

ADDRESS OF THE CHIEF JUSTICE THE HONOURABLE
MR. JUSTICE CLINTON BERNARD, T.C. AT THE
OPENING OF THE 1994-1995 LAW TERM
IN THE SUPREME COURT AT THE HALL OF JUSTICE
KNOX STREET, PORT OF SPAIN
ON MONDAY, 3RD OCTOBER, 1994

This is the last occasion on which I will be addressing this distinguished and impressive gathering. And so – **THE TIME HAS COME – FOR ME – TO SAY – GOODBYE!**

In doing so, I look back not with anger, rancour or despair. Rather, I do so with fond memories and, moreso, in grateful thanks to all those persons who gave me this wonderful opportunity to make my contribution to the development of the law and legal system of this beloved country Trinidad and Tobago. I trust that I have not failed you and that I had, if not wholly, then to a large extent, performed the heavy task which you thought fit to place upon my shoulders.

It is essential, I venture to suggest, that we look in retrospect through the looking glass so to speak to see to what extent, if any, I had honoured the confidence reposed in me. In this regard I consider it of the utmost importance that I should start first with the profession and the Bench and let the other matters fall into their respective places thereafter.

A. THE PROFESSION

Before I had succeeded to the office, I had observed certain things that gave some cause of concern. Young attorneys attended court in various forms of dress. Sartorial elegance of a kind which was akin to the sobriety of the Courts was not always the norm for some. In addition, very often they indulged in semantics – both physical and oral – that bordered on the theatrical.

So much so that I distinctly recall that on one occasion a practitioner of long standing actually appeared in the Court of Appeal of which I was a member dressed in a rather gawdy fashion. It seemed to me then that, for whatever reason, this member of the old guard had embarked upon a private course to match strides with some of these new members of the profession.

What was equally disconcerting to me too (and this was expressed openly by both Judges and Magistrates) was the fact that with the heavy influx of admittees to the profession, the relationship between Bench and Bar was becoming somewhat blurred.

When I succeeded to the office, I was determined to correct this. In the event, I engaged the Law School in long discussions on the subject immediately after my accession and for sometime thereafter. As a result of all this, the following emerged:-

- (i) A Practice Direction on the mode of dress in Court was issued by me.

- (ii) A general admission of new attorneys, similar to what obtained in the Inns of Court in England, was instituted. In consultation with the Principal of the Law School – Mr. Austin Davis – I decided that these admissions should take place towards the end of the first month of the beginning of the new Law Term, namely October. The scheme has worked very well indeed and has met with general approval. The thrust behind it was four-fold:-
 - (a) It was intended as a medium for the newly initiated at the outset of their voyage into the profession to have first-hand exposure to the importance and sobriety of the Institution to which they now belonged.

- (b) An exposure to the shock of the atmosphere that prevails in court.
 - (c) The absolute necessity for proper mode of attire and, of course, conduct in Court at all times.
 - (d) An opportunity for the new attorneys to interact with practitioners, magistrates and judges following their admission to the profession.
- (iii) Again, after discussion with Mr. Davis, we cemented all of this by introducing an annual Law School Week in which, and an Annual Dinner at which Law Students, practitioners, Magistrates and Judges would attend and participate therein.

Those innovations have been a resounding success and have enhanced the image of the profession all – round. Oh how since then I inwardly admire so many for their attire, conduct and performance in Court! The future of the profession is in capable hands! I will most certainly miss many of you and your faces. I can assure you that my memories of you would be pleasant and lasting ones. I will most certainly remember that melodious voice of Mrs. Denise Gouveia-Perry who added such lustre to the very moving church service this morning.

B. **THE MAGISTRATES**

For my part when I acceded to the office, I considered that the office of Magistrate left much to be desired. In my view, they were not accorded the recognition which they deserved and to which they were justly entitled – notably in terms of accommodation, personnel and conditions of service. In this connection, I was acutely aware of the numerous efforts and appeals of one of my predecessors namely, Sir Isaac Hyatali, for their betterment. I was determined to take up his cudgel and to carry on from where he left off. I confess

too that in this regard I was met with sympathy, understanding and support from all relevant bodies.

To my mind, what seemed over the years to have escaped the attention of – if not lost to so many of us, including practitioners – was the importance of the office of Magistrate. To me they seemed, with the passage of time, to have become in the minds of some a forgotten breed. Like Sir Isaac, I too did not share that view. After all, like him I opined that in terms of the legal system in Trinidad and Tobago they, being first and foremost the ones who dispensed justice for the majority of litigants, deserved all that was requisite within proper and acceptable limits and to be shown regard and respect for their position.

In the event, I pursued a course of action over the years which has resulted in a number of achievements or proposed undertakings.

