

*Leave of Absence**Wednesday, April 28, 1999***HOUSE OF REPRESENTATIVES***Wednesday, April 28, 1999*

The House met at 10.30 a.m.

PRAYERS[MR. SPEAKER *in the Chair*]**LEAVE OF ABSENCE**

Mr. Speaker: Hon. Members, I wish to advise that leave of absence has been granted to the Member for Port of Spain North/St. Ann's West up to May 7, 1999; to the Member for Diego Martin West up to April 30, and to the Member for St. Augustine up to May 11, 1999.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Tunapuna/Piarco Regional Corporation for the year ended December 31, 1995. [*The Attorney General (Hon. R. L. Maharaj)*]
2. Report of the Auditor General on the accounts of the Tunapuna/Piarco Regional Corporation for the year ended December 31, 1996. [*Hon. R. L. Maharaj*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Environmental Trust Fund for the year ended December 31, 1998. [*Hon. R. L. Maharaj*]

Papers 1 to 3 to be referred to the Public Accounts Committee.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House now deal with "Bills Second Reading" under "Government Business" instead of "Motions".

Agreed to.

CONSTITUTION (AMDT.) (NO. 3) BILL

[THIRD DAY]

Order read for resuming adjourned debate on question [March 12, 1999]:

That the Bill be now read a second time.

Question again proposed.

The Minister in the Ministry of Planning and Development with responsibility for the Environment (Dr. The Hon. Vincent Lasse): Mr. Speaker, I rise to make my contribution on the Constitution (Amdt.) (No. 3) Bill, 1998, a Bill, in my humble view, which has evoked a great deal of hysteria. It has evoked much debate. It has evoked much uncalled-for suspicion. It has caused eminent personalities, all of the same mind and status, to speak out against it, but I am not challenging the purpose and intent of these eminent personalities.

What I can say at this point in time is that these eminent personalities are not Members of Parliament. I say this without malice and in good faith. It is said: "Uneasy lies the head that wears the Crown". You see, these eminent persons do not go to a constituency office at least twice a week, nor do they have to answer their telephones throughout the night and, sometimes, during the wee hours of the morning. These eminent persons do not have to wonder where the next meal of their poor and helpless constituents is coming from. As it is said in the calypso, they do not hear the "voices from the ghetto". While their intentions may be honourable and noble, they are out of physical touch with the realities of the day-to-day existence of the majority of the population. I speak of the most deprived sectors of the population, the real poor people.

Now, as a Member of Parliament, I have to answer questions which are germane to this Bill before us. I am asked, "Why is it that my daughter who had applied to the Teaching Service Commission for a position five or 10 years ago, has in her possession only an acknowledgment slip, and, of course, she has no means at her disposal to know the status of her application?"

I am asked, "Why is it that my son, who has been a police officer for 15 years, has not yet been promoted, even though he may have passed necessary examinations and he has no means at his disposal to enquire about the status of his promotion?"

I am asked, "Why is it that my daughter, who had been a nurse for 10 years, is still a temporary nurse and she has no means at her disposal to enquire about her status? Would she be temporary until the day of her retirement from the service?" "This type of uncertainty can militate against her efficiency bearing in mind the

I am asked, on a weekly basis, "Why is it that my daughter, who has applied for the position of a cleaner or a wards maid some 10 years ago, has only received an acknowledgment slip?" The lists go on and on.

I am surprised that we, as parliamentarians, could come here and say that we do not wish to know. We do not wish to interfere. We do not wish simply to ask questions and get answers on behalf of our constituents. I submit that those who do not want to do their duty to the people who have elected them so to do, should find some other calling. But it will be a setback to transparency if Members of Parliament are deprived seeking information on behalf of their constituents.

Mr. Speaker, permit me to quote from the *Weekend Independent* of Friday, March 19, 1999 at page 12, an article entitled “All the six wise men can do is beg”. I quote:

“The Attorney General says that the representatives of the people have the right, through Parliament, to scrutinize the workings of any sector of the state.

He is perfectly right. The lack of a mechanism of public accountability for all such operations, even including the way civil servants and judges are appointed, is a serious lacuna in our constitutional arrangements. We must not fool ourselves that the present system has prevented abuses. All our governments have extensively manipulated the existing system, even without a constitutional amendment to help them do so.

The problem, though, is not the lack of legislation.”

Miss Nicholson: Who wrote that?

Dr. The Hon. V. Lasse: I continue:

“The problem, though, is not the lack of legislation. The problem is lack of a Parliament. Until this shortcoming is corrected any legislation that purports to achieve accountability will simply rip away the false veil of independence from the service commissions.

...Parliamentary supervision is not the same thing as political influence. MPs are supposed to have a role other than their role as supporters of government or opposition. ‘Political’ is not a bad word. Politicians who become Members of Parliament are theoretically representatives of the people first and party supporters second.”

Mrs. James: I am glad you brought out that point.

Dr. The Hon. V. Lasse: I continue:

“Furthermore, in the system we purport to operate, Parliament is supreme. ‘Separation of power’ is a phrase that has no application whatever to a

Parliamentary system. The political independence of the civil service and the Judiciary are not ensured by insulation from Parliament. They are insured by the supremacy of Parliament over Government, by the power of the Parliament to control the executive.”

10.45 a.m.

The article went on to state that:

“Parliamentary scrutiny of Civil Service and Judicial appointment procedures includes ensuring the freedom of those procedures from interference by the Government. Or, for that matter, by the Opposition.

What the Attorney General has not said, since it forms no part of his real intentions, is that in a Parliamentary system scrutiny of State operations by Select Committees is part of Parliament's ongoing control of the government itself. There is also concern with structure and long-term policy, and not day-to-day operations.”

The article went on to state, Mr. Speaker, that:

“The British Parliament has twenty-seven Select Committees, one of which oversees the Public Service.

These Committees are manned by MP's with special knowledge and interest in the subject matter. Their composition roughly corresponds to the party alignments in the House as a whole, but there is a rigorous tradition of independence from party whips in the work of the Committees.”

