

**ADDRESS OF THE CHIEF JUSTICE, THE HONOURABLE
MR. JUSTICE CLINTON BERNARD, T.C., AT THE OPENING OF THE 1988 –
1989 LAW TERM IN THE HALL OF JUSTICE, KNOX STREET, PORT- OF –
SPAIN, ON MONDAY OCTOBER 3, 1988**

The new Law Term has come upon us at a time when our country is going through a crisis of some magnitude. The responsibility of Bench and Bar has for this reason increased twofold. Those of us who are associated with the legal profession and the administration of justice have more than ever a duty to display a sense of dedication and steadfastness which are necessary prerequisites to the maintenance and preservation of law and order. It is well for those of us in the profession at whatever level or standing to bear this well in mind. A just and orderly society is never built upon a foundation other than one which displays a mix of patriotism, sacrifice, trust and tolerance. As head of the Judiciary, I appeal to all concerned to close ranks and to rally to this call. In this hour of her need, Trinidad and Tobago expects this from all her illustrious sons and daughters.

This is the Judiciary's day. As such, I apprehend that some people expect a lot to be said this morning. If that be the case I am going to disappoint a great many, since I entertain at this point in time no such real desire or intention, and will spare some the agony. Sometimes it is far better to let posterity be the judge, more particularly since, when it comes to pass its judgment, it has in its possession as evidence for this purpose, among other things, the result of a Poll. When once a person has this kind of evidence to support him, one does not have to utter a single word, even if in the heat of the debate, he had been totally misrepresented. Time alone will tell for how long and how far the Nation and those who have to guard it will be able to withstand the menace of the serious and widespread criminal assault upon it. As has been said from time immemorial: "Evil triumphs when good people do nothing". In testimony of this the learned Rabbi Joachim Prinz made this comment in a speech in 1963 at the Lincoln Memorial in Washington: "The most urgent, the most disgraceful, the most shameful and the most tragic problem is silence."

Only recently the new Lord Chancellor of England, Lord Mackay of Clashfern, had cause to consider the question about the right of judges to speak out. He expressed the view that the rules which prohibited judges in England from speaking out in public should be abolished. He said that judges are people who are appointed to dispense justice, and that he believed that they should be allowed to decide for themselves what they should do. Judges, in his view, “should be free to speak to the press or television, subject to being able to do so without in any way prejudicing their performance of their judicial work.” He made it clear that he intended to practise what he preached. See the Commonwealth Law Bulletin – volume 14 No. 1 – January 1988 – Page 472 under the rubric “Judges to be permitted to speak out.” A like observation was made by me in my 1986 Address.

I have said my piece and will say no more except to add that (a) unless sterner measures in relation to the commission of certain crimes are taken, and soon, there is likely to be a complete breakdown of law and order in this society, and (unless it be thought otherwise) that (b) I am, as the Law Reports will show, no stranger to the principles relating to human rights and fundamental freedoms enshrined in the Constitution. It must be appreciated that we are living in dangerous times, and that the criminal element is both sophisticated and determined, and as such, it is no longer to be taken lightly or for granted.

The Judiciary has no truck with Pharisaical behaviour. Nevertheless, today being what it is, it is fitting – indeed it is the acceptable practice – that the Head of the Judiciary on behalf of his colleagues should reflect on the recent past, as well as on the future. I accordingly do so.

It was with a sense of great delight and pride to learn as I did about the award of contracts for the renovation and extension to the San Fernando Supreme Court, the construction of a Judicial complex (High Court and Magistrates’ Court) at

Arima, and a Magistrates' Court at Princes Town. I am happy to learn as well that without fanfare the Chaguanas Magistrates' Courts have been restored and further, that despite financial constraints, the contractors have cleared the site at San Fernando and that work has started there. When this building is completed, it will bring considerable relief to the people of San Fernando, as well as the Judiciary, its supporting staff and the legal profession. I appreciate, of course, the reason why construction of the new building in Arima has had to be postponed, even though a contract has been awarded.

