

ADDRESS

of the

CHIEF JUSTICE

The Honourable Mr. Justice S. Sharma

at the

***Opening of the
2003 – 2004 Law Term***

in the

SUPREME COURT

at the

**HALL OF JUSTICE
Knox Street, Port of Spain**

on

TUESDAY 16TH SEPTEMBER, 2003.

CHIEF JUSTICE SHARMA:

Your Excellencies, Madam Attorney General, President of the Law Association, members of the legal profession, distinguished guests.

A. In my address at the opening of the law term last year I gave an overview of some of the problems facing the administration of justice and indicated how I intended to tackle some of them. Many of you who were present on that occasion were able to hear the depressing news of the many problems, particularly those facing the Magistracy.

In order to render the earlier parts of this speech coherent and intelligible it is necessary to return to what I said on that occasion. "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 those Magistrates' Courts 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 forty 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 are still functioning is a tribute to the 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 by the combined efforts of the Magistrates and the staff that the Magistracy have been saved from total collapse.” In that speech I highlighted amongst other things, the archaic and laborious system of note-taking by hand, the unending lists of the Magistrates, the sub-human conditions under which the Magistrates and staff have to function and the deplorable state of the buildings.

PROGRESS REPORT

Backlog in the Magistrates' Court

Delayed listing of magisterial appeals

B. The backlog of appeals in the Magistrates' Courts has been attributable to the following:

1. Unavailability of typed notes of evidence; and
2. An inefficient system of note taking.

Several measures have been employed to deal with this issue.

These include:

1. A Cabinet approved pilot project for reducing the backlog of magisterial appeals in which the notes of evidence await typing in the San Fernando and the St. George West Magistrates' Courts.

The backlog of notes of evidence to be typed in both the St. George West and San Fernando

Magistrates' Districts has been eradicated. Staff members involved in the backlog reduction project must be commended for their hard work and effort.

2. A full month of magisterial appeals was heard in June. One hundred and ten (110) matters were listed in Port of Spain and ninety-nine (99) were heard and determined. Fifty (50) matters were listed in San Fernando and forty-three (43) matters were determined. The remaining matters were adjourned. Thirty-two matters were also listed for Tobago from August 4th – 6th 2003 and all were determined.

Magistrates are working assiduously to ensure that approximately 205 matters prior to 2003 are forwarded to the Court of Appeal in a timely manner.

3. A new system of recording notes of evidence is being introduced: The Judiciary has implemented a pilot project to introduce a system of audio digital court reporting to provide for a more efficient method of recording notes of evidence. The objectives of audio digital court recording are:

- (a) To eliminate longhand note-taking by Note-takers, Magistrates, and Judges in order to reduce the length of trials;

(b) To record complete court proceedings;
and

(c) To improve the timeliness and the reliability in the production of transcript.

This project was concentrated initially in the St. George West District with the installation of an audio digital court recording system in two courtrooms. In June 2003 the pilot was extended to include one Civil Courtroom of the Supreme Court.

Ultimately, it is envisaged that audio digital, together with the supporting transcription staff will be the means by which proceedings in the Magistrates' Courts and the Civil and Criminal Courts of the Supreme Court will be recorded. However, it should be noted that the successful implementation of this system throughout the Magistracy and the Supreme Court would be dependent on the necessary funding. It is expected that the implementation of audio digital court recording systems in courts throughout the Judiciary will cost \$17 million.

I am extremely pleased to announce that on the 3rd of September, 2003 Cabinet agreed to the implementation of the audio digital recording system in courtrooms throughout Trinidad and Tobago.

Critical as well, is the availability of the appropriate legislation to allow for the introduction and utilization of audio digital court recording in the Judiciary in preliminary enquiries.

The Judiciary is also exploring the outsourcing of the transcription of Audio Digital Recordings to improve the timeliness and the reliability in the production of transcripts. To this end, the Judiciary has invited proposals from Transcription agencies, companies and firms to provide transcription services to facilitate and continuously support the audio digital recording pilot project at the St. George West Magisterial District. It is anticipated that this service would be required to support the implementation of an audio digital court recording system in all courts throughout Trinidad and Tobago until the Judiciary (Magistracy and Supreme Court) can be adequately staffed with appropriately trained and skilled persons.

4. The introduction of a more efficient system of monitoring appeals:

A new system of monitoring appeals (from the time of notice to the time it reaches the Court of Appeal) is also being implemented, so that

matters requiring immediate attention could be dealt with expeditiously.

In the new system, files will be colour coded to determine the various timelines required for each type of matter. Monthly status reports will also be provided to each Magistrate to allow for individual tracking of matters that are outstanding for reasons.

The Judiciary also aims to integrate the technology used within the courtroom with case management and judicial support systems to provide a complete system that will improve its service delivery.

With the introduction and implementation of all these programmes, it is expected that the recording and production of notes of evidence in both the Magistracy and the Supreme Court will be transformed and the manageability of the court's record improved, thus dramatically reducing trial delays. This will in effect strengthen the integrity of the process and provide the Judiciary's clientele with a newfound thrust and will engender greater confidence in the justice system.