Mr. Speaker, I now proceed to the Explanatory Note of the Bill to establish my case for accountability, transparency and openness in a free and democratic society. I quote, Mr. Speaker:

“This Bill, for the removal of doubt, seeks to amend the Constitution by adding thereto, a new section 66A for the purposes set out below.

Section 129 of the Constitution confers on a Service Commission unfettered power in that no one can question, in a court of law—

- (a) whether a Service Commission has validly performed any of its functions under the Constitution; or
- (b) whether a member of the Service Commission has validly performed any of its functions in relation to the work of the commission.

This form of unrestricted power now seems incompatible with the principles of accountability, transparency and openness in a free and democratic society.”

I continue to quote, Mr. Speaker.

“The new section 66A will enable the House of Representatives or the Senate to appoint Select Committees or Joint Select Committees to investigate and report to the House or the Senate or, in the case of a Joint Select Committee, to both Houses of Parliament, on the powers and methods of functioning of, and criteria adopted by, Service Commissions; and also on the powers and methods of functioning of and criteria adopted by, Ministries, Statutory Authorities and enterprises controlled by or on behalf of the State in which public money is invested.”

Taxpayers' money is used to pay these individuals, Mr. Speaker, so as it is said, there must be accountability.

“The Bill, therefore, by providing for the establishment of Select Committees and Joint Select Committees to investigate and report to each House on the powers of Service Commissions and other public bodies, seeks to give effect to the principles of accountability, transparency, openness and access to information held by public bodies generally.”

Mr. Speaker, as I see it, the Members of this honourable House who seek to oppose this Bill and create, as I mentioned earlier, a high degree of hysteria are, in my view, rather myopic and are bent on scoring cheap political points on a misinformed public. You see, Mr. Speaker, there are those who continue to tell the public that this Bill will give Government—and I repeat, that this Bill will give Government—some advantage over service commissions. But what they are not telling the public, Mr. Speaker, is that the Bill is not about Government *per se*. This Bill, as we all are aware, is about Parliament, which is made up of Government, Opposition and Independents.

In order to clarify my point on this matter, I would again quote from the *Trinidad Express* dated March 3, 1999. The headline of the article is “Constitution Bill in the national interest”. I quote:

“The Bill expressly states that the Joint Parliamentary Committee would examine the powers, methods of functioning and criteria adopted by the Service Commissions in the execution of their duties. It should be emphasised that the Bill empowers the Commission not only to examine the administrative

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functions of Commissions referred to, but also all Ministries, Departments of Government, Statutory Authorities and State-owned or controlled Corporations. The Government is not threatening to usurp anyone's authority but is in fact seeking the interest of the public by putting systems in place, which will ensure that every aspect of government is carefully scrutinised.”

I continue to quote, Mr. Speaker:

“It should be noted that legal decisions taken by the judiciary cannot be changed as the proposed parliamentary committees can deal only with administrative matters of the Judicial and Legal Service Commission. ...The Committees have the power to monitor and initiate investigations into the exercise of the administrative functions of the Commissions. Through this Bill, the Government seeks to ensure that people are kept abreast of the State's functions. In addition, please note that the Bill will also strengthen our democracy and promote openness and transparency in State affairs and in turn benefit the right of all.”

So this Bill, as I said earlier, is not about Government. It is about Parliament. The Bill speaks about the ability of the House of Representatives or the Senate to appoint select committees or joint select committees. I reiterate, Mr. Speaker, that this Bill is about Parliament and not about Government *per se*. And there is a very clear distinction between Government and Parliament.

Mr. Speaker, I want to make this point very strongly because I believe that part of the mischief is being made by conveying the wrong message to the public, thereby further confusing the issue. I would now read into the record the definition of Government as provided by *Black's Law Dictionary*.

“The system of polity in a state; that form of fundamental rules ... by which a nation or state is governed, or by which individual members of a body politic are to regulate their social actions. A constitution, either written or unwritten, by which the rights and duties of citizens and public officers are prescribed and defined, as a monarchical government, a republican government, etc. ...The machinery by which the sovereign power in a state expresses its will and exercises its functions; or the framework of political institutions, departments and offices, by means of which the executive, judicial, legislative and administrative business of the state is carried on.”

There is also a definition for “Government *de jure*” which is:

A government of right; the true and lawful government; a government established according to the constitution of the nation, and lawfully entitled to recognition and supremacy and the administration of the nation”.

Therefore, I went into the definition of Government to establish the point that government and Parliament *per se* are not one and the same.

I want to address the question of accountability, Mr. Speaker. I am not convinced and I will never be convinced if any Member of this honourable House tells me that he is opposed to accountability, that he is opposed to transparency and that he is opposed to openness in a free and democratic society. Why should a Member of this honourable House oppose a Bill which would afford him the opportunity to investigate and to obtain information on the functioning of service commissions? Why, Mr. Speaker, I ask? Why would that hon. Member deny his constituents the right—and I repeat, the right—to inquire, the right to get information on matters which affect their daily lives?

As I have outlined, and elaborated upon earlier in my contribution, I refer to questions asked by my constituents which are relevant to the Teaching Service Commission, the Police Service Commission and the Public Service Commission and these are the facts I think we have to deal with. As I see it, it would be a serious breach of duty to constituents if Members of Parliament are denied the right to seek answers for questions which they pose to us at our office from time to time.

Mr. Speaker, I would be supporting this Bill fully because I account to the people of Point Fortin on a weekly basis and I have their fullest support in backing this Bill which seeks to answer questions which they have put to me. I can only say that those who oppose do so not on grounds of logic but on grounds of petty partisan politics. I heard the Leader of Opposition suggesting, among other things, that consideration may be given if the Opposition chairs such committees. All I can say is that the hon. Member has been in Parliament for some 27 or 28 years and he should know it does not work that way.

11.00 a.m.

