ADDRESS BY THE HONOURABLE CHIEF JUSTICE S. SHARMA
OPENING OF LAW TERM 2002-2003
ON THE 16TH SEPTEMBER 2002

Madam Attorney General, Honourable Minister of Legal Affairs, President of the Law Association, distinguished guests members of the legal profession, on their assumption of office, former Chief Justices Bernard and de la Bastide expressed great apprehension on the daunting task that awaited them. At that time many of you would recall that there was a feeling of utter hopelessness and resignation. Several legal pundits had openly pronounced, perhaps with justification, that the legal profession had hit an all time low, and the administration of justice was on the verge of collapse.

The slow climb to recovery started with Chief Justice Bernard who, in spite of the inherited problems and the lack of financial support was able to make some progress towards addressing the thorny problems. It is not my intention here to list his achievements—that would be done by those whose duty it is to record history.

Chief Justice Bernard was succeeded by Chief Justice de la Bastide having been appointed from private practice. He brought with him a completely different approach. Building upon what had been started by Chief Justice Bernard, de la Bastide unrelentingly and vigorously pursued the many problems then facing the Judiciary. He started to tackle the backlog of cases, which had become a major blot on the administration of justice. He modernized the administrative aspect of the day-to-day running of the Judiciary. He spruced up old methods and systems and introduced new and innovative ideas.

It was during his tenure that the Judiciary took on a new face—once again there was a feeling of hope—that a situation once thought to be beyond redemption was now on its way to a level which could now be arguably be said to be worthy of emulation. Chief Justice de la Bastide would be the

first person, however, to acknowledge that the task of rebuilding the Judiciary would not have been accomplished without the unswerving support of a committed Judiciary and co operation of a staff whose goodwill, loyalty and industry formed the base from which the assault on the challenging problems of the Judiciary could be launched.

It will also be right to mention that those Chief Justices who had preceded him did not have the necessary finances to assist them in trying to bring about the many fundamental changes which he effected nor did they have the support and loyalty of a united Judiciary.

The repeated requests of his predecessors for necessary funds make sad reading and this is bound to stand out as one of the most humiliating periods of the judiciary in our legal history. Posterity will be the best judge of the various contributions made by the several Chief Justices throughout our evolving legal history. Contemporary thinking or thought is never a fair judge. The opinions and judgements are invariably coloured by partiality, friendship, hostility and other strong human emotions which tend to cloud objectivity. However, I can safely say today that during the period which de la Bastide was Chief Justice, the Judiciary has undergone one of its most challenging periods. We are happy that he was then at the helm. The independence of the Judiciary has been reinforced and the unity and commitment of the judges strengthened.

Madam Attorney General, members of the profession, distinguished guests, the fall and rise of the Judiciary is only one part of the story. There is another. I propose to tell it so that present and future generations of lawyers will be vigilant in ensuring that such a situation must never be allowed to be repeated.

How then did the Judiciary find itself in such a morass?

Ever since we gained independence in 1962, each Chief Justice has in his opening of term speech unfailingly made stirring pleas to ensure that the

Judiciary, as a separate arm of State, was provided with the necessary funds to ensure that it was equipped to carry out its most important function of administering justice to all.

The Judiciary had to rely on funds for such simple items as pens, pencils, stationary. There were no secretaries for judges, no shorthand writers. The judges had to take notes in longhand. It was only in the last eight or nine years that this situation was somewhat improved when CAT Reporters were provided in some courts. We still do not have a full complement of CAT Reporters and therefore some judges are still forced to take notes in longhand. In fact there are at least five judges now suffering from Carpal Tunnel Syndrome brought about by prolonged periods of note-taking by hand. They have since sought medical attention.

The situation deteriorated over the years because of this and other areas of neglect. This was so despite the colossal rise in litigation, concomitantly brought about by the seemingly unending motions under the Constitution and other areas of public and private law.

Crime began to rise to uncontrollable proportions. Citizens found themselves as prisoners in their own homes while criminals roamed freely. This upsurge in crime caused many citizens to form themselves into vigilante groups to ensure their own safety and to protect themselves from the helplessness of the situation.

At about this same time came the landmark decision of Pratt and Morgan which decreed that a delayed execution of five years from the date of conviction constituted cruel and unusual punishment. As a consequence hundreds of convicted murderers had their death sentences commuted to life imprisonment. The outrage resulting from this decision and burgeoning problem of crime caused the majority of law-abiding citizens to react with great anger and for the first time the other arms of State

were forced to focus on the problems facing the administration of justice in general and criminal justice in particular.

Since then the situation has slightly improved and more attention is now being paid to the Judiciary and the administration of justice. However, we have a greater distance to travel before this situation becomes acceptable. When I come to deal with the Magistrates' Courts, the point will be more starkly illustrated and appreciated.