I will record the achievements here and now. These which I can remember at hand are as follows:-

- (i) The headquarters of the Magistracy, which was in Port of Spain and as such was a total disgrace to the image of the Judiciary over the years, was transferred to NIPDEC House which formerly housed the judges and civil side of the High Court. The change-over has since allowed for more magisterial personnel there.
- (ii) Renovations were done to the Chaguanas Magistrates' Court to allow for the smoother operation of justice there and also to allow for two magistrates to preside thereat.
- (iii) A new building was constructed in Princes Town and two magistrates as opposed to one, which hitherto was the case, now preside there.

- (iv) A new building was constructed in the Chaguaramas area to deal with matters at magisterial and/or other levels.
- (v) Tenders were invited and an award was made for the construction of a judicial complex (and I desire to emphasise this once again) in Arima to house both a High Court and Magistrates' Courts there under the design, finance and construct plan with the company called FINCOR.
- (vi) Tenders were invited for the construction of Magistrates' Courts in San Juan, Tunapuna and St. James.
- (vii) The terms and conditions of magistrates have been duly enhanced and there has been a marked increase in personnel.
- (viii) Their jurisdiction has been widened considerably. In addition, their hours of sitting were regulated and they were required to provide written reasons for all decisions appealed against.

Given the significance of their office, their enlarged jurisdiction now and to come and their obvious importance to the legal system here and the community at large, I have been assured by the Executive that sympathetic consideration would be given to my pleas for the further enhancement of the office of magistrate. Speaking for myself this is long overdue.

Incidentally, as I have pointed out so often to the powers that be, it is essential and I again repeat and emphasise that from all standpoints including the growth in jurisdiction and personnel of the Port of Spain Magistracy, the top floor of NIPDEC House should be handed over to the Magistracy. Accommodation for the magistrates and more courts there, are, I am told, becoming rather pressing. What is giving rise to increased concern is the fact that additional personnel will be provided and some are due to take office there soon. The need for extra

space there is imperative. Hence, my call for the use of the top floor of the building which, I am told, could be put to better use than that which now obtains. I trust that the authorities would oblige.

C. THE JUDGES

Up to the time that I assumed office as Chief Justice, it was extremely difficult – if not impossible – to differentiate between the robed attorney on the one hand and the robed Judge on the other, unless, of course, one knew the parties, or the judge was actually presiding in Court. In the event, I struck upon an idea, after which the new robe with the national colours was introduced.

There were other matters, which obtained in relation to the Judges and which to my mind constituted an affront to the office. I set out to find a solution for these indignities as well.

First of all different levels of public officers were allowed to use the Priority Bus route but not the Judge. I was told that as Chief Justice I was entitled to do so and was offered a Pass for this purpose. I refused the offer and insisted that as a matter of principle I would accept only if this simple courtesy was extended to all the Judges and Masters. The Administration eventually honoured my stand.

I took a similar stand with the Diplomatic passport. I refused to use it unless and until the other Judges were similarly treated. To my mind, this was (and I said so) a facility which, for obvious reasons and which need not be reiterated here, should have been extended to all Judges from the outset. Again, the Administration fully appreciated the logic of this reasoning and obliged.

And then there was the case of the use of the V.I.P. Room at Piarco. I maintained my stand here as well. Needless to say, the Administration yet again conceded.

Finally, I must refer to what I consider was my best shot for the Judges of this country. Hitherto, the remuneration and pension of Judges were not such as to attract willing and suitable persons to the Bench. Only the more committed came forward. Something had to be done to attract more suitable people. So I conceived the idea of tax-free salaries and pensions for Judges. I also took the view that, in relation to the latter, it should apply both to serving and retired Judges.

The plan needed to be supported. In the result, I discussed the matter with the then President of the Law Association, Mr. M. De La Bastide, Q.C., and his fellow officers as well as certain representatives of the Trinidad and Tobago Chamber of Commerce. Both parties fully supported the proposal and later followed up the talks with written support for it.

Armed with this kind of support, I later appeared before the Salaries Review Commission appointed under the Constitution. The long and short of all this was that the proposal was accepted by the Commission and later implemented.

In addition to all of these increased benefits, there is also the added perquisite of judicial contact. We the judges have never had it so good! Incidentally, I do not know how true it is, but I understand that the authorities are interested in this matter and are expected to look into it.

By the way Mr. Attorney General allow me to bring a matter to your attention. It is concerned with the use of these premises by certain parties. I had allowed these parties to occupy a part of the building in 1986 temporarily and in one

particular case, for only one year. Nine years have passed and the position remains the same.