The Long Lists

In seeking to reduce the formidable lists of the magistrates I had proposed among other measures that the Director of Public Prosecutions (DPP) enter a nolle prosequi in respect of minor offences, which were clogging the lists and proving to be very costly because they were routinely adjourned.

I am happy to say that the DPP has decided to enter nolle prosequi in seven hundred and six (706) matters – of which three hundred and eighty (380) are for petty offences and three hundred and twenty-six (326) are for minor road traffic matters.

This move has resulted in a significant dent on the lists at the Arima Court and to a lesser extent on the lists in the Courts at St. George West and Tunapuna.

I had also proposed the creation of a Remand Court.

On October 15, 2002, I established a Committee under the chairmanship of Mr. Justice Mark Mohammed to consider the measures, which could be adopted to shorten criminal trials in the Assize and in the Magistrates' Court and also to consider the feasibility of setting up of a Remand Court.

With respect to the latter the Committee was mandated to consider the legal requirements and any other steps that might be necessary before such a court could come into existence. Secondly, the computerisation needs and any other steps that might be necessary to centralize the system of reporting of information so as to ensure the efficient functioning of the proposed court. And thirdly, any other matters that could in any way impact directly or indirectly on the proposed exercise, for example, convenient times of sitting etc.

I invited representation on this Committee from the Law Association, the Criminal Bar Association, the Southern Assembly of Lawyers, the Tobago Lawyers Association and the Officer of the Director of Public Prosecutions.

Representation of the Committee was also extended to the Magistracy, the senior ranks of the Police and Prison Services and the Director of Forensic Science Centre. Each of the main stakeholders in the criminal justice system was, therefore, represented on the Committee which met on a total of eight occasions over a period of four and a half months.

On February 27, 2003, the Report of the Committee was submitted to me containing several unanimously agreed recommendations for much needed reform at the level of the Magistrate's Court in particular. The report went further than the recommended terms and was quite comprehensive and far-reaching. The principal recommendation is for the introduction of structured case management at the level of the Magistrate's Court thereby enabling the Magistrates to assume greater control over the procedural evolution of matters.

Several other recommendations have been made with a view to enhancing the efficiency of the operations in the various departments that are integral to the criminal justice system and the success of the principal recommendation is contingent upon the implementation of all of the Committee's collateral recommendations. It is not my intention, to set out in detail the proposals made. A further account of the recommendations is set out in our Annual Review, - for those who are interested. The press is already aware of the existence and contents of this report, and in fact, several newspapers have already carried some of the more important proposals.

One of the principal recommendations of the Remand Court Implementation Committee is the establishment of a Backlog Reduction Committee for the Magistrates' Court which it is hoped will enquire into the reasons for unacceptable delays at this level and which it is also expected will devise measures to expedite the hearing of long outstanding matters. The membership of this Committee is expected to be finalized shortly.

On the receipt of this report, I wrote to the Attorney General, enclosing a copy of the report, and I suggested that the same members of the Committee under the Chairmanship of Mr. Justice Mark Mohammed be converted into a task force to work together with three legal officers to be appointed from the Attorney General's Office in order to implement the various recommendations made. This has been done and it is now up to the task force to complete its work and bring to completion the recommendations made by the Committee. I am determined to ensure that the recommendations made by this Committee shall not suffer the same fate as the numerous reports and recommendations made over the years.

Before proceeding any further today, I will like to extend my appreciation and gratitude to all those who participated in this exercise for having given up their time willingly in order to ensure that the administration of justice is enhanced. I have already thanked each of them privately in writing and I wish to do so now publicly.

UPDATE ON BUILDINGS

C At no time in the past has there been a full complement of functional Magistrates' Courts.

ARIMA MAGISTRATES' COURT

Last year when I addressed you, I spoke about the dilapidated buildings and the deplorable conditions under which the Magistrates and staff had to function. I had singled out the Arima Magistrates' Court for mention, and had pointed out that a prison van exposed to the intense heat was used to house prisoners. Staff had to be moved from the first floor to the ground floor and one courtroom reconfigured to accommodate two courtrooms. The judiciary has exhausted the good will of the members of staff, who no longer wish to hear why we have not been able to relocate them.

These factors, among others, have seriously impacted on the backlog of cases, and have substantially detracted from the determined efforts by the magistrates and staff in tackling the backlog. There is, however, a glimmer of hope in Arima.

A building was identified by the judiciary in March 2002. The usual bureaucratic delays ensued. The building is now in the process of being tailor-made to conform to the unique requirements that are so vital for a functional court.

SAN FERNANDO MAGISTRATES' COURT

Because of the disgraceful conditions at the San Fernando Magistrates' Court, some two and a half years ago, the Courts had been forced to close at 2.00 p.m. every day. This situation still continues today.

In fact, the Honourable Attorney General paid a site visit to this Court and expressed great horror about the state of the building and the conditions under which the staff have to work. The poor condition of this court has also impacted adversely on the backlog of cases.

Again, there is a ray of hope. The judiciary after some considerable delay has now been given the all clear to have an architect of its own to do the necessary work on two buildings now in the possession of the judiciary. It is hoped that these would become functional some time next year.

ST. GEORGE WEST MAGISTRATES' COURT

NEW WING – St. Vincent Street, Port of Spain.