Madam Attorney General, members of the legal profession, distinguished guests, this country proudly boasts of it's adherence to the Rule of Law and the Constitutional recognition of the Separation of Powers and the Independence of the Judiciary. Yet, I submit that it could forcefully and persuasively be argued that the failure to provide the judicial arm of the State with the necessary funds violates The Rule of Law in its widest sense, and undermines the Independence of the Judiciary.

In the light of the problems in the past and given the present situation, I wish to join the pleas made by my predecessors to enable the Judiciary to have its own vote. The question of accountability which has historically been used as an excuse is no longer valid on the ground that there are enough mechanisms in place to ensure that this is achieved, especially since the new culture of accountability is now ingrained in our national psyche.

In any event, there is no reason in principle why a designated Financial Officer cannot appear before Parliament or financial committee if it was thought necessary to do so.

THE APPOINTMENT OF JUDGES

In all jurisdictions which adhere to the Rule of Law, judges exercise enormous powers over citizens. They literally preside over matters of life and death, the living as well as the dead. They make decisions which

touch the most intimate parts of our lives, custody of children, divorce and property settlement. The deprivation of property and liberty are just examples of the awesome powers exercised by judges. It is therefore necessary and the public have an undoubted right to know something about these judges. I can see nothing objectionable if a judge is interviewed by the press about his background, family life, and other aspects of his day to day living. This in my view can do a lot to remove the perception of aloofness which now prevails. The days when the Judiciary was kept shrouded in a mystery are at an end. How judges are appointed, what criteria are used, should be made public with only such limitations as are necessary to ensure that neither the office nor the candidate is in anyway compromised. It is my respectful view in appointing judges one should look for patience, courtesy, the ability to understand other people's problems, experience of the courts, evaluation of evidence, knowledge of the law, all of which should lead to a good judgment and a safe pair of hands. These criteria are in no way incompatible with the earlier requirements set out in the Annual Report of the Judicial and Legal Commission for the year 2002.

From time to time, it has been mooted that the appointment of judges should be in public, not unlike what prevails in the United States. My reaction to that is certainly not, if only for the reason that some of the questions asked in the United States are a gross invasion of private life and I rather doubt whether candidates for the Bench in this country would be prepared to expose themselves to the kind of verbal lynching and crucifixion to which Judges Borke and Thomas had to endure.

Trinidad and Tobago is a small country, its population just about 1.3 million. We must be very careful to ensure that what we seek to introduce in our system is helpful and productive of the exercise. The appointment of a judge is a matter of public concern and interest, but it must be handled with tact and sensitivity. Of course, there must be the widest consultation, but this must be done on the basis of absolute

confidentiality, otherwise suitable candidates would not come forward if they fear that they are likely to suffer any humiliation or indignity.

THE JUDICIARY AND THE PRESS

There has never ever been a stated policy between the Judiciary and the press. Each has its own particular function, but that fact should not prevent us from interfacing with each other or working in the best interests of the country in general, and the administration of justice in particular. I think the relationship between the two must not be as uncommunicative as it is now. It must be more open. A judge should feel it is no threat to his independence if he talks about the nature of the job in a general way or what measures we propose to take to improve the administration of the law. It is very bad just to put up the shutters on everything. A cynic might say that a judge doesn't open his mouth outside his court because he would make a fool of himself if he did. By refusing to say anything on certain general issues the impression of aloofness may be fortified. It is a bad state of affairs when people cannot query what judges are doing. After all, politicians, doctors, accountants, all sorts of professions in the public domain do not escape inquiry. As Chief Justice, I should seek to have a better relationship with the press to find out what agitates them and explain to them what we are doing. Take for instance the vexed question of consistency or lack of uniformity in sentencing. From time to time there is a great outrage by groups and citizens alike about the appropriateness of a particular sentence. Most citizens measure justice in terms of the sentence meted out. The focus is never on the trial, always on the sentence.

Now, the lack of uniformity is not as frequent as is often thought to be for the simple reason that when the press reports the matter, because of space and other considerations, the full story is never given and, consequently, a fair picture is not portrayed. In a case like this, there is nothing wrong or objectionable if the press sought clarification from a

designated officer from the Judiciary. Even if the press did not seek clarification there is no reason in my view why the Judiciary through a designated officer should not issue a fuller report of the reasons so that any distorted view might be corrected.

The Press has an important part to play in the Administration of Justice. They report matters of national interest, they criticise and they praise. Indeed they can, and sometimes do make a scholar out of a moron and convert mediocrity into genius. Such is their power. The judiciary however, is not afraid of criticism, either from the Press or any other source. The judges do not traditionally reply to press criticisms of decisions or even corrected factual errors. This reticence has been thought necessary to judicial independence which would be harmed were a judge to descend into the arena and into controversial discussion. It is mainly because of the customary silence of the judges, that the press is placed under a greater duty to be fair, accurate and objective.