Mr. Attorney General I have neither the spiritual power to indulge a taste for nor indeed the authority to resort in real terms to the parable of the loaves and the fishes. Neither do I harbour any pretensions to indulge in “Cromwellian” methods. But the fact of the matter is that accommodation in the Hall of Justice is now at a premium. The situation is now very acute. At present two Judges have been forced to share Chambers. A situation of this sort is unacceptable from every standpoint. Provision for additional Judges is anticipated. I fear that the Judges and I will inevitably be forced to resort, unfortunately, to some rather unorthodox methods to secure our Chambers. I must, therefore, perforce plead with you to secure other accommodation for the Integrity Commission and the Tax Appeal Board as a matter of urgency. The fact of the matter is that there is just no more room at the Inn.

Three new persons have been appointed to the High Court Bench. They are Mr. Justice Carlyle Bharath, Mr. Justice Stanley John and Mr. Justice Herbert Volney. Justice Bharath, in particular, has come to the Bench with wide experience in private practice behind him. I congratulate them all and wish them all success. We have a fine bunch of Judges here and I confidently expect these new ones to add to the lot.

Having said this, would it surprise the country to know that while some people have been continually going about the place belly-aching about the quality of our Judges here and elsewhere in the Caribbean, our judgments are cited or used abroad? If my memory serves me right, it was done in Australia where a judgment of Sharma J. (as he then was) was cited in the Court there. Another recent example is the case of *Burroughs and The Attorney General of Trinidad and Tobago v. Katwaroo* – a decision of this Court of Appeal (40 W.I.R. 287) – which has been cited with authority in the modern book on Judicial

Review by Supperstone and Goodie and in which some of the leading lights in England on Administrative Law, namely, ***Justice Laws, Beloff, Elias, Professor Drewry and Sir Louis Blom-Cooper, among others*** have had an input? Isn't it about time that we rid ourselves of this negativity about the quality of our Courts? No man can lay claim into infallibility. Even today in England the views of the great thinkers of the era – Lord Denning and Lord Diplock – have been reviewed by their successors. But this has not in any way resulted in loss of respect for their juristic excellence. In fact, they are still regarded as the great jurists of the modern era! That is how the law develops! The lesson, of course, is obvious. Societal development being what it is, juristic technology can never indulge a taste for or for that matter lay claim to omniscience or infallibility.

**D. CASE LAW PRONOUNCEMENTS, LEGISLATION
AND EXECUTIVE ACTION**

Arising out of judgments which I had given and speeches which I had delivered from time to time over the years, among other things, a number of reforms were enacted by Parliament and various forms of Executive action were either put in place or are in the pipeline.

For the record, I would make passing reference to some of them here. The Unfair Contract Terms Act was passed (***Quammie v. Trinity Motors***). The Family Court Bill and The Small Claims Court Bill were tabled. The Sexual Offences Act was amended to provide for trials involving sexual assaults of females to be conducted in private. The defence of diminished responsibility was introduced as well as the defence of oral provocation. The right of an accused person to remain in the safety of the dock from whence he could make all sorts of allegations against the victims of crime and their witnesses, some of which were more often than not abominable and revolting, was abolished. (***Bullock v. The State, and Jagessar v. The State***). Recalling the event, the purists, bleeding hearts and human-rights activists had a field day with me. They came out from

the woodwork and lambasted me in all forms and fashion, both in the print and electronic media as well as elsewhere. They did the same thing when I raised the question about the unfortunate luxury afforded to citizens by s.14 of the Constitution and bail, the effect and consequences of which the country is reeling under today. However, these are matters which have engaged or are engaging the attention of others elsewhere. So I must pass on and return to the topic and to add that despite the hue and cry the Government of the day stuck to its guns and passed the law. No doubt, the Government by its action must have fully endorsed the view which I expressed In **Henry v. The State** that “justice is not only for an accused person; it is also for the innocent victims of crime”. I would add also that even after the legislation was enacted the doubting Thomases and disgruntled were still around. They held their peace only after the Privy Council endorsed the stand. Regrettably, such persons and bodies were echoing the unfortunate sentiment that nothing tangible, lasting or concrete could come out of this country, unless it receives its blessing from abroad. How tragic!

To pass on: **L.J. Williams v. Smith and The Attorney General** opened the gate for constitutional redress to be sought for alleged breaches of fundamental rights by executive action. **Jack v. Jack** paved the way for premarital cohabitation to be taken into account for ancillary relief following a subsequent marriage that had broken down irretrievably and had ended later in dissolution thereof.

Renovations were done on the Chaguanas Magistrates’ Court and a new one was constructed at Princes Town. The San Fernando Supreme Court was refurbished and extension thereto added. These finished products were befitting and symbolical of the majesty of the law and also allowed for more Magistrates and Judges to preside there.