This new wing has a history of its own. Some two and a half years ago, it was said that these premises were ready for occupation by the magistracy.

A site inspection revealed so many defects that the judiciary refused to take possession. About five million dollars, in addition to what had already been spent, are being expended to address these shortcomings.

The fundamental errors and the blunders initially made resulted, principally, because NIPDEC failed to consult with the judiciary on the project. The original designs of the building showed complete ignorance or indifference to the special needs and requirements of a Court building.

The remedial works are still continuing at a leisurely pace, with no obvious personal supervision. Several deadlines were given for the handing-over of the building; but these have been routinely flouted.

New furniture used to furnish the building were destroyed and or disfigured by the workmen in the course of this work. However, the judiciary has requested NIPDEC to bear the cost of replacement.

The excessive costs overruns, the inordinate delays, the failure to consult with the judiciary, the improper planning, the lack of daily supervision of workers and the reckless disregard and disrespect for public property together with the failure to meet promised deadlines, have all contributed to the colossal disaster that the refurbishment turned out to be.

On Friday the 15th August 2003, possession of this wing was handed over to the judiciary. The wing is still in a highly unsatisfactory condition and the judiciary was again reluctant to take possession.

However, on the written undertaking given by the Attorney General that her ministry will provide the funds to complete the job by workmen employed by the judiciary, the judiciary took possession. Now that it's under the control of the judiciary and with the available funds, we hope to be in occupation in a matter of weeks rather than months or years.

There are several more magistrates' court buildings, which are in need of either substantial refurbishment or demolition and rebuilding, for example – the Chaguanas

Magistrates' Court and the Sangre Grande Magistrates' Court. Plans are underway to address this situation.

The news is however not at all bad. I have been assured that the new Magistrates' Court in Arima will become functional and ready in a few weeks time and that the Chaguanas Magistrates' Court should be relocated to a new building by the end of this year.

MAGISTRATES' COURTS TOBAGO

On the 4th August 2003 I led a high-powered team to Tobago in order to address and assess the problems confronting the practitioners. The discussions with the members of the Tobago Law Association were cordial, candid and very productive. They fully understood that the question of funding was crucial to any progress in Tobago and appreciated that the judiciary was doing all within its power to improve conditions.

One thing, which emerged very clearly from our discussions, was that Tobago had special needs and I reassured them that they will be addressed and they were to be put on equal footing as Trinidad. Nothing less would suffice.

PRO BONO WORK.

D. It will be recalled, that in my speech I had invited lawyers, particularly those who were newly qualified, to volunteer themselves for pro bono work. A circular was sent out to all the Clerks of the Peace, requesting them to invite practitioners in the particular districts to respond to my request. Unfortunately the response was extremely poor, and I am really disappointed.

What I find particularly puzzling, is that some of these self same lawyers, would raise money for charitable purposes and yet do not seem to be interested in helping the poor, the disadvantage and the needy, who desperately need legal representation. I have not given up.

Today, I want to repeat that call. I want to suggest a new approach, that practitioners doing pro bono work should, at the end of the term, submit to the Registrar a list of all the cases so done. In recognition for their services, these lawyers would be honoured in a manner befitting of their contribution. I hope this new suggestion will meet with greater success.

JUDICIAL EDUCATION.

E. The prolific English lawyer and writer, John Mortimer, speaks of “a general decrease in the awe and wonder with which the population looks at its established institutions,” an attitude from which the courts are not exempted. He puts it this way:

Many years ago, when I first took up the law, proceedings in court were shrouded in myth. In those days the country at large believed that trials invariably came to the right conclusion, that police officers told nothing but the truth, and that judges were miraculously conceived and were born unencumbered with the usual human luggage of preconceived ideas, kneejerk reactions, prejudice, failures of the imagination, inability to admit mistakes or pure bloody-mindedness.

These myths have now, no doubt to the regret of many members of the legal profession, gone the way of witchcraft and the Flat Earth Society. Trials have, despite energetic whitewashing by appeal tribunals, been shown to have gone horribly wrong. Police evidence is now taken by juries with large helpings of salt. And the pronouncements of some judges, before and since retirement, have gone beyond endearing eccentricity to give some cause for alarm."

See *The Spectator* August 25 1990 p. 14C.

Similarly local legal myth had it that upon taking the judicial oath not only did the status of the lawyer change but by some form of legal magic that person became imbued with the knowledge of all the laws and thereafter this knowledge was forever carried in the breast of the judge which he readily dispensed and expounded at will. That myth has now been shattered and it has now become clearly recognised that there was always a genuine and pressing need for judicial officers to undergo continuing legal training.

In this regard two important and major steps have taken place. Firstly, several years ago, the former Chief Justice de la Bastide initiated annual retreats for the Judges which was later to be followed by retreats for the Magistrates. The benefits of this exercise are clear.

Firstly, they promote camaraderie and help foster better relations among the judicial officers themselves. This in turn leads to a more united and cohesive Judiciary so necessary if there is to be true or meaningful progress. By attending and participating in these retreats the Judges and Magistrates

themselves had clearly recognised, quite rightly in my view, that they had a lot to learn and realised how impossible it would have been to dispense justice, according to law, without upgrading their skills and increasing their knowledge. Of course, there were many more advantages. For instance, it provided an occasion to break down social barriers and any hostility, which might have been more perceived than real.

