

**TRINIDAD AND TOBAGO SUPREME COURT**  
**OPENING OF LAW TERM 1992-1993**  
**ADDRESS BY CHIEF JUSTICE CLINTON BERNARD, T.C., S.C.**  
**OCTOBER 5, 1992**

The year ahead, I venture to suggest, poses a serious challenge to the Judiciary and by extension to the country. For my part, I do not pretend for a single moment that the task ahead will be an easy one, for if my soundings are correct the challenge will give rise to crises of conscience and character and will obviously demand renewed fortitude and resolve.

The Judiciary has an important role to play during this period and, of course, the years immediately following. If it abdicates this responsibility which destiny has placed upon its shoulders, law and order and social justice would have become for the people of this country things of the past. Of course, the Judiciary cannot do it alone. There must be other players.

Once and for all let us be clear in our minds about this – a Judiciary in any democracy is its cornerstone. Destroy it, undermine it or reduce it to the level of the floor and our democracy will be lost to us for all time. I am sure that all decent and self-respecting people in the society understand and appreciate all this and would not stand idly by and allow any of these negatives to occur. No price is too high or heavy to pay for the preservation of the Institutions which are the guarantors and the bulwarks of our democracy from the corrupted within as well as without. We must at all times bear well in mind that certain people are placed in positions of trust to ensure that truth prevails whatever the cost to their limb or their good name.

What is taking place here today is nothing new or strange. It is taking place all over the world today. What is imperative, however, is that we must face it and stand up to it with courage and resolve.

Given the challenges that lie ahead, those of us who value and respect our native land must not allow the search for truth to become a casualty. Thus, if only as a sense of satisfaction and inspiration we can look back over the last seven years during which I have had the honour and privilege to head the Judiciary of this country. First of all new and more appropriate robes for judges were introduced.

The terms and conditions of serving and retired judges were considerably enhanced with particular reference to their salaries and pensions which have been made exempt from tax (As far as I am aware, this does not occur in any other place. We are indeed the envy of the other Commonwealth countries). The jurisdiction of magistrates has been widened, and as a consequence the dispensation of justice has been speeded up. New courthouses for judges and magistrates have been built or are in the course of construction. Mechanical aids have been introduced and to this end a training scheme for mechanical reporters involving foreign technicians is in progress with a view to full-scale implementation of the system at all levels in due course. Steps are in train, with the approval of the bargaining organizations, to make the Judiciary at all levels a closed shop such as obtains in the Audit, Customs and immigration Departments. If the Institution is to play its proper role, it cannot afford to lose its expertise – this precious commodity – at any level. My discussions with the representatives of the Public Service Association and of the Personnel Department lead me to the inescapable conclusion that they too share a similar sentiment. Magistrates are now required to furnish written reasons in all appeal matters and the filing of skeleton arguments is now a requirement in all civil appeals.

Many other innovations have been made with a view to simplifying and in some cases improving the system. For example, many changes were made to the Rules of Court including the introduction of new ones. The new rules relating to the recording of evidence by mechanical means, discovery, pleadings, summons

for directions and inactive matters are but a few examples. According to my Records, the Rules relating to the last name had been sent to the former Attorney General for issue and should have come on stream a long time ago. I must, therefore, ask the present incumbent to do so with the greatest dispatch as the Rules will assist tremendously in flushing out the system and in giving a clearer picture of the true state of affairs in the Registry. The making of unsworn statements from the Dock by accused persons has been abolished and now a relic of the past. An accused person who now wishes to call evidence must now go into the witness box and do so and will now be subject to cross examination as everybody else. Such persons can now no longer stay in the shelter of the dock and then cast aspersions and imputations on the character of others without let or hindrance as obtained in the past. Abused females can now recall their accounts free from the gaze or glare of the public. Proceedings in undefended divorce suits have been simplified and the atmosphere made less traumatic, formalistic or cumbersome as these are now being attended to primarily by Registrars with minimal input from a Judge later. Next, The Family Court Bill has long since been tabled in parliament and is awaiting its passage and enactment there. Further afield people can now challenge mutual arrangements which they consider unfair if this arrangement is caught by the Unfair Contract Terms Act.

With regard to the proposed Family Court, I express the hope that, as promised, the building at the corner of Knox and St. Vincent Streets which belongs to the Judiciary, but which was used to house a section of the Police Service temporarily, will be returned to the Judiciary soon. It is my understanding that the Police will soon be vacating the building. The Hall of Justice, contrary to some thinking, is bursting at the seams. The building in question will, as I have repeatedly emphasized, be ideal from all standpoints for housing the Family Division of the Supreme Court with all its adjuncts which, in my view, is now a prime necessity.

Family matters today are now so complex and stressful that, in my view, they can no longer be left to lawyers alone. Therefore, I express the wish that as part of the Family Division there be established a family guidance service consisting of appropriate personnel to work with the court, its officers and lawyers in resolving family matters.

I made passing reference to mechanical aids earlier. I wish to speak about the matter in a little more detail at this point.

