that the legislation was not suitable and that what was absolutely necessary was legislation with “Teeth”. I enclose copies of the correspondence that passed between us for your information. Indeed, following my letter to him your predecessor contacted me. He expressed his agreement with my view and indicated that he was taking steps to advise the Commission that the proposed legislation was wholly unsuitable and that it should redraft legislation along the lines which I had been advocating, that is to say one with “Teeth”.

You will also find enclosed two Confidential Reports from the Commissioner of Prisons which are very enlightening on the question of Professional Bailors and Justices of the Peace. The appointment of Justices of the Peace is also a case of great concern as you will glean from the Reports and my Address. There is urgent need for a review of the system with regard to such appointments.”

As Head of the Judiciary I did all that was humanly possible to correct the problem. I am happy to record that I have held discussions with the present Attorney General and his appropriate advisers in connection with the matter. I desire to inform the country that by letter dated 6th August, 1987, the Attorney General has informed me that an appropriate Bill has been drafted and that it is hoped that it will be introduced in the next session of Parliament.

THE MAGISTRACY

The Magistracy has not been spared the arrow of some whose love for sensationalism and a tendency to create panic is well known. It was not surprising to me at any rate to read the news that there was a backlog of cases in the Magistracy reportedly amounting to well in the region of the astronomical figure of 2.6 million cases.

The question of the backlog in the Magistracy arose by reason of a question posed in Parliament. Because of the obvious concern that this report created in the country and particularly since the exercise was completed contrary to the Chief Justice's express directives to the Chief Magistrate to the effect that he should be kept abreast of all the steps taken in pursuit of the exercise, I called upon the Chief Magistrate for a report. On the 3rd September, 1987, the latter submitted his report to me. In his letter he reported to me that I had not been called into this exercise as I had earlier requested for the reason that the officer who furnished the information had explained.

“that he was prompted to take this course of action because he was besieged by telephone calls from the Department of the Director of Public Prosecutions”.

It is a matter for regret that the Department of the Director of Public Prosecutions and I am informed certain other parties had taken upon themselves to be so actively engaged in an exercise which was one primarily for the Ministry of Legal Affairs acting through its Permanent Secretary, the Chief Magistrate and the Chief Justice. I desire to say no more.

Let me now relieve the country of its anxiety in this regard. The Chief Magistrate has reported to me that for the period 1980-1986, 530,620 cases were filed and 378,908 cases were determined leaving a balance of 151,712. For the period 1st January to the 31st July, 1987, 52,605 additional cases were filed thereby making a grand total of 209,312 cases. Of this number 75,665 cases were outstanding as at the 31st July, 1987. A breakdown of the figure is as follows:

Indictable	...	...	...	...	10,656
Private complaints	...	...	...	...	9,678
Traffic					
(a)	Tickets	...	...	...	10,090
(b)	Other matters	...	...	...	19,918
Summary Matters	...	...	...	...	8,645
P.C.C.	...	...	...	...	1,949
Inquests	...	...	...	...	2,656
Outstanding	...	...	...	...	12,073

Total					75,665

Note carefully that of this amount more than half of this is comprised of traffic cases and private complaints.

In his report the Chief Magistrate gave the following reasons for this backing of 75,665;

- (1) Non-service of summonses.
- (2) Applications for adjournments by the Prosecution.
- (3) Applications for adjournments by Defence Attorneys
- (4) Applications for adjournments by Litigants to obtain Attorneys.
- (5) Applications by defendants for Legal Aid.
- (6) Public Holidays
- (7) Carnival
- (8) Accused committed on principal offence. Connected charges adjourned, pending determination of the principal charge.
- (9) The accused not sent down from the prisons.
- (10) Police Property Keeper absent and exhibits not available
- (11) Traffic cases adjourned, pending determination of Inquests.
- (12) Police Officers transferred, on long leave or attending other courts in older matters
- (13) Prosecution not ready either because witnesses not served, Police file with the Director of Public Prosecutions or the absence of State Attorney.
- (14) Magistrates on transfer or on vacation
- (15) All accused not before the Court.
- (16) Accused serving a sentence and the police to apply for a Writ of 'habeas corpus'.
- (17) Non-production of statements on inquests by the Police and District Medical Officers

I endorse the view of the Chief Magistrate to the effect that a greater input by the Attorneys and by the Police would go a long way in improving the situation. I also desire to add here that the Magistrates' Courts have not been themselves immune from electrical outages and bomb threats.