So, when that hon. Member made the point he was simply, joking. The weakest argument that had been advanced, so far, against Select Committees of Parliament came from the Leader of the Opposition who boasted that he has 28 years of experience in Parliament, and that Members of Parliament in Trinidad and Tobago are not full-time. Mr. Speaker, in my view, that hon. Member may well be

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treating Parliament and parliamentarians with contempt. What is he really saying? Is he saying that when a Member is elected as a Member of Parliament he will have the option of representing people on a part-time basis? Is that what he is saying? I strongly disagree with that hon. Member on this point.

Mr. Speaker, permit me to quote the Leader of the Opposition from *Hansard* dated February 24, 1999, 2.10 - 2.25 p.m. The hon. Member said:

“Members of Parliament in Trinidad and Tobago are not full-time. Therefore, when we talk about the committee system, and when we want to import the committee system into Trinidad and Tobago, wholesale, we have to understand that the major jurisdictions from which that system has been set up are jurisdictions with problems that are very different from the problems we have here.”

In my humble view, this position is devoid of logic on two important grounds: Members of Parliament should not be considered part-time parliamentarians. I do not consider myself so. The second ground was that a comparison was made with a wide variety of jurisdictions, including the British Parliament, the Indian Parliament and the Zambian Parliament. Hence the reason I say that the arguments advanced by the Leader of the Opposition were devoid of logic.

Dr. Griffith: The man is a political idiot.

Dr. The Hon. V. Lasse: Mr. Speaker, I do not consider myself being a Member of Parliament on a part-time basis, and I would never consider myself as being so.

Dr. Griffith: Twenty-eight years of experience and he has no sense.

Dr. The Hon. V. Lasse: Mr. Speaker, but all is not lost. In my preparation and research for my contribution to this debate I read an article in the *Trinidad Guardian* dated Friday, March 5, 1999, entitled: “In support of accountability” by Dr. George E. Dhanny”, in which he supported the Attorney General—he supported the Bill which is to provide a legal framework, giving the people of Trinidad and Tobago the right to have their representatives in Parliament, and Parliament as a whole, scrutinize the executives and their parliamentary representatives. Dr. Dhanny went on to state:

“The Attorney General has thus argued his case with great vigour and insight in support of the proposed measure, only to be confronted by a generalised and

selective response, bereft of specificity and reasoned arguments, and bordering on hysteria and sensationalism.

There has been no satisfactory response...”

he continued:

“to the AG’s cogent arguments. It seems unrealistic,...”

he said

“in the face of rapid and fundamental changes in forms and structures of government worldwide and the global economy, with emphasis on principles of accountability, transparency and openness, for anyone, however distinguished or learned, to argue against the desirability and, indeed, validity of such notions of good governance in civil society, so widely espoused by all democratic states that boast of representative government.”

Dr. Dhanny concluded by stating that:

“The Bill seeks to liberalise state machinery and administrative proceedings with a view to making its operations more transparent and open, and its actions more accountable to the people through their Parliament and parliamentary representatives.

Those who seem opposed to open and responsible government, and accountability to the people, need to state their case with equally reasoned arguments that are both pertinent and cogent, as those that have been advanced in support of the Bill.”

Mr. Speaker, I could have rested my case here, but I take this opportunity to develop more on the matter which to me is very serious. I believe that the public must be informed of any sinister plot of detractors to tamper with, or to prevent the harmonious development and codification of law. There are those who wish to maintain and perpetuate the *status quo* by all means. As I know it, law follows society and in a society which is developing progressively there must be the progressive development of law.

For this reason, Mr. Speaker, I shall refer briefly to some comments in favour of the Bill, which appeared in an article entitled: “Karl: Commissions Should Be Accountable.” This appeared in the *Trinidad Guardian*, Monday, March 1, 1999. It has been stated that:

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“FORMER Attorney General, Karl Hudson-Phillips Q.C., believes that the Service Commissions should be accountable to someone, especially when they are voted monies every year.”

11.10 a.m.

“Service Commissions have been voted monies by Parliament every year, they cannot exist unless they are voted money by Parliament. If that is so, to whom are they accountable?...But it cannot be that in this day and age Service Commissions would not be accountable to anybody at all and they should be free to operate as some people think...as rogue elephants.”

Mr. Hudson Phillips, Q C continued:

“What is required is to take the hysteria out of the debate”.

This is what I have been asking Members to do, Mr. Speaker: take the hysteria out of the debate and take a sober look at the constitutional position because, in the final analysis, it is really a question of examination of the management and operation of the institutions under the Constitution. This point of hysteria and the problem created was also mentioned by Dr. Dhanny.

What we are looking for is logic and cogent arguments. Mr. Speaker, I cannot recall any direct intervention by any previous administration to totally eliminate service commissions, but I can remember attempts to question the administrative functioning of one service commission. There seemed to have been some validity in so doing, so I now ask the question: Why is it now wrong for this administration to set up select committees of Parliament to investigate and report to the House on the powers and methods of functioning and the criteria adopted by ministries, statutory authorities and enterprises controlled by and on behalf of the state or, in which public money is vested?

Also, what is legally or morally wrong with seeking information? Mr. Speaker, I will now read into the record clause 3 of the Bill which states:

“The Constitution is amended by inserting after section 66, the following section:

“Appointment of certain
Select or Joint Select
Committees

66A(1). Subject to subsection (2), it is hereby
declared that—

- (a) in addition to any other Select
Committee which each House is

empowered to appoint under its Standing Orders, each House may appoint Select Committees or Joint Select Committees, to investigate and report to that House or both Houses as the case may be, on the powers and methods of functioning of, and criteria adopted by, Service Commissions, Ministries, Statutory Authorities and enterprises.”

Mr. Speaker, it is interesting to note, however, that I refer to clause 3(2):

“Notwithstanding paragraph (1)(b), a Minister or a Chairman of the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission and the Teaching Service Commission may in his individual discretion determine whether or not to appear before any Committee referred to in the section.”

Mr. Sinanan: Hon. Minister, I just want to point out to you that the clause from which you are quoting, clause 3(2), was, in fact, deleted by the amendment which was circulated by the Attorney General.