The provision of these additional amenities, including the move to NIPDEC House, was the shot in the arm for the provision and appointment of additional judicial personnel to meet with the increased burden of litigation. More

Magistrates were appointed and, if one is to act on the declarations of those in authority on the Executive side, still more are to come. Meantime, the jurisdiction of Magistrates was widened to permit them to determine summarily offences which hitherto were within the domain of the High Court, e.g. robberies, kidnapping, etc., and special courts in Port-of-Spain, Chaguanas and San Fernando were assigned to hear and determine offences involving firearms and narcotics. The Constitution was amended to provide for the recall of retired Judges and a number of them has since been appointed to assist with the increasing work-load. Again, if one is to act on the pronouncement of those in authority on the Executive side, among other things, a Criminal Appeal Division of the Court of Appeal would be established which will comprise additional Appellate Judges to meet the challenge posed by the decision of the Privy Council in ***Pratt and Morgan v. The Queen***. But the matter does not end there. Skeletal arguments were introduced for civil appeals. Legislation was passed for the recording of evidence by mechanical means and the Registries in Port of Spain and San Fernando have been fully computerised. The Tobago Registry can access the one in Port of Spain. The Supreme Court Library has been furnished with an extensive legal database. (I will develop upon these latter matters and the full implication of them a little later). The judges have now been supplied with their own personal computers to facilitate them in the performance of their duties. The Workmen's Compensation Act was amended and the jurisdiction was transferred to the Master. So too with the uncontested divorces. The jurisdiction was transferred to the Registrars. The Judge now plays a minor part therein. These latter innovations were introduced so as to free up the Judge and to allow him more time to deal with more intricate matters.

In 1989 or thereabout, a committee of the Chamber of Commerce met with me and in the discussions which ensued they raised with me, among other things, the procedure relating to identification parades. Agreement was reached that the system tended to frighten or discourage most victims and witnesses. They recommended the implementation of the one way mirror procedure which

obtained in the United States of America. I promised that I would pursue the matter. This I did later with the then Attorney General. A lot of water has flowed below the bridge since then. However, I am happy to announce that Rules for the use of the one-way mirror have since been considered and approved by the Judges engaged in the Criminal Courts, the Justices of Appeal and myself. These Rules have since been brought into force. My understanding is that the system would be brought into operation in stages beginning with Port-of-Spain and I think, San Fernando.

There is also a proposal for additional magistrates which would include a third one for Tobago. This is an imperative. As I have said before (and again would wish to repeat), Tobago has special needs which call for urgent attention, and more particularly so since litigation in the island at both Magisterial and Supreme Court level has increased considerably. The two Magistrates' Courts which are now housed in the Hall of Justice there should be relocated to another place. This would allow for sittings of a Criminal, Civil and Master's Court, as well as the Appellate Court, at all material times. Tobago will then be fully operational.

In all this euphoria there are, I apprehend, some regrets about which I must record my profound disappointment. First of all, to me it is a matter for regret that the proposed legislation to permit the Police the right to detain persons suspected of involvement in crime for a particular period and to interrogate them during this time freely, was merely published and left pending. After all, is there not legislation in England which permits of this? I think so. Unless the Magistrates Court Act 1952 has since been repealed, that seems to be the case there.

Next, it is also a matter for regret, in my view, that the proposed legislation relating to the defence of alibi which would require an accused person, who desires to raise it at his trial, to do so by notice to the prosecution well in advance together with full particulars thereof, is still in abeyance. Does not a law of the

kind exist in England? I think so. Such a course is commendable and deserves to be implemented.

Obviously, there is need to insist at all times upon adherence to the principle of the presumption of innocence. Nevertheless, in this day and age and having regard to all the circumstances this vital question must inevitably be postulated. Has not the time arrived when, as in some countries, the acknowledged rights of a criminal suspect should be balanced off to meet the equal rights of the decent and upright people of the society? I could only pose this question which I am certain is shared by all right-thinking members of the community. The rest is for the Legislature.

I see that the paper committals procedure which I had advocated is in the pipeline. Commendable as it may be, I must perforce again sound the warning that the success of this venture could only be achieved by an appropriate increase in judicial personnel, support staff and other variables at the Supreme Court level; otherwise a terrible and unmanageable bottleneck would come about at this end.

My biggest regret has been the failure on the part of the Administration to proceed with the construction of the Judicial Complex at Arima following the award of the contract for its construction under the design, finance and construct facility provided by FINCOR. Central to the proper and efficient administration of justice is that building. It is unnecessary to rehash the case which I had made out for it, except to warn that if it is built, as indeed it should, it must house only the Judiciary and offices concerned with the administration of justice. I am delighted to learn, however, that the present Administration is intent on seeing the project through to its completion.

Now, I think it is well that we all should note this. The introduction of the sentencing tariff in England has its genesis from the abolition of the death penalty

there and the substitution thereof of life imprisonment. See the Criminal Justice Act 1991, Doody's Case and the Article entitled "Fixed Principles" in the London Times – Wednesday – 25th May, 1994. In effect, legislative authority has been given to the Courts there to resort to a tariff, if and whenever a term of life imprisonment is the penalty for an offence.