THE MEDIA

No one can have any truck with nor question one's freedom to disseminate information. Indeed this freedom is, as we all know, guaranteed by the Constitution of our country. It is, of course, the right and duty of a free press to alert the community on any matter touching upon any fibre in our day to day affairs. Nevertheless, permit me on behalf of the people of the country and in the pursuit of the very democracy upon which our very freedom and existence depend to appeal to those responsible to be cautious in the handling of "bad news". Take for example the bogus figures relating to the Magistracy about which I have just spoken and the use that was made of it in the courts and newspapers in the United States of America. That kind of unfortunate publicity, in my respectful view, does incalculable harm to the image of our country in international circles and can scare away prospective investors from our shores. Not only was the information false but it could only be the machinations of some mis-guided individual. Be wary also of those who come to you with tall tales about "Friendship Clubs" and "Cabals" in the Judiciary. There is no truth in that allegation: That too could only be described as the work of one or other malicious persons whose only object could be to create strife and confusion and to undermine our democratic institutions.

BACKLOG

I think I have said sufficient already and that what I have so said is indicative of my deep concern as well as that of others about this question of backlog and the remedial methods proposed with a view to collaring the problem. It behoves me, notwithstanding, to make some further observations here even at the expense of appearing to be repetitive. But I consider that I must do so all the more having regard to some of the views and opinions that had been recently expressed some of which, in my respectful view, are quite unrealistic to say the least.

The scourge of backlog is neither recent nor is it unique to our shores. In the first place let it, for the records, be known that it did not begin with the present Chief Justice. In fact, I inherited it. Indeed the late Chief Justice, Sir Hugh Wooding, whose regime did not have to contend with the complex legal matters of today himself spoke about the difficulty. But he too was not responsible for it. The fact remains that from his period and until recent times the Judiciary was accorded a low priority by the Executive. The record would reveal that prior to my elevation to the office, the only Chief Justice who had fought assiduously for improvements in the system to meet with the changing times was none other than Sir Isaac Hyatali, T.C. His pleas to the Executive fell on deaf ears. When I assumed office the records – public and private – will reveal that I had taken up from where Sir Isaac left off. With regard to the public record attention is invited to the speech I delivered at the Welcome Ceremony held in my honour on Monday, January 13, 1986, and my address at the opening of the previous Law Term on Friday, October 3, 1986. It should be observed that the former speech was delivered some thirteen days after I assumed office. Coincidentally or significantly the rumblings are of recent vintage. Inaccurate information has been publicly disseminated with the not unnatural result that eyebrows have been raised, comments have been made and proposals put forward. Some of these proposals involved the question of longer working hours for Judges, encroachments on the terms and conditions of Judges with particular reference to Vacation Leave and the establishment of night courts. I must indeed respond to these suggestions and their relevance to this question of Backlog. In doing so and having regard particularly to the fact that I have stated emphatically that Backlog is not unique to Trinidad and Tobago I must perforce look at the International scene in this regard with particular reference to some of the more developed countries.

Take the United Kingdom. The legal system there is more sophisticated and more sensitized than ours. Only recently the question of backlog raised its head there. It was reported in the Times Newspaper of Thursday, 12th March, 1987,

that proposals had been put forward by the Lord Chancellor's Department the day before with a view to cutting costs and delays in the civil court. Included in those proposals were longer working days for judges and the abolition of the long Summer Vacation. There was a response to those proposals. According to the publication the Master of the Rolls, who heads the Court of Appeal's Civil Division, was also reported as saying that although Judges may sit for only five hours in court excluding lunch hour, they are already working long hours in terms of reading and preparation in their rooms and at home. On top of that he is reported to have reminded that many Judges take work home in the evenings and on weekends. He pointed out too that Judges do highly concentrated work when sitting on cases and that it was questionable whether they could absorb more by sitting a longer day. He expressed the view also that there could be difficulties with abolishing the long Summer Vacation. In this connection he expressed the view that if Judges were to be deprived of their holidays in the Summer, the equivalent time would have to be taken out of Term time. I trust that I would be forgiven if I express the view that the Master of the Rolls in England must also have been thinking as well about the Judges of Trinidad and Tobago when he expressed those views. Incidentally, the Supreme Court in England enjoys a Christmas Vacation, Easter Vacation, Whitsun Vacation and the Long Vacation beginning August 1 and ending on September 30 save in the case of the Court of Appeal (Civil Division). In this connection, see 0.64 r. 1 sub r.2 of the Rules of the Supreme Court, 1985.