THE JUDICIARY AND LAW ASSOCIATION

In the last few years, the relationship between the Law Association and the Judiciary has not been what it should be. This was a matter of great regret as the administration of justice becomes a casualty in all this. It is not my intention to seek to apportion blame. I wish to start with a clean slate. I have already taken steps and, in fact, have actually met with the President and some of the members, and from the discussions we have had, I feel very optimistic that there would be full and mutual co-operation.

On being welcomed as Chief Justice in the Court of Appeal, I mentioned in my speech that, there were bound to be differences between the Law Association and the Judiciary. In fact, I should be very worried if we did not have these differences. However, once we have the best interests of the profession as our common objective and we are not motivated by extraneous factors, substantial benefits will accrue to the profession.

THE LEGAL PROFESSION

Throughout the ages, lawyers, judges and all those concerned with the legal profession have been given a bad press. They have been lampooned, reviled, criticized and condemned in every possible way — decent as well as indecent. They have been often regarded as the caricaturist's delight. In more recent times, they have been described as great procrastinators, lacking in charity, inward looking, seeking their own interest, not caring in any way for the wider interest of the public. David Pannick, in his book entitled "Advocates," says at p. 171 - 72:

> "Lawyers are resented for their closed shops, inefficient procedures and general self-satisfaction. Those who use the system complain about the delays, their expense and on occasion, the poor quality of the service. Public resentment of those practices is such that not even the combined powers of advocacy of all lawyers could begin to persuade a lay audience that the administration of the law is consistent with the public interest."

In my opinion, there is some justification for those trenchant comments. However, I submit that the lawyers themselves can do a lot in starting to dispel this negative image. Some years ago, Justice of Appeal Zainool Hosein and a number of talented legal practitioners (in an effort to show a human side to the profession) started to perform in concert "Lawyers under Lights." It started like a puff of fresh air. It has now become a strong wind, blowing powerfully across the national stage. I am told that at every performance, all the tickets are sold out. The level of performance is so high that it threatens to rival those who are professionally in the performing arts.

This is only part of the story. It sounds incredible but it is true. All the monies realized by these performances are shared amongst the various worthy charities. Lawyers giving charity! Who would have believed this years ago? Yet it is happening before our eyes.

Today I want to pay tribute to all those who have taken the time, trouble and effort to make this possible. The moral of this story is clear. This gesture is clearly going to inspire and encourage other professional groups to do the same and in the process, nation building would be enhanced. Further, it does a lot to improve the image of the lawyers. When I come to deal with some of the problems which now plague the Magistrates' Courts, I shall reveal what I regard as another plan to tap further into the social renaissance which is now taking place in the legal profession.

THE COURT OF APPEAL

I start with the best news first. You would no doubt recall what I said earlier in my speech when I talked about the feeling of hopelessness and the sense of helplessness that were felt in the profession many years ago. The legal pundits had pronounced that the administration of justice was moribund—there was no hope. It is against this background that we must examine the performance of the Court of Appeal and the High Court. Dealing first with the Court of Appeal, none can deny that the performance was nothing short of excellent. It is not my intention to burden you with the statistics. This is set out in the Annual Report of the Judiciary for the year 2001-2002.

I would just like to say that the Court of Appeal's performance has been extraordinary. In capital matters the courts are well ahead, and are actually awaiting proceedings from the CAT reporters so that they could be listed. In the civil appeals, here too is good news. The Court is well ahead and appeals are being listed as soon as the records are ready. The magisterial appeals are up to date and the court last term, embarked upon matters appealed in 2001 and 2002. All the statistics dealing with these matters are published in the Annual Report and are available to members of the public and the press.

Today, I would like to pay tribute to all those judges who played a significant role in reducing the backlog in the Court of Appeal headed by Chief Justice de la Bastide. I would like to place on record our profound gratitude to the late Justice of Appeal Lloyd Gopeesingh who worked tirelessly at all times and played no small part in this exercise. I would also like to mention former Justices of Appeal Ibrahim, Hosein and Permanand.

The present Bench is not to be excluded. They continue to work hard and they are committed and dedicated to the task and I want to thank them for all they have done in bringing the court list under control.

THE HIGH COURT

Serious inroads have been made into the backlog which had plagued the High Court for decades. The High Court judges will continue to maintain the momentum to ensure that there is no pile up of cases as in the past. In tackling the tremendous backlog, there were bound to be casualties of one sort or another. It has been brought to my attention that although cases were dealt with expeditiously by the judges, in several instances the judgements had been delayed for an unusually long time. The complaint is a justifiable one however, I suppose this problem only arose because the judges embarked upon the problem with typical judicial zeal, and found out that really they ought to have paced themselves more realistically.