Dr. The Hon. V. Lasse: Mr. Speaker, from what I have read through the press, from personal and other contacts with members of various commissions, they do not seem averse to providing information; they do not seem averse to transparency and openness; and above all, they do not seem averse to providing information and they do not consider it interfering with their independence. So, what is the reason for this hysteria? I submit that it is simply political, and above all, one can say that it is yet another attempt to create mischief.

Please permit me to sum up, Mr. Speaker. While the debate was rather interesting, it was nonetheless very disappointing, especially when the hon. Leader of the Opposition began his grandstanding. “This stage is mine,” he said, which reminded me of the lyrics of Explainer, but I am confident that we are no longer “kicksing in Parliament”. It also reminded me of the saying that the world is a stage and that we are all players, however, those who wish to be actors should take their acting on the road shows.

The debate centred around the need for information, transparency and openness. We on this side made the point—and I made it very forcefully—that as

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Members of Parliament, we have been requested from time to time to provide information to our constituents on matters under the purview of certain commissions, and in order to fulfill their requests, there must be some mechanism through which this can be done. This Bill which calls for select committees of Parliament, if adopted, will certainly satisfy this need.

Those who oppose the Bill by stating that Government was seeking some advantage over commissions are misleading the public, because this Bill does not deal with Government *per se*. It deals with select committees of Parliament, and Parliament is comprised of Government, Opposition and Independents. One may wish to define the composition to suit their own circumstances but, Mr. Speaker, the fact is the fact.

The arguments advanced by those who opposed the Bill were devoid of logic. As was said earlier, the arguments were designed, in many cases, to create hysteria. Such arguments came in a generalized form and were bereft of specificity. It goes without saying that service commissions should be accountable to someone, and this, in my view, does not mean interference. Accountability to someone, in my view, does not mean interference.

We in Parliament are the representatives of all the people, so why can we not ask questions on behalf of the people we represent? Members on the other side should be objective and not allow their emotions to run away with their wills. From the debate which was punctuated with the measure of hysteria, it should be clear to all that this amendment will not affect the main functions of the service commissions. For example, the recruiting of staff, disciplining of staff, and so forth.

The main difference here is that select committees will be able to seek and obtain information, thereby creating transparency and openness, and giving to our constituents answers to questions which they may have asked us from time to time. There will be no political interference *per se*, because the joint select committees will be comprised of Government, Opposition parliamentarians and Independents, and I will not treat with the Police Service Commission and attempt to abolish same as was stated by the hon. Member for Siparia in her contribution on February 24, 1999 between 2.45 and 3.00 p.m. I believe the Hon. Member for Siparia did justice in making her point very clear.

Mr. Speaker: Hon. Members, the speaking time of the Member for Point Fortin has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. R. L. Maharaj*]

Question put and agreed to.

Dr. The Hon. V. Lasse: Mr. Speaker, I thank hon. Members for their indulgence, but I am about to wind up. Finally, I am here in this Parliament on serious business. I am here on the business of the people who I have the honour to represent, and I submit that all Members of Parliament should be here to articulate the views of the people they represent, but some of us seem to have developed oversized egos—when one starts feeling that this is his stage, for example.

We are here to represent people and to ensure that whatever legislation we adopt is in the best interest of all the people. We are here to ensure that democracy is preserved, and this Bill, among other things, is about democracy and the right to seek information on behalf of our constituents—the right to obtain information on behalf of the people whom we have the honour to represent.

As I said, in the beginning, and I shall now say in the end, I fully support this Bill and I trust that Members would see the wisdom in so doing. I thank you, Mr. Speaker.

11.25 a.m.

Mr. Barendra Sinanan (*San Fernando West*): Let me first comment on the contribution of the hon. Member for Point Fortin and say that he raised two matters which I think are worthy of comment. He spoke of hysteria and I think also he spoke about members of his constituency not getting replies from the several commissions. With respect to the latter, I think he is quite correct and in my contribution I will address that point. With respect to hysteria, I think he is also right in the sense that this Bill provokes all right-thinking people to become hysterical when you look at the contents of it and the purpose behind this Bill. [*Desk thumping*].

Mr. Speaker, I take solace in the fact that I honestly believe—and I say this with the greatest respect to the honourable Member—that I am not convinced that he believes in what he said. [*Desk thumping*]

Mr. Speaker, the *raison d'être* of this Bill is section 129, and if I may quote section 129 of the Constitution, which is found on page 81, section 129(1) states and I quote:

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“Subject to subsection (3), a Service Commission may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for consultation with persons with whom it is required by this Constitution to consult, and confer powers and impose duties on any public officer or, in the case of the holder of an office referred to in section 111 (2), a Judge or on any authority of the Government, for the purpose of the discharge of its functions.”

So here we see in this subsection that the Commission, with the consent of the Prime Minister, can consult and make rules to regulate their procedure.

Subsection (2) talks about a quorum and subsection (3) says:

“(3) The question whether—

- (a) a Service Commission has validly performed any function vested in it by this Constitution;
- (b) a member of a Service Commission or any other person has validly performed any function delegated to that member or person under section 127;
- (c) a member of a Service Commission or any other person or authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in paragraph (b).

may not be enquired into in any court.”

That basically, I think, is the reasoning behind this Bill, this last clause here.

In the Explanatory Note it goes on to say:

“This form of unrestrained power now seems incompatible with the principles of accountability, transparency and openness in a free and democratic society.”

What struck me in this last sentence are the words “now seems” and the honourable Attorney General and most of his Members of the Government were in Parliament for years. How is it that it now seems incompatible?

The Attorney General, I would imagine, in a previous dispensation would have been fighting tooth and nail to preserve exactly what the Constitution says. [*Desk thumping*]

Miss Nicholson: Interfere with the Constitution.

Mr. B. Sinanan: I am surprised that to the Attorney General it now seems to be incompatible. Whereas a mere four years ago, it was not incompatible—it was very compatible.