No country is more highly sophisticated and better equipped to deal with a problem like backlog as the United States of America. As a matter of fact, the Judges of the Supreme Court of the United States of America are assisted in the writing of their judgments by highly qualified legal practitioners. Each one of them has his own clerk. Despite all of this it was reported in the Times Argus of 31st August, 1987, that the Vermont Supreme Court of the United States of America was faced with a huge backlog of cases and that attempts were being made there to renew efforts to cut down on the backlog.

And what about a place like India? It was reported in Bombay Newspapers of August 19, 1987, that Mr. A.S. Inamdar, Commissioner of Police, told the Rotary Club of Bombay the day before that:

“A legal case would take seven to eight years and people do not seem to have enough patience.”

But that is not all. In the Hindustan Times of New Delhi of August 18, 1987, Minister of State for Law, H.R. Bhardwaj, told the Lok Sabha that day during the question hour that according to the information received from the Registrar of the Supreme Court, out of 37,467 regular hearing matters opened on July 1, 1987, sixty-six (66) cases were over fifteen years old and 2,422 were ten to fifteen years old. Among the things the Minister proposed to deal with were the introduction of computer technology, steps to curtail oral argument and an increase in the strength of the judicial personnel. These proposals are among others already called for by Sir Isaac Hyatali, T.C. and myself. The authorities in India and those here appear to be on the same wave length.

There is backlog even in the courts in the West Indies. That apart, I have been informed that with regard to vacation leave, Judges in Jamaica are entitled to thirty-five working days vacation leave per year quite apart from the normal Court Vacation which for Judges of the High Court is six weeks and for Judges of the Court of Appeal is seven weeks. The thirty-five days vacation Leave may be accumulated up to one hundred and five working days.

A similar situation exists in Barbados. There Judges, I am informed, are entitled to forty-two days per year accumulative to one hundred and twenty-six days. The Court Vacation there extends from August to Mid-September.

In Belize the judges there I am informed are entitled to forty-two days vacation leave per year which may be accumulated to one hundred and twenty-six days. Their Court vacation is in the month of August. It is quite plain from these figures that the leave entitlement of the Judges of the Supreme Courts in the West Indies to which I have just referred are far more advantageous than that which is available to Judges of the Supreme Court of Trinidad and Tobago. I do not think that it could be disputed that the work which the Judges of our Supreme Court have to do is just as complex as that which obtains in the jurisdictions to which I have just referred. Most if not all of the Judges of this country work very hard. Time in Court is just the tip of the iceberg for them. They work long hours during the night as well as on weekends. An attempt to whittle down their leave entitlement, or to ask them to sit at night will not only be an encroachment on their terms and conditions of service but will be wholly impracticable and unsatisfactory from all standpoints. The average Civil Servant of this country is entitled to as much as thirty-five working days per year. Is a Judge who performs such highly concentrated work to be accorded less? And what about the University professor here? Does he remain longer hours in the classroom than a Judge does in Court? We must take heed and be careful that in our eagerness to address the problem we do not allow ourselves to be stampeded into a course of action the end result of which can result in "Killing the goose that lays the golden egg". Judges are hard to come by. They are a prized possession. Without them a country sinks! We want Judges whose brains are active. We do not want those whose brains may become fossilized, nor those who, from the rigours of the office, are likely in the pursuit of their work to drop dead.

There is little difference, I am told, in the hours of sittings of our Courts and those elsewhere. In this connection and with particular reference to the Caribbean. I have been advised that in Jamaica the Courts of First Instance there sit from 10.00 a.m. to 1.00 p.m. and from 2.00 p.m. to 4.00 p.m. Their Court of Appeal sits from 9.30 a.m. to 1.00 p.m. In Barbados the Civil and Appellate Courts there sit from 9.30 a.m. to 1.30 p.m. The Criminal Courts sit from 9.00 a.m. to 1.30