I must, nevertheless, reiterate that the construction of the Judicial complex at Arima is an urgent imperative. There are two very important reasons for this. Even though I had mentioned them before, they need to be restated. The first reason is that the existing building is inadequate, and is in a very poor state. The second and equally important one is that a new High Court in Arima will relieve Port-of-Spain from the burden of having to deal with the many matters that come from the Eastern Counties, as well as relieving litigants, witnesses and jurors, (some of whom come from as far as Toco) from having to come all the way to Port-of-Spain.

I am also pleased to learn that legislation has been drafted to provide for the establishment of a Small Claims Court. I look forward to the day when the legislation for the establishment of a Family Court is tabled in Parliament. In my view, the establishment of such a Court to deal specially with family and other related matters is long overdue.

In my 1986 Address, I had made reference to the practicability of introducing a new system of admission to practise in this Country. In pursuance of this proposal, I held discussions with the Law Association. I am happy to record that following consultation with the Association, which was in agreement with the idea, a Practice Direction was issued by me on October 13, 1987, providing for a grand admission of Attorneys once per year. The first of such admissions took

place on October 30th, 1987, at which forty-seven persons were admitted to practise as Attorneys-at-Law.

In my previous Address I had also raised the question about the introduction of skeleton arguments in the Court of Appeal with a view to speeding up the judicial process there, as well as the amendment to the Constitution to permit retired Judges to be temporarily appointed Puisne Judges to assist with the business of the Court. On December 1, 1987, following consultation with the Law Association, and with the concurrence of the other Judges of the Court of Appeal, a Practice Direction effective from January 1, 1988, was issued by me to permit of a submission of skeleton arguments in civil appeals. With regard to criminal appeals a difficulty has to be got over to permit of skeleton arguments in criminal appeals. As soon as that has been got over, steps will be taken to issue a similar practice Direction for criminal appeals. With regard to the question of the recall of retired Judges, Parliament, by Act No. 2 of 1988, amended the Constitution to permit a retired Judge to be temporarily appointed a Puisne Judge for a fixed period or not more than two years.

Following appointments to the Rules Committee, the latter met with despatch and formulated Rules in the following cases:-

- (a) The Copyright (High Court Special Jurisdiction) Rules.
- (b) The Petty Civil Courts (Amendment) Rules. The main objective of this is to allow for a system of personal service of summonses or writs of execution to co-exist with the existing court procedure of compulsory service by a bailiff.
- (c) The Matrimonial Causes (Amendment) Rules revising and shortening the existing procedure for divorces in undefended cases.

- (d) Amendment to the existing Rules and the law to provide for notes of evidence to be recorded by mechanical or other means.
- (e) Amendment to the existing Order 18 Rule 2 to provide for an automatic extension of time for service of a defence, where a defendant has issued a summons for a stay of proceedings under section 7 of the Arbitration Act.
- (f) The Law Association's proposals for reforms in civil matters as follows:-
 - (i) PRE-TRIAL MATTERS –
Discovery – Order 24;
 - (ii) Interlocutory Matters –
Amendment of Pleadings;
Summons for Directions;
Chambers and Master's Court;
 - (iii) Trial Procedures –
Amendment to Order 25,
Amendment to Order 37.

These Rules will be brought into force in due course.

A word or two must, however, be said about the recording of evidence by mechanical means. It will be appreciated, of course, that a system of the kind is not as simple as it appears. The matter has been referred to the Organisation and Methods Division, which, I am informed, is conducting a feasibility study for the introduction of the system in conjunction with appropriate agencies locally and abroad in order to ensure that when the system is introduced, proper equipment and skilled personnel are in place.

As Chairman of the Rules Committee I cannot allow the occasion to pass without extending to the Members thereof my personal thanks for the assistance which they gave me in the exercise. Their dedication and interest were of the highest order, so much so that within a matter of two months, all the work of the Committee had been completed except for one which raised difficulties of a sort and which is still engaging the Committee's attention.

I have always held the view, like others in the past, that the system of justice will be better served if the Departments of the Supreme Court and of the Magistracy are made a "closed shop". Public Officers who work in these Departments do specialised work and over the years attain particular skills and knowledge of the operations of the Courts. The promotion or transfer of these officers out of the Judiciary to other Departments very often creates problems for the Judiciary as their expertise which had developed over the years is lost to it. I have had discussions on this with the Law Association, and it has indicated its support of the call for a "closed shop". In the event, I have initiated discussions with the Organisation and Methods Division on this matter and I propose to actively pursue the matter with them and the Public Services Association. The idea is not a novel one, for there are examples of the "closed shop" in the Public Service, namely, Immigration and Customs Departments.