The second step.

In August of 2002, Cabinet agreed with the proposal put forward by the Judiciary, that a Judicial Education Institute should be established. This institute comprises a Board of Directors and an administrative arm. The Board is diverse and some of the directors include Judges, Magistrates, a Senior Librarian, and a Judicial Co-ordinator. The establishment of this institute is a vital step and a very important development in the Judiciary. Its role and objectives are many and far-reaching.

Its main mission is to promote excellence in the administration of justice with continuous training and the development of Judges, Magistrates, other judicial officers and non-judicial staff attached to the Judiciary. Some of its objectives are to encourage and promote research with respect to legal issues, judicial administration, court systems and court management support activity.

Secondly, to develop in every officer a commitment to learning so as to improve their lives and enhance the quality of service delivered by the Judiciary; to issue publications and develop and approve education programmes to meet the needs

of the officers attached to the Judiciary. While it is true to say that Cabinet has agreed that a review of the operation of this institute is to be undertaken after 18 months operation experience I have no doubt that the importance of its existence is clearly recognised and that it will become a permanent feature of our legal landscape.

While I am on the question of Judicial Education, I see no reason why the legal profession should not follow the lead of the Judiciary in providing for continuing legal education, after all it is now universally accepted, that if the high standards of the Bar must be maintained, the profession must not complacently sit by. The failure of the profession to act timeously can slowly stifle the creation and growth of our jurisprudence and render the role of the profession obsolete and the services it provide worthless.

THE INDEPENDENCE OF THE JUDICIARY

I am aware that in my first address to you I spent a fair amount of time commenting on the importance of the independence of the Judiciary.

There can never be any complaint, however, if this question of the independence of the Judiciary is raised over and over again. It is far too important a pillar of our Constitution, and for the adherence of the rule of law, not to be raised time and again, particularly since there are many insidious ways of undermining this independence. The attack is not always frontal.

Interference from the Executive can take many forms:

- (1) Withholding of funds.

- (2) Preventing judges from obtaining training.
- (3) Preventing or impeding the hiring of staff to fill posts.
- (4) Assuming the power to decide that recommendations from the Chief Justice should be put before cabinet.
- (5) Interfering in the daily decision making jurisdiction of the Chief Justice.
- (6) Limited and insufficient budget allocations.
- (7) A grave reluctance to modernize court facilities.

I have discovered that many persons, some occupying very high positions, are unaware of the role and function of an independent Judiciary.

Experience over the years has shown that the Judiciary has been treated as if it were some Government department or one of the several Ministries of Government. This is most poignantly illustrated when the Judiciary has to approach the Executive, particularly, for funds. It has been said by senior Ministers—and I agree) that funds have to be allocated in a manner that is seen to be equitable and fair. That is not a principle that I reject. What I say, however, is that the Judiciary must receive enough funds and assistance from the Executive so as to enable it to meet a minimum standard so that it can deliver justice efficiently.

The Judiciary does not seek to ask for more than what is necessary to ensure that it delivers justice efficiently. But, if we are to adhere to the rule of law, or if we are to have a proper and

civilized system of justice, then there must be an absolute minimum which, in my respectful view, we have yet to achieve.

The Executive must realise that an independent judiciary, whose duty is to insist on the adherence to the rule of law and to uphold the Constitution and the law, is crucial to the development of the society. Without it, investors have no confidence, creditors are not protected, borrowers are exploited, victims of wrong are denied access, and State power in all its manifestations is abused without effective control.

THE MATRIMONIAL COURT

THE FAMILY COURT –

PILOT PROJECT - PORT OF SPAIN

F. Over the years experience has shown that the matrimonial rules, which underpinned the Matrimonial Proceedings and Property Act Ch. 45:51, had fallen woefully short of the intended objectives. Instead of promoting conciliation and settlements in the family unit, matters turned out to be bitter, hostile and acrimonious.

The adversarial approach used by the lawyers in the Civil Courts, and adopted in the Matrimonial Courts, did nothing to improve the situation. On the contrary it made matters worst.

The real disputes between the parties were often lost in legal entanglement, and high posturing between their lawyers, which often infected the parties.

Matters worsened over the years – this was evident particularly in Port of Spain Matrimonial Chamber Court where a

wait of four months was the average waiting time before a new matter could even come on for a first hearing or where a matter had to be adjourned to another day.

Obviously, this was quite unacceptable, and despite my rostering an additional judge to this Court, matters have not really improved. Further lengthy matters kept on being adjourned time and again before they could eventually be made ready for trial or before the Court could find the time to deal with them.

Many of you would recall, that from time to time it was mooted, that the creation of a Family Court would be the answer to this intractable problem.

None can doubt, or underestimate the importance of such a Court – in fact in my speech last year I talked about the importance of this Court, and also about the need to have an expeditious, efficient, and fair disposition of family litigation as it crucially impacted on all aspects of the society.

The present Attorney General, who is well acquainted with the problems having presided and also practised in this Court, decided to establish a committee, to determine how the matter should be approached.