The Act of 1991 which was discussed in Doody's Case (cited and discussed as well in ***Guerra and Wallen v. The Attorney General and Others***) seems to be an endorsement of the disclosures and thinking in Farfan's Case. If I am right in this view, then there seems to be need for similar legislation here, if judges are minded to resort to a tariff in like circumstances. There will also be need for a validating provision in the legislation as well.

I may mention here that in consultation with Judges and others actively involved in the criminal justice system, I propose to have drawn up and issued at appropriate times, and displayed in conspicuous places at authorised venues, a booklet for the guidance of jurors as soon as possible. I will also be raising for discussion with them the implementation of "plea bargain".

I now wish here to commend Mr. Gurley and the other members of his Committee for their objectivity and application and in the end for endorsing by way of their recommendations all that I had espoused and called for over my many years as Chief Justice of this country both in respect of the many matters I have adverted to here and what were proposed, initiated or implemented by the Rules Committee of which I was Chairman since 1985 and to whose performance I shall also advert in a moment.

While we are on this, may I be permitted here to say this and it is that I entertain the view that inherent in any proper system of law is the sanctioned punishment for violation of the law; and that unless the law is repealed or modified, the law should be enforced. That is the lesson of the Good Book. Any other approach

negates the very object for which the law was enacted in the first place and leads to disharmony, confusion, disrespect for law and order and the undermining and erosion of public confidence in the judicial system itself ultimately. A society that fails to heed this is courting unnecessary trouble and disaster for itself in the end.

E. "CAT" REPORTING IN TRINIDAD AND TOBAGO

This year marked the first year in which Reporters, locally trained in Computer Aided Transcription (CAT), worked in the Courts of Trinidad and Tobago. Five Trinidad and Tobago reporters, who were trained at the John Donaldson Technical Institute under a contract between the Government of Trinidad and Tobago and Educorp international Inc., took part in an apprenticeship programme where they joined three of their foreign trained colleagues in performing reporting services for the Court of Appeal and the Port of Spain and Tobago Criminal Courts as well as in the Civil Courts in matters of national importance of other weighty matters.

In two of the Criminal Courts real time facilities were provided where the Judge was able to have instantaneous transcription of all evidence on a computer screen in front of him, and the ability to mark and review text, thus totally eradicating the need for the taking of long-hand notes. One court's work output was doubled due to this facility.

In the two divisions of the Court of Appeal and in civil matters in the High Court, arguments were taken by 'CAT' reporters and transcribed immediately, so that transcripts of proceedings were available for the Judges the following morning. This allowed matters of national importance to proceed with dispatch from the High Court to the Court of Appeal and then on to the Privy Council.

A new intake of students began their course of study in Computer Aided Transcription at the John Donaldson Technical Institute in January of this year.

Those who do not come up to an acceptable standard would inevitably be left out. But such is the price of progress. Places would have to be found for them elsewhere. To do otherwise, would result in a calamity of unimaginable proportions, and irreparable harm would be the end result.

F. COMPUTERIZATION

The Supreme Court computerization project saw the installation of a mini computer in the San Fernando Supreme Court and access to the Port of Spain system for Tobago. Each Judge was supplied with a notebook computer and trained in its use. Judges' secretaries were supplied with personal computers and given access to the system.

Members of staff were trained in the use of the system and three members of staff were selected to be trained in the performance of systems administration and systems operation duties. Their training has been intensive and ongoing and, to date, very successful.

A computer imaging system has also been installed for the imaging of correspondence and court documents. The staff has been trained in this system and imaging of live data begins with the opening of this Law Term. This will afford greater security of court documents and speedier processing of Office Copies. The loss or pilfering of court documents will be eliminated or minimized.

G. THE SUPREME COURT LAW LIBRARY – LEGAL DATABASE AND INFORMATION SYSTEM

The Supreme Court Legal Database/Information System was established in 1991. Its mission is to enhance the development of the Administration of Justice through the provision of a relevant, up-to-date information service to the Legal Community.

Objectives

The primary objectives of the Supreme Court Legal Database are to manage and disseminate legal Information to the Judiciary and the Legal Profession.

The creation of the database would enhance the development of the Administration of Justice by:

- (a) providing a greater availability of legal information;
- (b) promoting the sharing of resources while avoiding the possibility of duplication;
- (c) increasing access to and fostering the exchange of Legal Information;
- (d) the production of Case Law Indices; Digests; Law Reports; Indices to Statutes' and Legal Bibliography.