In our meetings I have spoken to the judges, and they have undertaken to deal with the outstanding judgements as a matter of urgency. We learn by our mistakes and I am sure there would be little cause for complaint about late judgements in the future.

Today, I wish to place on record my deep appreciation, and that of former Chief Justice de la Bastide, for the unswerving support and commitment

of the judges of the High Court in reducing the backlog of cases. They have pledged to remain united to continue that support, (which they unfailingly gave to Chief Justice de la Bastide), and for that I am deeply grateful and heartened.

THE MATRIMONIAL AND FAMILY COURT

This court is arguably the most important court in our Judiciary. The proceedings in this court represent a microcosm of our society. Here we deal with the family as a collective unit, with all the concomitant problems. Any failure to administer this court properly can and has from time to time led to disastrous and tragic results.

In this œurt, the judge is called upon to perform a variety of roles. It requires tact and compassion, patience and understanding, but above all it has to be decisive and firm. It exacts its toll on the presiding judge. Experience has shown that in the past there is a tendency by male litigants to procrastinate in matters of custody of children, maintenance for wife and children and occupation of the matrimonial home. This situation is quite intolerable and certainly unacceptable. I have no doubt that our judges are fully aware of this ploy and will continue to exercise their full powers to ensure that these matters are dealt with as a matter of urgency and should be encouraged to make Interim Orders pending the protracted procedure of filing affidavits.

I am told that there is now something of a bottleneck, which if not nipped in the bud would certainly give cause for concern in the future. It concerns the several matters to which I have just referred. I would urge all judges presiding in this court to do everything in their power to ensure that even on the occasion of the first hearing of the matter, all of the matters I have just referred to are attended to even on an interim basis. The practitioner who is appearing for parties seeking relief such as maintenance for wives and children, is under a duty to ensure that such

matters are sorted out before adjournments are granted. I propose to approach the Law Association with a view to making the new Family Court Rules operational as soon as possible. I have no doubt that will go a long way in alleviating some of the present problems.

THE ASSIZES

With the massive increase in capital and non-capital offences, the judges presiding in the Assizes unrelentingly continue the task in trying to cope with the increase in their workload. Of course, the appointment of additional judges would help tremendously. More recently Chief Justice de la Bastide had made repeated calls for more judges in view of the enormous increase in criminal matters. Yet to date, nothing has been done. Today, I want to repeat that call. In the meantime we have to devise ways and means to deal with this burgeoning problem.

In an effort to speed up criminal trials, it is necessary to find a way to shorten the length of criminal trials by clearly defining the real issues and relieve the Prosecution of the necessity to present full and detailed proof of matters that are really not in dispute. The following example will serve to illustrate my point. A is charged for murder of B. A's defence is one of alibi. At the pre-trial hearing or conference, there is no reason why the State and Defence could not agree that whosoever committed the act was guilty of murder because all the ingredients of the offence are satisfied.

I submit that first of all such an approach would enhance the administration of criminal justice and also prevent it from falling into disrepute. There is nothing so confusing and more cryptic to a jury than to see a defence counsel whose client's defence in an alibi, cross-examining a doctor on the nature of the injuries when it is so clear that the person who inflicted them intended to kill or cause grievous bodily harm. The jury would no doubt think if the accused is saying he was not there, why is he disputing the injuries resulted in the deceased's death?

Of course, there would be very rare cases when in such circumstances the injuries are not of a kind to come to such an obvious conclusion and then the defence may want to have the doctor. But these cases would be extremely rare. The same approach could be applied in cases of rape and a host of other offences when the only defence of the accused is an alibi.

The advantages of this approach are as follows:

1. It would shorten the trial and save costs.

2. The jury would less likely be confused in view of the narrowness of the issues.

3. It will reduce the margin for judicial error.

4. The Trial Judge would not have to go through the ritual of fossilized legal archaeology, for example that death was caused within a year and a day or that the deceased was under the President's peace.

I propose to raise this matter with the Criminal Bar Association. I am sure that they would be receptive to the idea for all the reasons I have indicated above. There is no reason in principle why the same approach cannot be adopted in the Magistrates' Courts.

TALES OF WOE

I have saved the worse news for last. The story I am about to tell is depressingly familiar. I ask you to please bear with me. What passes for justice in the Magistrate's Court is in my opinion a serious blot on the administration of justice. It is a stinging indictment on every arm of the State. The Magistracy has been frozen in time and that time is some 40 years ago. Precious little has changed except, of course, that litigation in

these Courts have risen to such an extent that it renders the present system useless.

That the Magistrates' Courts are still functioning is a tribute to Magistrates themselves who despite the deplorable and sub human conditions have shown a commitment, which I am yet to see in any system of justice. The support staff of the courts are not to be forgotten. It is only the combined effort of the Magistrates and the staff that the Magistracy have been saved from total collapse.