As a result of the report of this Committee, Family Proceeding Rules were to be revised, restructured and implemented on the basis of a pilot project to be conducted only in Port of Spain for a period of two years. These rules were

accordingly drafted and are to come into operation on a date to be fixed.

This Court is to be situated at NIPDEC House, and all family proceedings will be dealt with here - Magisterial as well as High Court matters.

The Court will now apply the overriding objective of dealing with family matters justly and in a way which gives first and paramount consideration to the welfare of children (if any). Further, most of the procedural matters have been simplified or even eradicated and there are requirements for more disclosure before and during litigation. The approach to be adopted would be more conciliatory than adversarial.

In addition, the ready availability of a variety of social services to assist the court in its new setting should be more conducive to dispute resolution rather than agitation between parties and also would ensure that if, and when, litigation ensues, the issues will be narrowed and better defined so that they should take less time and expense.

The new Family Proceedings Rules and their implementation in a less adversarial environment should ensure that matters are resolved in a more holistic environment and hopefully this will help to ease the societal fall out generated by such litigation.

Judges and Magistrates who are to preside in this Court, have undergone special training conducted by a distinguished

and highly experienced Family Court Judge who is also an assistant professor at the Faculty of Law of the University of Calgary. The support staff and all the professional and skilled personnel are in the process of being recruited and trained, where it is necessary to do so. A second session of training for another group of judges and magistrates will take place in November of this year.

It is hoped that the measures taken will help to solve many of the problems, which are now being experienced in such matters.

Might I just add, that there is going to be a "Monitoring Committee" to observe the operation of these "new rules", in order to determine what are the shortfalls – so they can be addressed.

Finally, I would like to take this opportunity to congratulate Madam Attorney for her determination and tenacity in ensuring that the Family Court is now on the verge of becoming a reality.

THE ADMINISTRATION OF CRIMINAL JUSTICE – ITS ROLE IN THE FIGHT AGAINST CRIME

G. Today, the criminal justice system of our country has been catapulted into the forefront and has been tested, like never before. Law-abiding citizens have recoiled in horror and abject despair as they witness daily, the heinous and

unspeakable atrocities committed by the criminal elements. Contributing to the despair is the widely held perception that the security forces are relatively powerless against the ever-increasing ruthlessness and sophistication of criminals.

The purpose of the criminal justice system is to ensure that the guilty are punished and that the innocent are set free. It is crucial therefore that there be proper detection and investigation of crime. The war on crime does not however only rest with the police. That is the start of the process. A comprehensive assault on crime requires an approach, which factors into account the needs of the prosecutorial arm of the State, whose role it need hardly be said is pivotal, together with the needs of the Courts both at the Magisterial and at the High Court level.

The Executive has hitherto focused its attack on crime by concentrating on the investigative arm of the State. While this is a valuable starting point, an approach which focuses too extensively on this arm to the virtual exclusion of other equally important departments and agencies that constitute the criminal justice system, is a myopic one. The fight against crime has to involve a concerted and coordinated effort by the various agencies involved. Grave deficiencies in one department or agency, because of the symbiotic nature of the relationship between the various departments in the criminal justice system, will sooner or later impact negatively on the overall efficiency of the system. In these circumstances, the Executive must ensure that it comes to the rescue of the Judiciary to ensure that the

Courts are well equipped. The Executive must also come to the rescue of the Office of the Director of Public Prosecutions, which remains very much at the forefront of the assault on crime.

With respect to the Office of the Director of Public Prosecutions, it is crucial that there be a sufficient cadre of experienced and skilled prosecutors to handle the more serious criminal prosecutions before the Magistrates' Courts and the Assize Courts. In many serious and complex criminal matters the accused is represented by Senior Counsel. The State on the other hand is frequently unable to match with Counsel of even roughly equivalent forensic skill.

This is certainly not intended to be an attack on State Prosecutors – indeed I have the greatest admiration and respect for the manner in which they undertake their responsibilities, often times under very difficult conditions. There is however really no substitute at the end of the day for experienced Counsel. To illustrate this point, I would say using a sporting metaphor, “You cannot send a batsman with a coconut bat, to open the innings at Lords.” The Executive therefore has a duty, indeed a responsibility to ensure that the Director of Public Prosecutions' Office is properly staffed and its officer's appropriately remunerated to attract lawyers of a high calibre to take on the heavy responsibilities which they have to discharge.

There is no doubt that guilty persons have been acquitted in the past, because of the inexperience of Counsel for the State. This tends to undermine the criminal justice system.

It is perhaps a sad fact that this will continue in the future and some may argue that this is inevitable, in any system of justice – but at least an effort should be made to minimize such occurrences.

With respect to the use of police prosecutors in the Magistrate's Courts, Trinidad and Tobago remains one of the very few jurisdictions in the Commonwealth that retains this system. It is a colonial anachronism that in my respectful view has outlived its usefulness. Even in simple summary matters before the Magistrate's Courts, defendants are legally represented. The principles of disclosure are as important in those simple matters as they are in the more complex ones. The time has therefore long since come for Prosecuting Counsel from the Director of Public Prosecutions' office to represent the State in all criminal prosecutions at all levels. It is appreciated that this will take a substantial infusion of staff into the Director of Public Prosecutions' Office but this must be done if the prosecutorial arm is to perform at its maximum potential and thus fulfil its lofty constitutional mandate.