Mr. Deputy Speaker, this section 129 is what is referred to as an “ouster clause” and if I may be permitted to quote from a text entitled *Administrative Law, Second Edition*” by Peter Leyland and Terry Woods under the caption, this is on page 286; Ouster Clauses and I quote:

“Finality clauses are sometimes inserted in statutes to indicate that the decision of a particular justice or tribunal cannot be challenged by any court. There is overwhelming authority going back 300 years, however, which suggests that such finality clauses will not be recognized by the courts as excluding judicial review. *R v Medical Appeal Tribunal, ex parte Gilmore* [1957] 1 QB 574, is regarded as the leading decision on this point. Here, the National Insurance (Industrial Injuries) Act 1946, s. 36(3), provided that ‘any decision of a claim or question....shall be

So the words are similar to what we have in this section 129:

“may not be enquired into in any court.”

“The applicant sought the remedy of certiorari when there had been an error of law on the face of the record. Although the remedy was refused in the Divisional Court, it was allowed in the Court of Appeal. Denning LJ held that, while these words may have been enough to exclude an appeal they did not prevent judicial review—”

And this is the point. When the Explanatory Note says that you cannot go to the court to question a decision of a Service Commission it is totally incorrect.

Mr. Deputy Speaker, just yesterday, if I may quote page 2 of the *Newsday* dated April 27, 1999:

“Public Servant takes Government to Court”

and this is a case where a public servant is taking the Public Service Commission to court for judicial review asking why he was not promoted.

So it is not right to say that decisions of Service Commissions are precluded from the Court. They are subject to judicial review.

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I am continuing now with this quote from the text I referred to—this is Denning:

“I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words—and he was in no doubt that such a formulation as ‘shall be final’ was not sufficient to achieve this objective. With regard to ‘no certiorari’...his Lordship when discussing the effect of old statutes and cases:...the court never allowed those statutes to be used as a cover for wrongdoing by tribunals.”

So whatever wrong that a tribunal or commission does in the performance of its function can be questioned in the courts by way of judicial review.

“If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts, the rule of law would be at an end.”

That is very important.

“Despite express words taking away certiorari, therefore, it was held...that certiorari would still lie if some of the members of the tribunal were disqualified from acting.

Similarly, there is well-established authority to suggest that a finality clause will be ineffective when there is error which goes to the jurisdiction.”

And a case is quoted of *Pearlman v Harrow School* [1979] QB 56.

Mr. Speaker, the case that settles the law on this is a case of *Anisminic Ltd. v Foreign Compensation Commission* and if I may quote excerpts from that case which will put to rest the fact that you can, in fact, have judicial review of decisions of service commissions. Now, I am not saying that there are no problems with service commissions, I will address those later. Now, this is the case of *Anisminic*:

“A major obstacle to overcome was whether a statutory ouster clause could prevent the intervention of the courts. The House of Lords considered the meaning of the Foreign Compensation Act 1950, s. 4(4), which had provided in unequivocal language that ‘the determination by the Commission of any application made to them under this Act shall not be called into question in any court of law.’”

similar to what we have in section 129.

“Taken at face value this provision would appear to indicate that any consideration in a court was excluded by the clause, including any action to establish that the determination was itself a nullity. The logical consequences of this are plain enough, i.e., that a decision may well have been a nullity but there was no way of knowing this because the statutory exclusion clause prevented the courts from reviewing the matter.”

11.35 a.m.

“However, Lord Reid asked:

Does such a provision require the court to treat that order as a valid order? It is a well-established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly—meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction in the court...No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity.”

So I ask myself, what is the real purpose of this piece of legislation? Is it really to intrude on the jurisdiction of the court with respect to service commissions? If that is so, and I submit that it is, then it may be a stepping stone to something a little more dangerous than this piece of legislation.

Mr. Deputy Speaker, I go on to quote.

“As an *ultra vires* determination was regarded as not being a determination at all, the decision was a nullity which could have no effect.”

In other words, if a commission makes a decision that is *ultra vires*, it is not a proper decision and can be questioned.

“Their Lordships unanimously held that such exclusion clauses only protected determinations which were *intra vires* (i.e., valid or voidable because there had been an error of law on the face of the record).

Note that an *intra vires* decision might be voidable if there has been an error of law on the face of the record.

“In deciding whether they were dealing with an error of law which lay within the jurisdiction or a jurisdictional error (an error going to the jurisdiction), the majority held that the Commission had acted outside its jurisdiction. It is worth remembering... that even when there is any such clause purporting to exclude

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the jurisdiction of the courts, the determination of whether the decision is found to be void, voidable or valid would inevitably be made by a Judge on application for judicial review.”

I want to state categorically, Mr. Deputy Speaker, that it is not right to say that the decisions of service commissions are not subject to review of the courts. Every day, members of the public and persons employed in the public service take the service commissions to court. We have the celebrated case of Justice Crane taking the Judicial and Legal Service Commission to court, and right up to the Privy Council and won. If I am not mistaken, I think the hon. Attorney General was at one stage a counsel in that matter and I am reminded in many other cases, the Attorney General in his previous dispensation would take to the court asking for judicial review. This is why I said earlier on I find it strange that he now finds it incompatible with the principles of accountability, transparency and openness because he himself has won many cases in the court.

Mr. Speaker, I do not want to belabour the point, but I would quote one more paragraph which would emphasize the fact that yes, you can go to the court for judicial review.

I am quoting from *Judicial Review* a book by Michael Supperstone QC and James Goudie QC at page 61 under the caption “Ouster Clauses”.

“A ‘no certiorari’ clause is not sufficiently described by the mere proposition that it limits, indeed excludes, the courts jurisdiction; the real position is that by such a clause Parliament would be setting the decision-maker above the law.”

This is important.

“It would allow him to take a decision which he had no power to take, and thus licence him to break the law. Where the Court is asked to say, by virtue of such a provision, that it has no power to correct a perceived error of law, it is little wonder that it strains to find an escape route. It is not only that Judges, naturally enough, want to do justice. There is a deeper underlying point, and it is that a denial of the Court’s jurisdiction to correct errors of law is on the face of it a denial of the rule of law itself.”

Mr. Deputy Speaker, let us put this point behind our backs, it really does not hold and if this is the *raison d’etre* to this Bill, I submit to you that this whole thing ought to collapse just on that.