NOTETAKING.

Fifty years ago the Clerk to the Magistrates took notes in longhand. This still continues today. I want to read to you a memorandum from the Clerk to the Peace to the Clerk of Appeals. This tells the complete story.

From Clerk of the Peace, San Fernando, to the Clerk of Appeals, Appeal Court, Hall of Justice. Subject: Outstanding appeals where the Magistrate has resigned without submitting reasons and Conviction or Dismissal Orders.

> "In accordance with Magisterial Circular Number 6 of 2001, I forward herewith the following appeals of Mr. So and so, former Magistrate of Trinidad and Tobago, where no reasons have been submitted and Orders of conviction or Dismissal signed. The reasons for the delay in submitting these appeals are:
>
> 1. Difficulty deciphering the notes of evidence in some of these appeals.
>
> 2. The office has one copying machine which services the whole office. We depend on this machine to photocopy everything, starting from forms, summonses, appeals, committals, notes of evidence, inquest, returns, et cetera. There are times in the past when the machine broke down and it took a long time before it could be repaired
>
> 3. Paper supplied is inadequate.

4. Priority is given to other Magistrates sitting on the Bench who have outstanding appeals.

5. This office does not have the post of machine operator on its establishment. We depend on the messengers to assist in the copying of all documents.

Yours faithfully, Clerk of the Peace."

This memorandum is typical of the kind we routinely receive in the Court of Appeal.

To reinforce the point I should add here that as at the 30th June 2002, there were 648 appeals from decisions of magistrates which have not been submitted to the Court of Appeal because the notes and reasons are not yet ready.

The reason for this pile up is clear. An archaic and ineffective system of note taking and reproducing evidence. All done by hand. The need for technology is clear.

THE BUILDINGS

Many of the buildings are in a dilapidated state. Some are in a state of collapse. The toilet facilities are sub-human or non-existent. I understand that in the Arima Court, the prisoners have to wait in the security vans until their names are called. With overcrowded courts whose air conditions frequently malfunction or break down, coupled with the improper ventilation, it is really beyond my comprehension how these Magistrates function. I have been told by the Court Administrator when the proposal for the Magistrates' Courts were presented to the Budgets Committee, some of the members on being shown pictures of what conditions looked like in some of these courts, were truly horrified.

I am truly amazed at the shoddy buildings and poor state of hygiene to which the public have access have escaped the normally scrupulous eyes

of the Ministry of Health. In one of my meetings with the magistrates they complained bitterly about the lack of furniture, the overcrowding of their chambers, and the problem of having to share a room designed to accommodate one magistrate but in fact is forced to accommodate three and four magistrates at one given time. Another serious complaint is that there are no legal texts, and reference books to assist them in the complex legal questions that are raised daily before them.

We must bear in mind that magistrates handle the bulk of the litigation in this country. They deal with all sorts of matters on a daily basis with all manner of litigants.

Each Magistrate has an average list of 100 cases. By the time he or she has dealt with applications of one sort or another, performing in these conditions he becomes short-tempered. And who bears the brunt of this? The litigants of course, many of whom might be mothers who have come to court, perhaps for the fifth, sixth or seventh time, and who may have left their children unattended or have had to make some other personal and financial sacrifices in order to attend court. Who cares? Is this how these people, many of them living below or on the poverty line, are to be treated when they seek justice?

We would do well to remember that it is in these courts a litigant's notion of justice is formed. It might make interesting reading to hear what they have to say about the system.

In this country, we very glibly and thoughtlessly brag of our adherence to the rule of law and justice for all. In my respectful opinion, this boast can seriously be challenged.

SECURITY FOR MAGISTRATES.

In a letter dated January 22, 2002 to my predecessor, the Magistrates forwarded a letter expressing their concerns about their personal security while presiding. I wish to refer to a substantial part of that letter which referred to their concerns.

"Within the last three years:

- one Magistrate, Her Worship Madam "A" has had her house fire-bombed.

- Her Worship Madam "B" had to endure an intruder placing pellets in her chamber, the person who left it having sent a message that he has left something there for her.

- His Worship Magistrate "C" has had ammunition placed in the precincts of his court with a message that it or one similar to it was for him.

- Magistrates "X" and "Y" have had to variously run, duck and take cover while sitting in court and out of court in order to avoid being struck with a variety of projectiles, including chairs, concrete, stones and faeces (both bagged and free-formed) thrown at them by persons in police custody.

- One magistrate had prisoners in court variously run upon their desk. Magistrate "Q" had prisoners lunged at him and tried to destroy the courtroom. Magistrate "W" was threatened in his court.