With respect to the Courts, it is crucial that we have an efficient and expeditious criminal justice system at all levels. Long and intolerable delays in bringing accused persons to trial are a boon to those committing serious offences. Witnesses often times become exasperated by delays and this serves as no incentive to secure their testimony at trial.

With respect to bail, the right to have reasonable bail is not an absolute one. The presiding Judge or Magistrate has a discretion and a balance must be struck between the rights of a person charged and presumed innocent and the interests of the law-abiding citizen. All the circumstances prevailing in the society have to be considered in determining whether bail ought to be granted or not. There is a perception that bail is granted as a matter of course. In reality this is not so. It is up to the Magistrates and Judges to carry out a proper balancing exercise so as to ensure that the well being, safety and security of the society is considered as a matter of paramount importance.

APPOINTMENT OF SENIOR COUNSEL, COMMONLY CALLED “SILK”

H. Ever since we can remember, the gift of Senior Counsel was always in the Executive. Whatever the reasons, they are not necessary to find out or to rehearse, for it is now clear that in modern constitutional thinking and jurisprudence there can be no justification for politicians making the appointments.

The present position is that applications are made to the Attorney General, who, in turn, consults with the Chief Justice. A final list is prepared and submitted to Cabinet; the Cabinet may or may not appoint—the Cabinet may not appoint all. Some, indeed, may be rejected. Reasons are not given, nor are Applicants made aware of what criteria are used for making such appointments. The short point is that there is no transparency.

It is my respectful opinion that this Constitution anomaly must now be removed. I would suggest that the appointment

should be made by the President on the advice of the Chief Justice after consultation with the Attorney General and the President of the Law Association and any other person thought necessary. The fact that such an appointment should reside in the hands of politicians can be disconcerting as even a beneficiary might not be sure whether his appointment as Senior Counsel was on the basis of political patronage or merit.

I, therefore, invite the leaders of the various Legal Associations to join with me in seeking to have this anomaly put right. The independence of the Bar and, in turn, the independence of the Judiciary requires that no politician should be involved in the appointment of Senior Counsel.

There is another aspect touching the issue of Senior Counsel which has been the focus of attention recently in England, and that is whether there is the need to have such a system at all. There was some strong criticism from both professionals and members of the public in England who criticised it as being archaic and outmoded and was really seen as “a licence to print money.”

It may very well be that in the near future we may have to take a fresh look to see if its continued existence is in the best interest of the litigants.

THE ROLE OF THE JUDGE IN TRINIDAD AND TOBAGO

I. Not so long ago, the main job of the judge was to resolve private disputes between citizens and conduct criminal trials. Today, however, the role of the judge has become more complex

and difficult. Ever since we gained independence in August 1962 Parliamentary supremacy was replaced by Constitutional supremacy.

The Constitution, which became the Supreme Law of Trinidad and Tobago declared that all citizens were to continue to enjoy fundamental rights and freedoms, enshrined in the Constitution, and that except in certain defined circumstances, no future Act of Parliament was to be inconsistent with the Constitution. The Court was given the power to strike out such legislation. It then became the Court's responsibility to determine a vast array of complex and divisive issues, which often embraced social and moral questions that were of profound importance to society.

The heightened collective awareness of Constitutional rights spawned unlimited applications in which Constitutional reliefs were sought. This is clearly evident in our law reports, which are replete with cases of a constitutional nature. Another reason for the change in the role of judges was the introduction of judicial review, which gave an "aggrieved citizen", a right to challenge executive action. These two areas have inevitably brought judges more in the public eye. It is therefore imperative that our systems do all that they can to minimise the danger that judges' decision could be perceived to be politically motivated.

Further, in the new social policy role of judges, is the apparent inability or unwillingness of politicians to deal with pressing social or political issues. In the result, matters that are

of a sensitive nature, which can prove to be politically embarrassing, are thrown in the “lap” of the court for determination.

Judicial involvement in these matters leaves the judiciary open to criticism from politicians and the public. It is not however, the role of the judge to seek public acclaim or cater to the needs of any particular faction. The duty of the judiciary is owed to the law. It is the role of the judge to render justice and to do so without fear or favour. It is this that the public must be encouraged to see, that decisions taken are not taken for short term expediency but because they are best for the society in the long run.

In her article entitled “the role of judges in modern Commonwealth Society” Beverly McLachlin (now CJ of Canada) says:

“The necessary concomitant of the increasing insistence on human rights and the new social face of the law is an independent judiciary, ready and able to review a wide range of government action. While the legislative and executive branches of government have an important role to play in supporting human rights, the difficult burden of interpreting the rights and maintaining them even in the face of governmental intransigence if need be rests on the shoulders of the courts.”

LQR Vol. 110 p. 264.

I have spoken quite a bit about the role of the judge in today's world – however, we must not forget the magistrates,

who deal with the bulk of matters brought by persons seeking justice. Most of them continue to function in unsatisfactory and deplorable working conditions.

In dealing with their long lists, they have at all times to be of equable temperament, in spite of the provocative and aggressive advocacy of some Counsel, which has now become very common. They must at once, exhibit the proverbial patience of Job and the wisdom of Solomon.