Ast year I had reported that training in Computer-Aided Transcription (CAT) had begun at the John S. Donaldson Technical Institute and that foreign substitute CAT reporters were covering our courts in the interim.

Since then, a limited pilot project was implemented in the First Criminal Court in Port of Spain whereby transcription of all testimony was done in “real-time” mode enabling the Judge to read it immediately and to scroll back to previous evidence. It further enabled him to mark or highlight any evidence of submission. It is worthy of notice that in this Court the average speed of taking testimony has doubled. Development of the system will continue this year.

What about the case for computerization? This is a system which, if introduced, will automatically go a long way in improving our system of justice, since among other things it would afford the Administration, unlike as obtains at present, to have a full of its stock in trade, to better manage its affairs and to know in an instant the true state of affairs in any area.

I am indeed proud to announce now that contracts have since been awarded for the supply of hardware and software for the computerization of all the Registries of the Supreme Court and for the implementation of these systems.

The training of Supreme Court staff to function in the proposed computerized environment began in earnest in late July of this year.

I pass now to our library facilities and its accomplishments to date.

The Library produced its first published Index to the Judgments of the Supreme Court 1991, based on its computerized Database. Computerization of the judgments prior to 1991 has also commenced. Computers have been acquired for the Libraries at San Fernando and Tobago, thus facilitating access to the Database at the Supreme Court in Port of Spain.

A review of the services that the Library offers to its clientele has been completed. Based on this review, revised charges for photocopies would be introduced, as well as charges for On-line searches and Document Delivery.

Speaking about law reports I am pleased to announce also that arrangements for publication of the local law reports are now well in hand. Facilities and machinery have been put in place and an editor has been found. I expect that the first of such reports should be available some time early in the new year if not before. This event will be a red letter day for the profession and should be hailed by all the members thereof. Without law reports a lawyer is like a tonsorial artist without his scissors or a sartorial artist without his needle and thread.

I mean neither disrespect nor discourtesy to anyone but I would be remiss in my duty if I fail to pay public tribute to the former Councils of the Law Association and in particular Mr. Michael De La Bastide, QC, Mr. Oswald Wilson, Mrs Glenda Morean, Mr. Ralston Nelson, Mr. Sebastien Ventour and Mrs. Denise Gouveia-Perry for their yeoman contribution in the drive to make this event a reality. I

extend my thanks also to the prospective editor, Mr. Justice Alcalde Warner, to whom the entire profession obviously owes a debt of gratitude.

Tobago is all part and parcel of these encomiums. But more than this there is cause for its attorneys and by extension its inhabitants to be so pleased with themselves in this area (as they now appear to be) for over the last seven years the courts now sit there more often than every before. But that is not all; the island has now been provided with an additional magistrate and a permanent Registrar. For my part, the situation in our sister island is such that there is no good reason why Tobago should not be supplied with three permanent magistrates and at least two serving judges one of whom should be on a permanent basis.

Last but by no means least, a Grand Admission of new lawyers has been introduced. The first of such ceremonies took place on 30<sup>th</sup> October, 1987. As a concomitant to all this, in collaboration with the Principal of the Law School and of course the other authorities, an occasion for “Dinners” has since been introduced at the St. Augustine Law School. The first of such events took place in June of this year. I was quite pleased to see so many persons in attendance. These events took place in June of this year. I was quite pleased to see so many persons in attendance. These events are part and parcel of the core of the profession and add dignity and meaning to it and its role in the community. All members of the profession should be encouraged to lend their support to these endeavours.

I could go on and on reminiscing about these and other achievements but, as it is said, a good lawyer knows when he has made his point and as such when to stop. So with this in mind I must move on consoled in the knowledge that the records are there; that they speak for themselves; and that no matter what, they cannot be erased. Nevertheless before I pass on I consider that it would be remiss if I fail to pay and indeed I do so now – public tribute to certain colleagues

in the professions, past councils of the Law Associations, Legislatures and Executives for their contribution and support.

All these things and more could not have been accomplished without them. I owe them a profound debt of gratitude and desire publicly to acknowledge this both on my own and the country's behalf.

And now we must look to the future. What about it? As to this, I myself entertain no fears or misgivings. For my part, I hold the view that in this area one should look in the direction of the Report of the Committee on Delays. I have been furnished with a copy thereof and, as a consequence, have had an insight into the thinking and strategies of the Committee. It is my wish that the powers that be publish the Report. I do not do so for what may be felt are purely selfish motives, that is to say because it has endorsed all that I have said in the past in the way of legal reforms, nay, I do so because it speaks volumes and sets the tone for a great leap in the legal system. I salute its authors for a job well done and in so little time.

Endemic in the people in the local setting is the proclivity to indulge their taste for idle gossip, the unsavoury, outlandish diatribe, and the bizarre. Ever so often some resort to devious conduct, intemperate language and hackneyed rhetoric. Tragically, not infrequently the unsuspecting or gullible are inclined to believe these calumnies and diatribes. These attitudes do nothing to promote the public welfare in the eyes of serious and right thinking people, but rather dull the country's image here and abroad.