- Her Worship Madam A-C had had to endure being imprisoned in the Arima court building in circumstances of a prisoner riot and with a prisoner telling her that he had murdered before and it takes nothing to kill again.

- Her Worship Magistrate R. H. has had her tyres slashed on the court's compound and a variety of other affronts done to her during the performance of her duties.

- Woefully, at least three Magistrates "T" on multiple occasions, Magistrate "R" and "A" have been informed of by the police of contracts to murder them, "being taken out" (as it were).

- In one case a Magistrate was formally informed by a Superintendent of Police and a Special Branch Inspector, who requested audience in his chambers, that foreign nationals may have hired a named person to murder him. The Magistrate was then advised that he should be prepared to shoot, but no provision for any security for him out of the courtroom or in the courtroom apart from 15-minute displays of armed police officers on the courtroom on a few occasions.

The letter continues:

"It does not stop there. The majority of us are at the mercy of a hope that we will not be attacked in our chambers when court is over for the day as the police vacate the building.

The Magistrates, therefore, seek your forever resolute intervention to solve this grave state of affairs where there is a surreal but uniform hesitation by the Commissioner of Police to act immediately upon the matter of security of the Magistrates."

On the 22nd February 2002, the Chief Justice wrote to the Minister of National Security expressing his grave concerns about the problems and suggested ways and means of improving security and enclosed a copy of the Magistrates' letter of January 22, 2002. The Chief Justice also wrote to the Commissioner of Police in similar terms and enclosed the letter received from the Magistrates. The Chief Justice did not receive a response from either the Minister or the Commissioner, and on the 4th

June, he again wrote the Minister tactfully suggesting that the first letter might not have been received and sought to enclose a copy of the previous correspondence. To date, there has been no reply.

If the Minister did in fact receive this letter, and I really cannot see any reason why he did not since his office is a stone's throw from the Hall of Justice, then I say it is an act of gross discourtesy and an affront to the office of Chief Justice not to have even acknowledged the receipt of these letters, let alone the request for a meeting to formulate plans for the security of the Magistrates. Such behaviour is not to be expected from people who hold high and sensitive office. It does nothing to promote confidence and enhance nation building.

We in this country are not known to be proactive and do precious little to avoid the consequences of threatening or dangerous situations. We are always wise after the event by which time it is too late. Once again I would make a plea both to the Minister and the Commissioner of Police to respond to our call for greater security in the Magistrates' Courts. We now await a response from the Minister of National Security and the Commissioner of Police.

SHORT TERMS RECOMMENDATIONS:

BUILDINGS

With respect to the buildings, I expect we shall be shortly getting some relief when the building at St. Vincent Street become suitable for occupation. That should be, I am assured, very soon. In those buildings that are unfit for occupation, for example, the Arima Courts, should be vacated and a suitable building found and rented until such time as we can get something suitably more permanent. Where there are plans to rebuild, which would perhaps take years, we should be able to rent suitable buildings until the construction of new courts. All health facilities must be upgraded and maintained to ensure basic rules of hygiene.

I have been told by the Court Executive Administrator that suitable buildings for rental were found to replace the Magistrates' Courts in Siparia, Arima and Chaguanas but by the time the bureaucratic obstacles were removed, the prospective land lords had either rented the building to another or changed his mind. Surely, something can be done, to speed up the procedure. Matters of this nature should be given immediate attention in view of the deplorable state of the buildings.

THE LISTS

In dealing with the formidable lists by Magistrates, I would suggest a Remand Court be set up near the Golden Grove Prison. This Court will deal with all remands of all courts in Trinidad and Tobago. There are two main advantages to be derived from this measure. The Magistrates' lists would be reduced and the tedious, cumbersome and unreliable transport of prisoners from the Prisons to the courts would be alleviated to such an extent for the obvious reason that they will have to transport less prisoners.

I would also suggest that the DPP enter a nolle prosequi or take whatever measures necessary to withdraw from the system all ticket cases two years and over, and all other petty crimes over two years. The revenue lost from the ticket cases are far outweighed by the time and resources spent in keeping them on the list and having to adjourn them time and time again.

CAT reporting must be introduced in a matter of months in the major courts starting with Port-of-Spain, San Fernando and Arima. Later on, as more CAT Reporters are recruited, they will gradually be assigned or absorbed in the remaining courts.

PRO BONO PUBLICO (PRO BONO WORK - FOR THE GOOD OF THE PUBLIC)

You will recall that when I spoke of the reawakening of the social conscience in the legal profession, I indicated to you I had a plan to tap further into this renaissance that is now taking place. I propose to open a roll in each magisterial district, which would be under the control of the Justice of the Peace. I would invite young lawyers, particularly those who have been recently admitted to practice, to register if he or she wishes to do pro bono work in the Magistrates' Courts. This list would be passed to each Magistrate in the particular district. When it appears to the Magistrate that a litigant is in need of legal assistance or requiring such assistance, the Magistrate would assign one of lawyers on the list.