Mention may here be made of another matter. It has to do with unsworn statements from the Dock. In Criminal Appeal No. 9 of 1983, Michael Bullock vs. The State, the Court of Appeal made the recommendation for the abolition of the procedure whereby an accused person may make an unsworn statement from the Dock. The Chairman of the Law Commission has since advised that the Commission intended to consider the matter and that he expected that a draft Bill will be forwarded to the Honourable Attorney General for consideration.

In my speech last year I raised the question about the sittings of the Supreme Court and I had suggested for consideration what should be the periods of

sittings. The Law Association had thereafter made recommendations to me on this. Since the occurrence of these events, I received a petition signed by a number of practitioners about the same matter. In the circumstances, I have decided to postpone a decision on this until I have had further discussions with my colleagues, after which a decision will be taken accordingly. Let me say this: While judges have been doing and will continue to do their utmost in attending to matters that come before them, they are human beings, and can only do so much. Judges are not machines. While longer hours may assist in speeding up the business of the Court, they can do much harm in the final analysis. I made the point in my speech last year. Incidentally, for the records, the same question was breached in England except that this time it was put to the new Lord Chancellor Lord Mackay of Clashfern. According to the records he, like Lord Donaldson, the Master of the Rolls, put his foot down on the request for longer working hours for judges. It is reported that he ruled out any extension to a judge's working day. He is also reported to have stated that judges were under quite considerable pressure. A high level of concentration for a long period of time was required by them. Further, he had come across businessmen on "quite considerable remuneration" who were not required to concentrate to that extent. See Commonwealth Law Bulletin – Vol. 14 No. 1 – January 1988 – Page 473. What the Lord Chancellor has said is akin to what I said in my Address last year.

Fresh blood has been injected into the lower and higher Judiciary. With the introduction of this new blood and the consequent filling of judicial officers a better effort was made to speed up the business of the Court. There has been some success in this regard. Better could have been done, I am told, if practitioners and litigants were more prompt in their obligations. This is an area that needs to be addressed by all, if the work of the Courts is to be improved all the more.

The statistics reveal that in the Port-of-Spain Chamber Court 3615 matters were listed and that a record number, to wit, 2302 of them were determined. In the

Masters Court in Port-of-Spain 1631 were listed and that 626 of them were determined. In the Port-of-Spain Matrimonial Chamber Court 2547 were listed and 947 of them were determined. In the Port-of-Spain Motion Court 385 matters were listed and 172 of them were determined. 648 judgments summonses were heard in Port-of-Spain and 303 of them were determined. 991 divorce suits were listed in Port-of-Spain and 938 of them were determined. In the Port-of-Spain Criminal Court 467 matters were listed and 163 of them were determined.

In San Fernando 1410 matters were listed in the Civil Chamber Court and 569 of them were determined. 541 divorce suits were listed and 402 determined. 559 chamber summonses were listed and 225 of them were determined. In the Civil Court there 739 matters were listed and 276 of them were determined. In the Matrimonial Chamber Court 1011 matters were listed and 382 were determined. In the Criminal Court 409 matters were listed and 85 of them determined. In the Master's Court 3372 were listed and 989 of them were determined.

In Tobago 17 matters were listed in the Criminal Court and 12 of them were determined. In the Civil Court 191 were listed and 13 of them were determined. In the Civil Chamber Court 117 were listed and 74 were determined. In the Matrimonial Chamber Court 66 were listed and 36 were determined. 128 suits comprising divorce, motions and judgment summonses were listed and 66 of them were determined.

In the Court of Appeal, 56 criminal matters were listed and 50 of them were determined. 264 civil matters were listed and 79 of them were determined. 15 petty civil matters were listed and 6 of them were determined. 121 motions were listed and 61 of them were determined. 355 private and police magisterial matters were listed and 200 of them were determined.