Legal Database: SOFTWARE: CDS/ISIS

The design of the database was perfected by the Librarians of the Supreme Court. The database utilizes the software package, CDS/ISIS developed by ILO and distributed by UNESCO for use in Libraries. ISIS is an Information Storage and Retrieval system designed for the computerized management of structured non-numerical databases.

Listed hereunder are the existing databases within the Supreme Court Legal Database/Information System:

- (a) **TTCASE** - a database of abstracts and head notes of the decisions of the Supreme Court of Trinidad and Tobago. The database created in 1991 contains both current and retrospective decisions of the Supreme Court of Trinidad and Tobago and facilitates the retrieval of case law by subject, judges, suit number, and parties to the action

- (b) **TTLEX** - a database of Trinidad and Tobago Legal Material. It contains reports/speeches/conference papers/research papers/journals/articles, etc. indexed and abstracted. The database facilitates retrieval through subject and several other access points

- (c) **SERLEX** - a database of Indices/ Abstracts of Commonwealth Caribbean Legal Material and material from international law journals that pertain to the Commonwealth Caribbean.

- (d) **TTLEG** - for the period 1993-1994 the library has begun preliminary steps in the design of a database of Statute Law of Trinidad and Tobago. The objective is to develop a database which shows relationships between statutes and facilitates easy retrieval and updating of the law.

The Law Library of the Supreme Court published its first Annual Subject Index with head notes to the **Judgments of the Supreme Court in 1991.**

The 1992 Index has been expanded to include the decision of the **Judicial Committee of the Privy Council** of actions on appeal from the Court of Appeal of Trinidad and Tobago. The Library also publishes a **Monthly Subject Listing with headnotes of judgments of the Supreme Court.**

A major area earmarked for improvement is the automation of the total library operation from the actual receipt of the documents to the point at which it is available for loan. This introduction of an integrated library system will minimize the build-up of back-log of documents for processing. This system will ensure that the items are immediately available to users.

If the full library operation is to be automated, there is need for the upgrading of the existing hardware to accommodate the increased output.

Funds have been made available in 1994 for the establishment of a Local Area Network. Phase one which entails cabling, has been completed.

The network system would provide on-line access to the Law Library's databases to the Judiciary, in the first instance, and eventually to the wider legal fraternity.

Funds would be sought again in 1995 Budget for the provision of additional computers required.

H. THE RULES COMMITTEE

As Chairman of the Rules Committee over the last nine years I can publicly vouch for the voluminous amount of work that was done by it over the first seven of these years. During the period the President of the Law association was then tr. M. De La Bastide Q.C. and later Mrs. G. Morean. Their respective bodies, through them, fed the Committee constantly with a host of ideas. My Committee welcomed their cooperation. Together, we worked hand in hand over the years. As a result, the existing Rules of Court were improved upon considerably and new Rules were enacted to conform with the realities of the day to day business of the Court. A few examples will suffice to substantiate the point. The Matrimonial Causes Rules, The Petty Civil Courts (Amendment) Rules, The Copyright (High Court Special Jurisdiction) Rules, and the Rules relating to

Inactive Matters were all drawn up by the Committee and steps were taken later to have these put into place.

The Committee also drew up Rules covering the following:

- (i) Amendment to pleadings by consent.
- (ii) The effective date of a default judgment.
- (iii) Substituted service under the Petty Civil Courts Act.
- (iv) Increased fees
- (v) Automatic extension of time for service of a defence where a defendant has issued a summons for a stay of proceedings under S.7 of the Arbitration Act.
- (vi) Filing of pleadings.
- (vii) Service of an originating document.
- (viii) Affidavit of Service
- (ix) Assessment of evidence by the Registrar in uncontested divorce proceedings.
- (x) Amendment to O.25 and O.37.
- (xi) Discovery.

I would like to take this opportunity to thank the members of the Rules Committee, Mr. De La Bastide, Mrs. Morean and their respective bodies for the willing cooperation and help which they afforded me all during those long years. I will forever treasure this experience. I must, however, end with a sad note here. It is a matter for regret that the present Association, which has been in office over the last two or more years has, for whatever reason, not seen the need to put forward a single new idea for consideration by the Committee.

Albeit, there is still some more work for the Rules Committee to do. I intend shortly to put before it material for the introduction of the 'mediation process' in civil suits, using as a working guide models from the U..S.A. and elsewhere.

I. THE INSTITUTION AND ITS WELFARE

Those who hold the reins of leadership of an institution like this, are expected to supervise it with firmness and conviction, for it is the bulwark of any democracy. In the event, the Institution is a place for dedicated and hardworking thinkers – not hangers-on, misfits or friends. It is indeed not an easy job for that leader who insists on adherence to these basic tenets.

Like some of my predecessors, I likewise have not been spared the horror of vicious tongues and pens. Of detractors I have had my share but, as is well known, stones are never thrown at barren trees and, moreover, few are those who welcome the success of another without envy or bitterness.