This is not intended to rival Legal Aid but to supplement it. Legal Aid takes time before it is granted. It is therefore expected that the following benefits would accrue from this approach:

A. Young practitioners would be able to gain experience because of their appearances in court. They will get an opportunity to obtain experience which would not otherwise be forthcoming and really stand to benefit fully from this exercise

B. A social service would be performed by helping those who need representation for whatever reason.

C. Adjournments granted by Magistrates would not be for long and protracted periods as in the case when Legal Aid is applied for.

I recognize that the idea is a novel one, but I do think that it should be given a chance to see if it could work. We have to develop new and innovative methods— some would obviously fail, but that should not in any way prevent us from trying.

At this stage I wish to urge all those lawyers, who have benefited handsomely from the legal profession, to join some of their junior

colleagues in doing some pro bono work as well. After all, if they are not prepared to join the judiciary, because it will result in a dramatic cut in their income – the least they can do is to provide some legal assistance to those who are in need of their highly skilled services but cannot afford it.

This point is poignantly illustrated in cases in which people of limited means are locked in legal disputes with multi-national corporations and other corporate litigants, who have unlimited means at their disposal to retain the best.

This will not only go a long way to salve their social conscience, but it will give some credence that the rule of law is still alive and well in this country.

Madam Attorney General, members of the legal profession, we must not be allowed to forget the Magistrates themselves. Their morale has been understandably low. We must make a united effort to lift their spirit. Their terms and conditions have to be upgraded. Their workload is tremendously heavy. In addition to what was their traditional jurisdiction, they have been given added jurisdiction in heavier cases. Their daily task is really monumental. The solutions to these problems must come from us. In my respectful opinion, they must consist of a combination of our human resources, advanced technology, the necessary funding and new and relevant legislation.

It has to be a co-ordinated effort to tackle this problem. We must however make a start. The practitioners in the Magistrates' Courts must do everything to help and support the beleaguered Magistrates. The lists should not be adjusted or fixed, to meet the pockets of the practitioners, or matters of expedience. All the participants must be committed.

The prosecuting service also have a very important part to play and has to assist in the change of outdated systems that now prevails. Policemen

must ensure their attendance to courts and be prepared to carry on with their cases. All these things take effort and commitment. It is only in this way this situation can improve.

There are many other areas over which the magistrates have absolutely no control, which are causing major log jams in the system, and if not addressed will get us, nowhere. These agencies are an integral part in the conduct of matters before the magistrate's court. I wish to mention a few.

The Forensic Science Centre – There are protracted delays in the completion of analyses and the submission of reports, especially in narcotic matters.

The Probation Department – There are delays in persons receiving counselling and in receiving reports for juvenile offenders, which effectively delays sentencing of these persons. Apart from the insufficiency of staff at this Department, priority is given to the High Court in the preparation of reports.

The Legal Aid and Advisory Authority – By virtue of an amendment to the Legal Aid and Advisory Authority Act, magistrates are now empowered to appoint counsel. However, on many occasions there are no attorneys present to be appointed. Despite the increase of fees more attorneys appear to have removed themselves from the roll or are unwilling to undertake these matters.

The Blood Bank – The situation at the Blood bank is untenable. Persons are now being asked to wait one and a half to two years for appointments for blood tests to be carried out. This delays the determination of paternity and consequently maintenance matters.

The Police Service – In a number of matters the service of summons is not being effected and in a number of police matters, police complainants

have to be elsewhere on police duties. These are matters, which need to be addressed with the relevant authority.

Juvenile Detention Centres – The inadequacy of the Juvenile Detention centres has reached crisis proportion resulting in magistrates being asked not to remand persons to these institutions. Magistrates are unable to do otherwise given the circumstances of certain cases. The present situation dictates against the continued remand of female offenders at the St. Jude's Home for Girls. At present there is no other institution to which these persons can be remanded. In certain circumstances the law prescribes that persons can be deemed sixteen years and remanded to the Women's Prison at Golden Grove. This is highly undesirable since the numbers are increasing and as such I am proposing the establishment of an institution similar to the Youth Training Centre for these young women.

Child Guidance Unit – There are attendant difficulties with evaluation of persons who appear to be in dire need of evaluation and treatment.

Honourable Attorney General, members of the legal profession, some eight weeks ago I was appointed Chief Justice. What I have spoken about are some of the more pressing and urgent problems. In due course, I shall be in a better position to assess and appreciate and so deal with the other problems as we go along.