The Bill seeks to address, apart from service commissions, government ministries, statutory authorities and enterprises owned or controlled by, or on behalf of the state. We must ask ourselves where does the Ombudsman, and the legislation dealing with the Ombudsman fall into this scenario? I would quote from the Constitution dealing with the Ombudsman at page 63 where it talks about the functions of the Ombudsman. It says in section 93(1):

“Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or to any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.”

- (2) The Ombudsman may investigate any such matter in any of the following circumstances:
 - (a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
 - (b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has, or may have sustained such injustice;
 - (c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.”

What I am suggesting here, Mr. Deputy Speaker, is yes, I see among the four items to have oversight on government ministries, statutory authorities, and enterprises run and controlled by the state, but to some large extent, the Ombudsman does this already. Where we are relating to the Ombudsman may not be perfect, why not improve on the office of the Ombudsman, give him the power. We come to Parliament, and the Ombudsman’s Report is laid in Parliament and I recall, I think it is only once since I am here that we have debated a report by the Ombudsman.

The Ombudsman is an independent person, he is not politically persuaded by anybody. It is an independent office, so I am suggesting that if we have a problem

with service commissions, and I am not saying that we do not have, but to come to Parliament to give Members of Parliament the authority to question service commissions and its members, to me is not the right approach. The right approach would be to give some more teeth to the Ombudsman, who can make rules to have the service commissions perform more effectively, but I am suggesting that we look at the intent of what the Attorney General and the Government want to achieve by this and see how that can be structured into the office of the Ombudsman. I think this is the most appropriate person and office to look into the matters which the Bill seeks to address. As I said, more importantly the holder of that office is very independent and is not subject to any political interference.

Section 94(1) of the Constitution which again deals with the Ombudsman says:

“In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.

- (2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.”
- (3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation as he may consider proper.”

What I am saying, Mr. Deputy Speaker, is that the law is here already, it is clearly in the Constitution under the purview of the Ombudsman and what needs to be done is to look at how the Parliament can give the Ombudsman teeth and make his office more effective. To have Members of Parliament sitting in a select committee questioning commissioners, I do not think that is the appropriate way to go. It would lead inevitably to political bias and confusion.

Mr. Deputy Speaker, I think in the Constitution, the President is the person who appoints these commissioners and if I may just read from the Constitution,

section 126 on page 79. Before I get there, we must remember that a commissioner is appointed by the President after consulting with the Prime Minister and the Leader of the Opposition. In other words, it is the President's appointment. He consults with the Prime Minister and the Leader of the Opposition, but he is not bound by their advice. In his own deliberate judgment, he makes his appointment. Is this an underhand way of limiting and undermining the office of the President? The President is appointed by the Electoral College consisting of Members of both Houses. Members of this House are elected by the people, so when we appoint the President, he ought to do, and is doing the work of the people, and the Constitution gives him the power to appoint commissioners in his own deliberate judgment after consulting with the Prime Minister and the Leader of the Opposition. Who knows whether the President does not take the advice of the officers in due consideration?

Section 126(4) talks about the removal.

“A member of a Service Commission, other than the Judicial and Legal Service Commission, may be removed from office by the President acting in his discretion for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour.”

11.50 a.m.

So that if a commission is not functioning properly, the President has the power to do something about it. I am sure that if he finds in his deliberate judgment that the commission is not functioning properly he will invoke the powers given to him by section 126(4), subsection (5) which says:

“A member of a Service Commission may not be removed from office except in accordance with the provisions of this section”.

So Mr. Speaker, we have two things going here for us one—I have said I am not sure whether this legislation is not an attempt to intrude on the functions of the Judiciary. It is clear that if the process by which decisions of service commissions are arrived at, is improper, then the courts can in fact administer and adjudicate on those improper decisions. Any decision that is *ultra vires* can be investigated by the court. I am saying that the office of the Ombudsman gives that office power, certainly, to investigate government ministries, statutory authorities and enterprises owned or controlled by it. If it is lacking in that regard, then let us amend the law

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relating to the Ombudsman. Let us not try to politicize these service commissions. They were not intended to be politicized, Mr. Deputy Speaker.

Mr. Deputy Speaker, for example if you have service commissions and the hon. Minister made reference to it. He complained about four (4) members in his constituency not knowing about the decision of a service commission for many years, and all they had was an acknowledgment. Well, tighten the legislation dealing with service commissions. We can put time limits on service commissions. We can say in legislation that when an application, or whatever, is before them, they must adjudicate within a certain time-frame, and if need be, we can further say, they should give reasons. But to have commissioners appear before a select committee of Parliament, to me it is really an attempt to politicize, and to bring political influence and interfere with the integrity of these commissioners.

Mr. Deputy Speaker, you know this is a very important Bill like the hanging bill, like even the Salaries Review Commission. It is important in the sense that one needed to consult. The Attorney General I am sure—I do not know who he consulted. He could not have consulted the Law Association, because if he did, I would imagine that they would have told him that they were not in favour of the Bill.

[MR. SPEAKER *in the Chair*]

Obviously, the Chief Justice was consulted over a year ago concerning this, and at that time, more than a year ago by now, would have indicated to the Attorney General that he was not in agreement with this bill; yet still, this bill is before us. The question really is, why? What is the government up to in introducing this Bill? As I said before, Mr. Speaker, I am of the view that this Bill is an attempt, not to undermine the Judiciary but, certainly, to intrude on its jurisdiction. That again is a very dangerous proposition and position.

Mr. Speaker, I wish to quote from several newspapers to illustrate how dangerous this piece of legislation is. You know, we talk about six wise men, but there are not only six wise men, there are many more wise men, because on these service commissions, there are about four or five members, and there are about five of these commissions. It is not that the Chairman of each of these commissions indicated to the Attorney General their disapproval. I would imagine all of the commissioners would have done so. These are people with independent minds, and independent of political influence.