I have alluded to detractors. Take, for example, one such who was at one time a junior member of this august Institution. That person has allowed the Institution to be lambasted with impunity in another place. Little does that individual realise the untold damage that is being done to our democracy by such antics. This practice has, no doubt, been engendered by what, I am told, have been verbal and outward complaints that the individual was bypassed for higher office by the Judicial and Legal Service Commission through the instrumentality of its chairman on a ground which could only be described as despicable in the extreme and which I would not sully my tongue to repeat. My understanding also is that so badly, she claimed, was she treated that she was happy to leave this Institution.

That claim of mistreatment is both false and mischievous. Quite apart from the fact that the physical evidence is indeed a total disclaimer to the allegation, the truth is that that person had an unenviable record here. That person was well aware of the many complaints that were lodged against her by successive officers of the Law Association over the years. There was also, to the knowledge

of the officer, a written complaint from a member of the citizenry and which, to the officer's knowledge, also aroused great concern with the Commission. But the matter does not end there. Let me read into the Record what the Clerk of Appeals reported following the officer's resignation and departure to another place. The report is as follows:-

"I am to advise that at the time of the departure of Master X from the Judiciary in 1991, according to the records of the Department, outstanding appeals which are credited to her are as reflected in the attached statement.

"The total number of these outstanding appeals is eighty-one (81). A breakdown of these outstanding appeals is as follows:-

- (1) No Reasons have been furnished in 80 of them;
- (2) No Notes of Evidence have been provided in 80 of them.

"Many requests have been made orally and in writing, from time to time, by litigants and Attorneys, for these documents.

"Submitted herewith is a copy of the said statement for the information of your Lordship."

Obviously, there is no necessity to include the list in this Address but the Record is there and is available for scrutiny.

You see my friends, facts are stubborn things, but they do not lie! Which responsible body would take upon itself to promote an officer with such a patently abysmal record? The Court of Appeal would have to resolve the problem left behind by the officer in due course.

On another matter, there is still some unfinished business which, I trust, will not be left hanging in the air. Others more competent and knowledgeable than me have had their say. Indeed, one entity and an individual or two went overboard and resorted to clichés without being fully briefed. But as we all know, fools rush in where angels fear to tread. In this kingdom of Topsy and Turvydom right is wrong and wrong is right. The good name of illustrious people has been sullied and their reputation dragged in the mud. In these circumstances, should the matter be left to drift out to sea or swept below the carpet? Had I the power, I knew the course I would have adopted. In any event, we have gone some distance and, in the result, I harbour the view that the public has a right to know the full story. An open public commission of enquiry under the Commission of Enquiry Act would, in my view, at least fit the bill. There are no riches like a good name, and, in my humble view, every means should be afforded to let the citizenry be the final judge.

Those who know me well are aware of the fact that malice is not a word in my vocabulary, nor does it play any part in my operations. They are also acutely cognisant of the fact that in my work I do what I conceive it to be my duty to do. I concede that this is not a trait which is, as a rule, welcome in this land of Topsy and Turvydom. Nevertheless, in all this I console myself from time to time by recalling the following words of the renowned writer Rudyard Kipling:-

“If you can wait and not be tired of waiting,
Or being lied about don't deal in lies,
Or being hated don't give way to hating
.....
If neither foes nor loving friends can hurt you
.....
Yours is the Earth and everything that's in it
And which is more – you'll be a Man – my son”!

And also, I sometimes resort to more contemporary times and here I would recall the following parting remarks of one of America's distinguished presidents, namely, the late Mr. Richard Nixon, notwithstanding the circumstances under which he demitted office:-

“Always remember, others may hate you.
But those who hate you do not win,
Unless you hate them.
And then you destroy yourself.”

I would end this chapter by merely musing, asking or adding for the benefit or interest of the many committed and honest people of this country whether it is not about time that we should revert to the time-honoured principle of our forefathers that – “Above All We Must Practice Honesty and Pay The Price Regardless”.

Part of what is wrong with our society today is that so few of us are prepared to accept responsibility. Our society, in my respectful view, has become one of excuses and is pervaded by lack of responsibility. A society that is built on such foundation may yet survive, it is true. But one thing is certain. It will continue to be immature and retrogressive and could neither be admired nor be respected.

J. THE JUSTICE SYSTEM AND THE SILENT REVOLUTION

This country is a Republic with a written Constitution in which the functions of the various bodies are clearly demarked and in which also the affairs of certain entities mentioned therein cannot be called in question except in certain circumstances - ***See Thomas v A.G.; Jones v Solomon; Harrikissoon v A.G.*** These parameters, it seems to me, are becoming somewhat blurred by resorting to a system where there is no written constitution and defined demarcations and limitations upon the power of the Courts. Rules of Court which provide for judicial review of executive action cannot, in my view, prevail over the

clear and unambiguous terms of the Constitution. If I am on the right track, then it would seem that the matter calls for serious consideration; more particularly in the light of that to which I now come.