I desire to say something before passing on. I am acutely aware of the position which obtains in Tobago. At present a judge goes on circuit to Tobago periodically and for a month at any one time. For the time being at least, this period does not seem to be sufficient. In the event, a judge would have to be assigned to Tobago for a longer period if any proper dent could be made in the Civil Court there. I propose to give this matter urgent consideration.

I am satisfied that the work done in the Criminal Court, which is to be commended, would have been far better had it not been for factors beyond the control of the Courts, such as outstanding applications by persons for legal aid, the non-availability of witnesses and the state of affairs in the Director of Public Prosecution's Department.

I would like to add this. With a view to expediting the criminal process one of the measures which, I conceive, could assist in this area is by way of enlargement of the jurisdiction of magistrates to permit them to deal summarily with the offences of robbery and kidnapping. The introduction of such a measure would, in my view, go a long way in all respects. Drugs and robbery are, in my view, intimate bedfellows. They are like Siamese twins. If magistrates are permitted to deal summarily with the offences to which I have just referred, this, with or without the proposed legislation shortening preliminary enquiries, will certainly be a major improvement in the expediting of criminal matters. The position would, in my view, even be better improved if bail is denied in such cases, more especially in the case of a second offender. I throw this suggestion out for consideration by the appropriate authorities. Right thinking people of our country can ill-afford to have our country described, as I said on a previous occasion, as a nation of transients or one that is not serious about nation building. I would respectfully add this: to those persons who hunger after or are inclined to objectivity, I respectfully invite them to read and analyse, if they have not done so before, the underlying motivation and thrust of my address in 1986 and 1987 respectively on this matter.

Compared with the previous term, the record in the Master's Court is not as good. This was due principally to the fact that, except for two months before the end of the Term under review, there was only one Master as the other Master had been elevated to the High Court Bench.

Despite the constraints, all in all, the Judiciary – both at the higher and lower level – has done very well indeed during the previous term and I commend all the Magistrates, Judges and their supporting staff for their dedication and commitment. Records speak for themselves. On behalf of the well-intentioned citizens and on my own behalf I extend to you sincere congratulations. While we are on this, I exhort you to continue to give your country unselfish service. Your rewards will be many. Pay no regard to the sawdust Caesars, the babblers, alarmists and publicity hunters. They will eventually burn themselves out if they have not done so already. Remember that “contempt” is one of man's best armour. Remember also that you have the support and goodwill of your people.

Mr. Justice Alcalde Warner has retired from the Bench. Mr. Justice Sharma has been elevated to the Court of Appeal and Mr. Carlton Best, Mr. Melville Baird, Mrs. Brenda Paray-Durity, Mrs. Christie Morris-Alleyne have been appointed Master of the High Court, Chief Magistrate, Registrar and Marshal of the Supreme Court (Ag.), Deputy Registrar and Marshal (Ag.) respectively.

This morning we attended the usual Church Service at the Trinity Cathedral where prayers were offered for the Judiciary. The Judiciary is grateful to all those who took part in the Ceremony and offered their prayers and blessings. I take the opportunity here also to thank the Dean of the Holy Trinity Cathedral and the various religious organisations for agreeing with my proposal to hold all

annual church services in the future at this venue. These services, it has been agreed, will continue to be ecumenical.

Especially, on behalf of all those who were privileged to hear it, I most warmly thank Reverend Father Calvin Bess for his homily. I ask all dispensers of justice to drink from and bear well in mind his most inspiring message. And to all I say take heed and consolation as well from the message this morning coming from the Police Band in its march past “We can make it if we try just a little harder”.

As we begin the new Law Term, we in the Judiciary do so with hope and renewed vigour. In its responsibility towards the Nation and in the discharge of its onerous functions, it will not flinch despite the flauntings of a few. Rather, we in the Judiciary will continue zealously to play our part in the furtherance of justice to all manner of people – in our homes and in the streets – and as well as in ensuring that peace and brotherhood prevail in our fair land, conscious in the knowledge that we enjoy the unshakeable confidence, support and respect of all right-thinking members of our Community, and above all, first and foremost, the smile of approval of the World’s Greatest And Most Knowledgeable Spectator.

I now formally declare the opening of the new Law Term. The Sitting is adjourned to Tuesday 4th October 1988.