Mr. Speaker, I wish to quote from the *Trinidad Guardian*, Wednesday February 24, 1999. The bold headline here is *Politics not for Service*

Commissions. This refers to comments of the Judicial and Legal Service Commission. I would just quote parts of the article which was signed by all the commissioners.

Now, for the information of the House, let me indicate those who signed this letter—the Chief Justice, Michael de La Bastide, Mr. Kenneth Lalla; Justice Gaya Persaud, Mr. Henley Wooding and Justice Alcalde Warner. Are you telling me, Mr. Speaker, what the Member for Point Fortin would have us believe, that these men are just being hysterical? I do not think so, Mr. Speaker. Mr. Justice Guya Persaud is the Chairman of the Law Review Commission. All these men are men of integrity, and they have a concern. I think it is only right not to dismiss their concern as not understanding the Bill, but they do have a fundamental concern.

Dr. Lasse: Let me correct you there. I never said that the eminent persons created hysteria. I never said that.

Mr. B. Sinanan: Thank you very much Member for your correction. Let me quote from this article, Mr. Speaker:

“The measures proposed in the Bill are far reaching indeed and would amount to a reversal of several principles which are deeply embedded in the Constitution of Trinidad and Tobago.

What is proposed in the Bill is that a Parliamentary Committee be empowered to summon before it—

Well, this does not matter because the amendment removes the necessity for the Chairman and members of the Commission to appear before it.

“An argument advanced in the note is to the effect that to preclude enquiry into the decisions of a service commission is contrary to the accountability and transparency required in the conduct of public affairs.

The *raison d’etre* of the autonomous service commissions and of the various provisions in our Constitution ensuring their independence is well set out in the judgment of the Privy Council delivered by Lord Diplock in the case of *Thomas vs. Attorney General of Trinidad and Tobago*” at 1982 where he stated as follows:

“The whole purpose of Ch. VIII of the Constitution which bears the rubric *The Public Service*, is to insulate members of the civil service, the teaching service and public service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day.”

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This is exactly what this Bill is attempting to do.

Mr. Speaker: Hon. Members, the sitting will be suspended for one and a half hours for lunch, that is until 1.30 p.m.

12.00 noon: *Sitting suspended.*

1.33 p.m.: *Sitting resumed.*

Mr. B. Sinanan: Mr. Speaker, before we took the break for lunch, I was making the point that it appears to me that the Bill before us hinged on section 129 which indicates, as the Explanatory Note says:

“Section 129 of the Constitution confers on a Service Commission unfettered power in that no one can question, in a court of law...”

—certain things. I demonstrated this morning that that is not so. Decisions of service commissions can be questioned in a court of law under judicial review and I quoted the celebrated case of *Crane vs Attorney General* and, as recent as yesterday, in the *Newsday*, there was the case of *Ronald Narine vs the Public Service Commission*. So that it is not true to say that decisions of the commission cannot be questioned in a court of the law. Once those decisions are *ultra vires*, they can be questioned under judicial review.

As the Attorney General would well know, Order 53 of the Supreme Court Rules provides for application for judicial review and says:

“(1) An application for—

- (a) an order of mandamus, prohibition or certiorari, or
- (b) an injunction under section 9 of the Administration of Justice (Miscellaneous Provisions) Act, 1938 restraining a person from acting in any office in which he is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction mentioned in paragraph (1)(b) may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, by having regard to—

- (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,

- (b) the nature of the persons and bodies against whom relief may be granted by way of such an Order, and
- (c) all the circumstances of a case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.”

Therefore, it goes without saying, as I said this morning, that the courts do have an oversight with respect to the functioning of service commissions.

Also this morning, I drew reference to the Constitution as it relates to the Ombudsman and we see in the amendment before us, the Government wants to have Joint Select Committees report to Parliament in respect of government ministries, statutory authorities, enterprises owned or controlled by or on behalf of the state and service commissions. This morning I questioned the true intent of the Government, whether it is really a ruse to get at the Judicial and Legal Service Commission which is a commission separate and apart from the other commissions. It is one that is of special importance, not only to the independence of the Judiciary, but also for the protection of the citizens.

Mr. Speaker, I want again to refer to section 93(3) of the Constitution, which deals with functions of the Ombudsman. It says:

- “(3) The authorities other than departments of Government to which this section applies are—
- (a) local authorities or other bodies established for purposes of the public service or of local Government;
 - (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of moneys provided out of public funds;
 - (c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;...”

Mr. Speaker, I submit it to you that the Ombudsman has all the powers necessary for dealing with what this Bill intends to cover. If you look at subsection 3(b), and I want to repeat it:

- “(b) authorities or bodies the majority of whose members are appointed by the President...”

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Now tell me, Mr. Speaker, the majority of members appointed to a commission, are they not appointed by the President? They are appointed by the President and this section 93(3)(b) gives the Ombudsman power to investigate:

“authorities or bodies the majority of whose members are appointed by the

—and that includes service commissions. More than that, section 91 says:

There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.”

Here it is the Constitution is establishing the Office of Ombudsman to be an independent office. The Ombudsman cannot hold any other office for remuneration or otherwise, other than the Office of Ombudsman. He is an officer of Parliament. So here you have an officer of Parliament who can investigate all these matters referred to in section 93(3). It is all here in the legislation.

So, I asked myself: Is the Attorney General aware of this? The answer to that is yes, I am sure he is aware of it. The other question I asked myself was this: If he is aware of it, why is he pursuing this piece of legislation in the face of all that, in the face of it being against the public opinion, in the face of the fact that the Constitution clothed the Ombudsman with authority to investigate government ministries, statutory authorities and enterprises owned and wholly controlled by the state? It is all there in the Constitution.

Mr. Speaker, I want now to read into the record excerpts from different pieces written in the daily media. I started off this morning quoting from an article headlined “Politics not for service commissions”, which I wish to continue. This particular part deals with the courts not having jurisdiction and it was quoting Lord Diplock in the case of *Thomas vs Attorney General*:

“Although Lord Diplock was giving his opinion with respect to the 1962 Constitution, his observations remain valid with respect to the current Constitution and the statement is applicable to the Judicial and Legal Service Commission in every respect. To sum up, the cardinal principle in relation to the service commissions is that they must be able to function without political interference so that the Public Service is insulated from such interference in matters of appointment, promotion and removal of its officers. In our view, the proposed legislation militates against and tramples upon this principle.