Experience has taught that without a strong and completely independent Judiciary in any Sovereign State there can really be no valid claim by that State to be truly sovereign and democratic, in the sense, that we and other civilised communities know and understand it. This is a fact and we cannot pretend about it. In a truly Sovereign State, the indigenous Judges thereof play a most important part in the development of the law to suit the community, for they are the ones with peculiar knowledge of the social antecedents and peculiarities and cultural habits of that society which are important imperatives to the proper legal development of that same society. No foreign body of persons – no matter how eminent or well intentioned – could do this. That too is a fact of life. After all, Australia, Canada, India, Pakistan, Sri Lanka, Singapore, Malaysia, all the States of Africa and Guyana have all recognised this fact. There has been no weeping or gnashing of teeth coming out of any one of these countries. Are we in this Sovereign Republic so lacking in maturity and confidence that we are reluctant to be counted among the truly sovereign States? And indeed, what gives the right to certain individuals here to pass judgment on the calibre and competence of others elsewhere in the Caribbean! I do not subscribe to such display of crude egotism, and downright arrogance. Many of us know infinitely better. Nearer home, have we not produced such eminent people as Williams, Capildeo and Solomon? Naipaul, James, Selvon and Anthony? Hannays, Wooding, Clement Phillip and Hyatali? Am I to understand that in this day and age we can neither aspire to nor indeed achieve such noble heights! With respect, I, like so many, do not share such thoughts for such is the thinking of the defeatists and those whose inferiority complex is well – nigh unlimited.

Quite recently I had the privilege and pleasure to be a spectator to an interview by the television media of one of our most eminent Queen's Counsel on this

same topic. He expressed similar sentiments and referred to the real likelihood of laws alien to this region such as French and Italian, seeping into our own system eventually, by reason of legal developments taking place abroad. I respectfully agree with him and in this connection would, again respectfully, refer to the Article which was published in the English newspaper – The Observer – dated 9th May, 1993, under the caption ‘**THE SILENT REVOLUTION**’. This Article should be compulsory reading for all and, in particular, those involved in legal development here and in the region. No doubt after studying the article, many of us may be forced to sit up and THINK AGAIN!

Eminent Senior Counsel also made another valid point. It was that we may suddenly get up one morning only to find that we have been given, among other things, polite marching orders. To think of this as a real possibility belies our status.

Are these things which eminent Senior Counsel has so pointedly alluded to not sufficient to get some of us to sit up and rethink, lest we continue to be described as hewers of wood and drawers of water, and our country as merely a colony dressed up in fancy clothes?

K. THE NATIONAL AWARDS COMMITTEE

Some of the sceptics may wonder why I am doing this. My answer to them is that I would not have another proper occasion to do so and I consider that I would be lacking in etiquette, if I omitted to honour my undoubted obligation. Hence, I claim the privilege here to publicly extend my deep and sincere thanks to the secretary and members of the National Awards Committee which I chaired for the yeoman assistance and support which they gave me over the last nine years in the endeavour to meet with our terms of reference under the Order of the Trinity.

I see a number of these persons in the audience and I am heartened by this. We spent long hours and long days together in the pursuit of our task. I will always remember with deep fondness the conviviality and camaraderie which prevailed and will treasure the lasting friendships that we formed. Some individuals and organizations do not have a clue as to how they came to be proud recipients. When, hopefully, in my later years I should have occasion to reminisce over this, I would do so with a mischievous smile on my face and a twinkle in my eyes!

L ACKNOWLEDGEMENTS

I consider myself one of the luckiest men in this land. Though the road has been rough and sometimes frustrating, my life in the law and as head of this Administration has been most pleasant and rewarding at the end of the day. I have worked with some of the most wonderful people that one can find. They provided invaluable assistance and unstinted support. We agreed to disagree without being disagreeable. To them I have much to repay. I have in the course of my career, made many friendships which I will always treasure. These are my lasting memories and my rich rewards.

This is indeed my finest hour! And why do I say this? I do so because, among other things, I am approaching the end of my tenure. And as I do so, I wish to express, in advance, my deep and profound gratitude to those who saw in me what I myself never once did. I have laboured long and hard in the vineyard. The Record, I am certain, will confirm that I have paid my dues. I look forward, hopefully, to long years of relaxation with my grands and, hopefully if the Gods are kind, with my great-grands as well. And when they ask me, as I am sure they will, to relate them about the Administration of Justice, I will refer to all that has been recorded here and more and with a redeeming smile on my face I will tell them at the end that these historical events all occurred **IN MY TIME.**