I can assure this country that I am well aware of the awesome power of the office of Chief Justice and of the great trust and responsibility that attach to that office in the performance of the duties and responsibilities of the office in sensitive matters. I have never put my feet in the water without consulting the appropriate parties beforehand. There is tangible documentary evidence of this. For

example, appointments to and promotions on the Bench were made only after I had consulted the Law Association beforehand and placed its recommendations later before the Legal and Judicial Service Commission. Indeed, except for one or two isolated cases those who were promoted or elevated were in fact the nominees of the Association itself. Even the Association of Southern Lawyers was kept in the picture. Since I assumed office I had resorted to this practice. Constitutionally I am not required to do this, but I have done so as I consider it the proper thing to do. As far as I am aware, this was never done before, in any event, as a rule of thumb. Is that the conduct of a dictator or a person with a deranged mind?

Even in the area of complaints this has also been my practice. What is the Chief Justice to do if he receives constant and serious complaints from responsible entities some of which are well known to previous Councils of the Association and are documented? Must the Chief Justice sit back with folded arms? No responsible Chief Justice can afford to do so. His concern is to uphold the dignity and integrity of the Institution at all times. Any other stand would be tantamount to a negation of his duties and an abdication of his sacred trust. Alleged acts of misconduct are never countenanced in decent circles even at the lowest level far more at important national levels. In pursuing complaints, therefore, is the person responsible to be regarded as vindictive and wicked?

I confess to a truism about myself in the view of most of my associates – and it is that my greatest strength is also my greatest weakness, namely my trusting nature. Nevertheless, I do not pretend to proclaim my innocence. I leave this for another venue where in the fullness of time it would be and to a far wider audience. In the meantime, I console myself by adopting once more as my own the following profound remarks of Lord Mansfield In R v Wilkes:-

“I will not do that which my conscience tells me is wrong to gain the huzzahs 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”.

Those who know this country fully understand; more than this fully know; and still more fully appreciate what is the motivation – indeed what is the true prognosis behind the recent commentaries upon the legal system. They have nothing at all to do with the system as such. They have their roots and motivation elsewhere. I am well aware that many members of the community including members of the profession are alive to the true state of affairs. For my part, I am too concerned with my goal for further reforms in the system – given our financial and other limitations – than to be bothered or affected by idle cackle, idiotic babble and wholesale and hilarious calumnies and irrelevancies.

Obviously, I cannot achieve the goals by myself. In the event, I urge those conscientious members of the profession to continue to stick with me in the crusade for more legal and by extension more social improvements. I am eeply indebted to you for your unqualified and in stinted support and sense of fair play. Those wo are destined or chosen to keep a society on a proper keel must expect to be the butt of criticism. Sometimes these criticisms and assaults would border on the extreme, especially in a fastidious society such as this. But you must stand firm in spite of this and not renege from the mission for which you were chosen. Heroes are made of stern stuff but cowards die many times before their deaths.

True happiness comes to those who honestly strive for the best. Above all, service and brotherhood – manifested by genuine commitments and honest deeds and not mere empty rhetoric and clichés – are the absolute essentials of a true and serious society. Our community must strive towards these goals. We cannot have it otherwise; for without them a society isdoomed to ultimate failure

and to the graveyard. We, therefore, must not allow pursuit of the truth to fall victim to myopic thinking.

On my return to the country on September 30<sup>th</sup> my attention was drawn to a number of reports in the newspapers. The only one of any substance really was that which purportedly emanated from Mr. Andy Thomas also called Abdullah Omawale. All I have to say at this point in time, however, is that the affair to which the author has adverted was among matters which prompted action under the provisions of the Constitution and all the principal actors are fully aware of this.

The other reports do not merit a response from me for they are as irresponsible as they are malicious. While one recognizes and respects ones right to inform, it is a truism that misreporting is far more dangerous than failure so to do.

I have said certain things in the course of this address. Scandalum Magnatum is not my forte and it would be highly improper of me to do indulge. I have highlighted these areas, however, in an attempt to afford the public an opportunity to see things in their proper perspective and to appreciate the true reasons for these ridiculous and scandalous attacks.

Mine has been the honour to preside over the Judiciary over the last seven years – a period which has been the most reforms and achievements in the legal history of this country. I am proud to know that I played a major part in all this and I thank all those who afforded me the opportunity to do so and assisted me in achieving these many goals. I wish to assure all right thinking persons that I will continue to preside and play my part so long as I consider it worthwhile to do so. I expect these scurrilous attacks and assaults to be made from time to time. But, at the same time, in all this milieu I continue to take comfort from the following words of the famous German philosopher Friedrich Nietzsche: “That which does not kill me make me stronger”.

I desire now to take the opportunity to thank all those who contributed to the success of the day's ceremonies.

I now formally declare the opening of this law term. The sitting is adjourned to tomorrow, October 6<sup>th</sup>.