The indignities inflicted by Counsel and sometimes litigants, are suffered mostly in silence, for if they show any emotion or seek to put a stop to such crass behaviour, they are then accused of seeking to muzzle.

I have thought it necessary to make reference to these matters, not because you are not aware of them, but as a reminder of what judicial officers have to undergo on a daily basis. Some of our harshest and most severe critics are, on many occasions, members of the legal profession who ought to know better.

The unswerving commitment of our judicial officers was poignantly made in a conversation, which I overheard during our last session in our Continuing Educational Seminar in June this year. It was during a session in which there was a "Brain Trust among the judges – the topic was "Summing up in Criminal Trials". Two American professors who had been invited to make contributions on other topics were seated next to me. Nearing

the end of the session one of them said to the other, "The Island is very fortunate to have very committed judges". The other replied, "I agree."

Of course, "this is also true of our magistrates." I audibly endorsed their remarks and I know many of you too will do so silently.

Post Script

On the 7th August I received a letter from Professor Salatti who was the professor who had made the comment. In this letter he said:

"The atmosphere and setting were wonderful, but what will also remain with me are two impressions that you, the justices, the masters and the staff made on me. First, all of you are deeply and passionately committed to developing a strong judiciary that is highly respected because of its competence and dedication to the rule of law. Second, complementing that serious commitment to justice is a spirited camaraderie. Although the fascinating debates about the judiciary and its role in society were intense at times, yet everyone always was congenial and, if I might say, fun".

STATISTICAL UPDATE

THE COURT OF APPEAL

- J. At the conclusion of the sitting of the Court of Appeal on 31st July 2003 the status of the workload is as follows:

Civil

Matters which qualify to be listed for hearing will be exhausted by November 2003. However, it is important to bear

in mind that records are filed on a regular basis, though not necessarily on a daily basis.

Criminal

Murder

Pending in this category are matters which may be classified for convenience as follows:

- (1) matters filed before 2003
- (2) matters filed in 2003.

With respect to matters filed before 2003 there are four matters pending. In one of them a psychiatric report is awaited and in the other three, arrangements are to be finalised to facilitate the attendance in court by local and foreign-based psychiatrists. With respect to matters filed in 2003, transcripts are awaited in all of them. This has resulted because of the inability of the CAT reporters to cope with the demands on their services as well as the absence of any adequate system of recording proceedings in Court by way of an alternative to the existing, laborious, archaic method of judges recording their own notes in long hand. Consequently, we have not been able to list for hearing a single 2003 murder appeal for the year so far.

Non-Capital.

By November 2003 appeals with a conviction date of 2003 can be listed subject to the availability of the relevant transcripts. This means that we will be hearing appeals within 12 months of conviction. The eminently desirable position of hearing non-capital appeals within a much shorter period to time say three to four months of the conviction date can be achieved

only if the capability of the C.A.T. section is enhanced immeasurably.

Magisterial

During the period September 2002 to August 2003, out of the five hundred and thirty-two (532) matters listed, four hundred and sixty-eight (468) were determined at eight specially convened sittings at Port of Spain, San Fernando and Tobago. At these sittings, a number of appeals dating back some 18 to 20 years were dealt with. Many of them were just lying there awaiting magistrates' reasons when there was no realistic prospect of obtaining reasons from magistrates who were unavailable for reasons ranging from death, resignation or retirement.

HOUSE KEEPING MATTERS

Rules Committee

K. The Rules Committee has been quite active in the last few months. It has introduced certain rules and procedures that will greatly redound to the efficiency of the administration of justice. A practice direction was recently issued to deal with ex parte applications before a Judge in Chambers. In the past there was no set procedure with the result that much judicial time and expense were wasted. Once the Registrar was notified of an intended application the chamber Judge was virtually on "standby". He would sit around for hours awaiting the filing of the relevant papers. The practice direction has put an end to this time wasting. An orderly procedure is now in place to ensure that judicial time is used more profitably and efficiently.

A practice direction has also been issued to deal with the filing of documents in the Chamber Court. In order to assist the Judge in dealing with the real issue before him, attorneys are now required to identify in the body of their summons the particular Order and Rule under which the application is being made. In addition, affidavits filed in support of or opposition to an application must now be marked in a particular way so that the judge can more easily identify the maker and on whose behalf they have been filed.

In recent times attorneys have complained about the long waiting period between the filing of summons for directions and the date fixed for hearing them. The wait was in the order of some five to six months. It was recognized that the cause of the delay came about because of the vast amount of running down actions filed each year. They constitute at least 40 to 50 percent of all actions filed every year. Each one required a summons for directions to be filed before setting down for trial. This has now been abolished and in such actions there will be automatic directions for setting down. Attorneys therefore will see from this term onwards a great reduction on waiting time for the hearing of Summons for Directions in other matters. A running down court will be introduced and this will have the immediate effect of disposing of running down actions within a relatively short space of time. By freeing up the general trial lists, so to speak, it is hoped that judges will now be able to tackle other actions more effectively and with dispatch.