p.m. In the Eastern Caribbean States all the Courts there sit from 9.00 a.m. to 12.15 p.m. and from 2.00 p.m. to 4.00 p.m. As a matter of fact when one looks at the hours of sitting in this country which is from 9.30 a.m. to 1.30 p.m. and sometimes beyond for the Civil and Appellate Courts and from 9.00 a.m. to 1.30 p.m. and sometimes beyond for the Criminal Courts with a short break in the mid-morning, in each case they compare favourably with those in these jurisdictions. So in relation to this question of backlog the period of sitting is of little significance. What really needs to be appreciated so far as Trinidad and Tobago is concerned is the well-known fact of the litigious tendency of our people, the progressive increase in the volume of litigation over the years and the indifference of the Executive to the warnings and pleas of those in the corridors of the Judiciary all this time.

I welcome the concern of so many and the express desire of others to assist in the on-coming exercise for addressing the problem. I desire too to make three observations. Firstly, I wish to take this opportunity to thank the former and present Attorneys General on behalf of the Judiciary and the people of Trinidad and Tobago for all the inputs they have made in assisting the Judiciary in the country notwithstanding the country's present financial situation. Secondly, I feel certain that if the remedial measures which Sir Isaac Hyatali, T.C. and I have proposed are put in train this problem will in the course of time be satisfactorily reduced.

Thirdly, I am satisfied that the time has come for the Judiciary to be provided with its own Budget for its day to day operation at all levels and that the administration thereof should be under the superintendence of the Chief Justice. Such a move would, in my view, be consistent with the separation of powers as provided for under the Constitution.

JUSTICE IN TRINIDAD AND TOBAGO

So there we have it. The administration of justice in Trinidad and Tobago is clearly not without its fair share of problems, not the least of which, I admit is the backlog of cases. We must bear in mind, however, as I have sought to show, that countries which are far more advanced and technologically equipped and whose resources are far greater than ours also have similar problems. Indeed, the problem is universal as I have already indicated, I again emphasize that the failure to accord the Judiciary and the administration of justice proper priority throughout the years has largely been responsible for the present situation in which we find ourselves. However, I do not think that we ought to be unduly dismayed by this. What we have to understand and appreciate is, as I have said in the past and again repeat, that we all have an interest and a stake in the administration of justice in this country. The Judiciary cannot do it alone. I believe, however, that if we are all making the necessary commitments and sacrifices (and by this I mean everybody) I am sure there will be considerable improvement in the administration of justice. Indeed any failure on our part to do anything less will seriously imperil the institution and thereby our democracy.

Without public confidence no system of justice can hope to succeed. While, therefore, it is not too late and while we still have time I urge all concerned to ensure that this confidence is not undermined and/or eroded. When we look around there is evidence that the Judiciary has in some countries been emasculated and its independence undermined. We must, therefore, take heart that in spite of its problems and the failure to accord it its proper priority, the Judiciary in this country has jealously guarded and maintained its own independence-in some cases not without incidents. We cannot therefore take this independence for granted.

With the administration of justice operated by an independent Judiciary of unassailable integrity and a courageous and understanding legal profession-itself independent of the Government- we have much to be grateful for. We must,

therefore, go forward to a spirit of unity and commitment to ensure the preservation and maintenance of our system of justice. Without your help we cannot hope to succeed. With it we cannot fail.

Common courtesy compels me to announce that there will be a departure this year from the traditional custom of a party hosted by the Chief Justice. I regret this indeed. But this has been occasioned by the present circumstances in the country.

I now formally declare the opening of the new Law Term. The sitting is adjourned to Tuesday, 5th October, 1987.

ADDENDUM

Since delivering my Address, I have come across an article in the times newspaper dated 3rd October, 1987, on delays in the Court of Appeal in England. The article records that in his annual report Sir John Donaldson, Master of the Rolls in England stated that the only way to solve the problem of backlog in the English Court of Appeal was by way of additional judges and more courts. He is reported to have stated that there was urgent need for more lord justices not only to hear civil and criminal appeals, but to sit in the Queen's Bench Divisional Court, which heard cases raising questions of public law. He was also of the view that there was an equally urgent need to consider restricted rights of appeal. He also pointed out that 954 appeals were outstanding from the previous law term and that comparative figure for the previous years were 953, 943, 974, 924 and 1,100. The overall picture, according to him, was that of a court swimming strongly against an ebb tide, neither reaching the shore nor getting swept out to sea.