The problems in the Magistrates' Courts are formidable. They did not arise overnight, they started some 50 years ago. Every one recognizes that there is no quick solution to this massive problem. Nothing dramatic is going to take place. We have to start tackling the problem systematically and incrementally. I have no magical word, I cannot perform miracles. It will require the combined effort of all our resources and an integrated plan to deal with the problems.

If during my tenure I can make some appreciable difference in improving the Magistracy in particular I shall be happy. I cannot do it alone if this is to be accomplished successfully. All parties must be involved and committed.

May I however, parenthetically remind you that one of the fundamental rights guaranteed to a citizen under our Constitution is the protection of the law. This would, in my opinion, include his right to unimpeded access to the courts of the land, in order to obtain proper redress for his grievance.

In any civilised society it is the function of the government (executive) to put in place and maintain courts of law to which citizens can have access. The provision and maintenance of courts, is not merely confined to the buildings but everything that is necessary to ensure that those who use the system must have respect and confidence in it. The reason for this is clear, citizens would be deterred from taking the law in their own hands.

Madam Attorney General, members of the legal profession, distinguished guests, today we live in a world of high and advanced technology. We have come to expect things to be done instantly. We have the fax machine, the computer, the internet and a host of other gadgets which are designed to make life more comfortable—at least so it is said.

I want to remind you, however, that some things take time; justice is one of them. The requirement of open justice in which the quality of justice is the primary consideration cannot be measured. Those requirements, NOT STATISTICS, must be regarded as the essential mechanism of judicial accountability.

The true measure of any society is not reflected in the affluence of its people. The true benchmark, I submit, is whether justice is meted out to the poor, the downtrodden, the needy and the disabled in our society. In point of fact, these are the people who daily frequent the Magistrates'

Courts. From the picture I have painted this morning, I ask the rhetorical question, can we say that they are receiving justice?

I feel badly to be the bearer of tales of woe from the magistracy. But there is hope. We cannot despair. We must not. We lawyers very frequently rely on the doctrine of precedent in our practice. The turn around in the High Court and the Court of Appeal provide an excellent precedent for us to follow. I have absolutely no doubt that we shall succeed. It is therefore, in this setting I invite all members of the legal profession to join in the judiciary's march for justice and excellence. Membership is free and that should provide a good inducement for lawyers to join.

CONGRATULATIONS AND BEST WISHES.

Before finally concluding, I would like to express my congratulations and best wishes to the Honourable Justice Mark Mohammed, former DPP, on joining the High Court Bench. He has performed excellently as the Director of Public Prosecutions and I have no doubt that he would make a substantial and meaningful contribution to our jurisprudence. He is a worthy addition to the High Court Bench.

I also wish to congratulate Justices Stanley John and Wendell Kangaloo who were elevated to the Court of Appeal. We openly and warmly welcome them. I am sure that they will prove to be invaluable members, who would bring to bear in our deliberations their great experience in the areas of criminal and civil and other branches of law.

Madam Justice of Appeal Jean Permanand has retired after spending twenty years on the Bench, High Court and Court of Appeal. She also served in several capacities in the office of the Attorney General for a some 25 years. It is said that she has pioneered the way for many women who now hold high office. She has made a substantial

contribution in our community and is a worthy exemplar to all. We shall miss her camaraderie and support and particularly her meticulous approach which she sought to inculcate in us in writing our judgements. We hope that she will have a long, happy and healthy retirement.

Of course, the Chief Justice has also retired. Various speakers have already on a number of different occasions made references to the several roles and the many contributions he has made in changing the face of the Judiciary. I do not propose here to list them, I have already done so earlier. There are many, many more, but that will be done in due course by those whose duty it is to record history. In any case I do not wish to be accused of gilding the lily. What we would like to do on this occasion however is to wish him well once again. We wish him a long and happy retirement, but above all we wish him good health.

Before I conclude, I wish to bring to your attention something which you already know, but might perhaps have forgotten. Trinidad and Tobago is a small country whose visibility on the world map has been ensured by its contributions to the world in art, music, literature, sports, entertainment, medicine, law and many other fields. A recent example of this is the invaluable contribution made by His Excellency President A.N.R. Robinson in playing a pivotal role in setting up the International Criminal Court. We have convincingly shown that we are no less intellectually endowed or talented than anybody else, nor should we allow ourselves to be persuaded by a few from within or some from without that it is otherwise.

There are countless members in our legal profession and many in our judiciary who are able to match the best from other parts of the Commonwealth.

The sovereignty of a nation, I submit, is not to be defined by reference to its economic power, nor by the might of its armed forces, nor by the role it plays in international affairs. True sovereignty lies and can only be

complete when a nation has self-respect, unswerving loyalty and patriotism. Acknowledgement of its heroes. To these I would add respect and faith in its people and institutions to control its own destiny.

I now declare the new Law Term open. Court is adjourned to 9:00 a.m. tomorrow.