Finally, it is my intention to re-visit the practice direction issued some years ago with respect to the filing of skeleton arguments in both civil and criminal matters in the Court of Appeal. For some time now matters have had to be adjourned simply because attorneys failed to file the arguments within the required time limits. Invariably, the arguments would reach the desk of the appellate judges either late the day before the scheduled hearing or the very morning of the hearing, if at all. The time has come to consider what effective measures can be imposed to deal with this delay. Whether some sort of sanction against attorneys who fail to comply with the directions should be imposed e.g. that they be made to pay personally the wasted costs of the hearing is one of the solutions being looked at. I had written to the Law Association on the matter and was comforted by its positive response. It agreed that some form of sanction must be imposed. In the ensuing months the Rules Committee will formulate rules, if necessary, to deal with the situation. One suggestion in the civil jurisdiction is to amend the rules relating to the filing of the record of appeal the appellant must include the skeleton argument as part of the record. Once filed the respondent would have a limited time to file its skeleton arguments. If it fails to comply with the time limit an application would have to be made to the Court for an extension of time to do so. At the hearing of the application an appropriate order for costs could be made against the defaulting attorney personally, an order that would be supervised by the Court as far as payment was concerned.

Your Excellencies, Madam Attorney, President of the Law Association, members of the legal profession, distinguished guests, recent events touching the proposed acquisition by the Executive of the Magistrates' Court at St. Vincent Street, Port of Spain, have clearly demonstrated the need for proper and prior consultation between the Executive and the Judiciary, in matters affecting the judiciary.

The Attorney General acts as a conduit pipe between the Judiciary and the Executive. That office is a purely political one and it is not unreasonable to expect matters are firstly viewed in the political context. Progress and improvement in the Judiciary depend to a large extent on the personality of the Attorney General and his or her ability to influence and persuade other Cabinet members.

It is not acceptable to have the interest of the Judiciary dependent on the idiosyncratic behaviour of the Attorney General. There must be found a more effective way to have the problems of the Judiciary assessed and canvassed, in the Cabinet by someone who is objective and independent. I mean no disrespect or discourtesy, to the present Attorney General or any of her predecessors. This, however, might be a matter for Constitutional Reform.

Justice Telford Georges, that eminent and distinguished jurist in his report on the "*Independence of the Judiciary*" dated February 16 2000 recommended at p. 33 –

"I recommend that the established channel of communication between the Chief Justice on the

one hand and the Cabinet and the Parliament on the other should be the Prime Minister.”

In conversation with the present Prime Minister, I have the distinct impression that this approach is one to which he subscribes. In my view, however, this suggestion does not deal effectively with the problem – in point of fact – it still remains, Who is to speak in Cabinet on behalf of the Judiciary? With the Constitutional underpinning of the Separation of Powers, and the Independence of the Judiciary – the person must be objective, independent and impartial. The answer to this does not readily lend itself to any simple solution.

The Judiciary (including) the Magistracy is in the process of revisiting its traditional role. Throughout the past and even now, the main event is the Opening of the Law Term speech given annually by the Chief Justice. The vast changes that have taken place over the years within the Judiciary itself, and its interaction with other organs of the State are matters, which continue to mystify ordinary members of the public and even public officials as well.

As a starter, the Judiciary intends to embark upon a programme to educate the public about its Constitutional position, its role and function in society. It is to be expected that during the course of this exercise judges and magistrates will be free to tell members of the public what problems they are having in the Judiciary and their suggested solutions. The judges and magistrates, after all, exercise awesome powers over the lives of

our citizens and they have a right to know if justice is not being delivered efficiently what are the reasons.

The conventional reticence too of the Chief Justice may also have to be reviewed. Just as the Prime Minister sometimes addresses publicly, the gravity of the situation in the Country or any event of importance, so too should the Chief Justice have access to a similar facility to address the public about serious problems confronting the administration of justice.

Of course, this latter scenario will only be adopted in extreme circumstances when the Chief Justice has no other way. Let it be made clear, my intention is not to cause controversy or embarrass any department or ministry. I regard it only as a final option where all else has failed.

Your Excellencies, Madam Attorney General, President of the Law Association, members of the legal profession, distinguished guests, it is now universally accepted that there is a tragic decline in ethics and morality, standards and values, commitments and concerns, caring and sharing, social conscience and spiritual interests. Correspondingly, there is an escalation of crime and violence, vulgarity and intoxicated arrogance, a pervasive pathology pollutive of character at every level of life.

This slide that is now taking place must be arrested. The counter attack must be led by an integrated and coordinated plan by our churches, homes and schools working together. In all this the judiciary shall continue to play its part. The rule of law will be protected and the independence of the

judiciary remains intact. Our pursuit for excellence and justice for all shall continue.

Finally, I wish to thank the judges, masters, magistrates, the staff of the Court Administrative Unit, and the support staff in the Magistracy for the unswerving commitment to duty. They, by their dedication, have ensured that justice can be delivered, even in difficult times. I wish to thank them most sincerely. The staff at the Hall of Justice is not to be excluded. They quietly carry out their duties without singing a song about it.

To the staff generally, I thank you for your support, for your commitment and for the daily sacrifices you continue to make in order to ensure that the wheels of justice continue to roll.

I now declare the new Law Term open. Court is adjourned to 9.00 a.m tomorrow.