The argument that such interference is necessary for the purpose of transparency and accountability has a hollow ring. There will always be the necessity for a degree of confidentiality in relation to such matters as appointment and removal of public officers.

It is necessary to point out that the provision in Section 179 of the Constitution already cited is not to be construed literally. It is now well known that several decisions of service commissions have been challenged successfully by way of Judicial Review.”

The Chief Justice himself is saying that.

“For example, it is open to an officer who is able to show that he has been denied natural justice by a service commission to challenge in court the decision in relation to which there has been this denial. Further, the amenability of decisions of a service commission to review by the courts is not limited to breaches of natural justice but extends to acts performed by a service commission that lie outside its functions.”

And, again, this case of *Thomas vs Attorney General* is quoted:

“Therefore, it is not correct to say there is no accountability or transparency in relation to the functioning of a service commission. The accountability and transparency is by access to the judiciary and not to Parliament and the Executive.”

[*Desk thumping*] And therein lies the crux of the matter.

So, this legislation, Mr. Speaker, is not only an attempt to interfere with the independence of service commissions, but I fear that the real intent is to get at the Judicial and Legal Service Commission. [*Desk thumping*] I continue to quote:

“To remove the independence of the service commissions and allow a wholesale invasion of their field by parliamentarians is wholly unjustifiable. The freedom from political interference accorded to service commissions since the coming into operation of the Independence Constitution is as necessary today as it was on the 31st August 1962.”

This is no ordinary person making this statement. This is the Chief Justice of Trinidad and Tobago who, as it were, has come out of his crease, not a thing normally done by judges, to make such a statement. It is not only he, the Chief

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Justice, making this statement; it is all the members of commissions and they are all honourable men of independent mind—as I said this morning: Kenneth Lalla, Justice Guya Persaud, Henley Wooding and Justice Alcalde Warner.

1.45 p.m.

These men are not fly-by-night people, they are very sound and intelligent people—concerned citizens. I quote:

“Different from the service commissions are the ministries, statutory authorities and state enterprises controlled by or on behalf of the State or in which public money is invested and which are expressly included in the Bill.

Where the Government of the day appoints members of any of the aforesaid entities, it is arguable that—in the interests of accountability—those entities be answerable to their political appointors, Parliament and ultimately to the electorate which has brought that government to power. If, as will be the case, the powers, methods and criteria of service commissions are going to be the subject of investigation by bipartisan committees of Parliament, the independent non-political status of the membership will be compromised by their submission to politicians who are not their appointors and whose political interest they were not selected to serve.

Mr. Speaker, this article says it all.

“It is also appropriate to point out that the breach of the principle of freedom from political interference with regard to service commissions generally is even more damaging when it comes to the Judicial and Legal Service Commission. To strip the Judicial and Legal Service Commission of its independence, is an indirect assault on the independence of the judiciary,...”

Mr. Speaker: The speaking time of the hon. Member has expired.

Motion made, That the hon. Member’s speaking time be extended by 30 minutes. [*Mr. M. Joseph*]

Question put and agreed to.

Mr. B. Sinannan: I continue:

“To strip the Judicial and Legal Service Commission of its independence, is an indirect assault on the independence of the judiciary, one of the pillars of our Constitution.

The Wooding Report, in dealing specifically with the JLSC, said with respect to its recommendations as follows at para 385:

“ ‘The functions of the Judicial and Legal Service Commission as the body appointing Judges and Magistrates, demand that its total independent of the executive should stand out.’ ”

Mr. Speaker, here it is that the Wooding Commission, the Chief Justice—all the members of the commission and others are at pains to point out the importance of the independence of the Judiciary. This is something that, as citizens and parliamentarians, we must all seek to uphold to the best of our abilities. We must fight for this independence of the Judiciary with every breath of life that is left in our bodies.

“It is noteworthy that neither the Wooding nor the Hyatali Commission on Constitutional Reform made any proposal similar to those contained in the Bill.”

If it is that the Attorney General and his Government want to bring in this radical piece of legislation, why not go to the public? Why not appoint a constitution commission? Go to the public. If you are saying that you are bringing in this legislation to serve the people—the man from the ghetto, as the Member for Point Fortin referred to this morning—well go to the man in the street. Go to the people. Go by way of a constitution commission, instead of coming piecemeal every two months to tamper with the constitution, go now and have a full constitution commission review. Let the constitution be reviewed, it is about time it takes a review.

The point is, do not think that by coming here and interfering and tinkling with fundamental principles—I would even go as far as to say enshrined because although they are not enshrined, they ought to be enshrined. Go to the people who are affected by it. I am urging this Government, again, if you want to bring this legislation, the proper thing to do is to go out there to the public.

The other article I want to refer to briefly, Mr. Speaker, is one written in the *Newsday* of February 24, 1999, where Sir Ellis Clarke and five jurists asked that the Bill be withdrawn. Among those people there is the Chief Justice; Ex-Chief Justice, Cecil Kelsick; Mr. Justice Noor Hassanali; Sir Isaac Hyatali; and Justice Clinton Bernard. I think all of us in this country know of the last President, that he would not—he is of that personality—put his name to something in which he did not believe. Here is a man who has come out. This is a gentleman who has served

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as a magistrate, a high court judge, an appeal court judge and the President. He is coming to say: “look, something is wrong, be careful, do not tamper”.

The Attorney General said, in his reply to these eminent jurists, that their concerns are misplaced. Here is what former President, Sir Ellis Clarke, said. I am quoting from the *Express* of Thursday, February 25, 1999.

“FORMER PRESIDENT, Sir Ellis Clarke yesterday warned of the possibility of the country not getting ‘the right judges’ in the future to sit on the Bench because of the controversial Constitution (Amendment) Bill.

Sir Ellis who drafted the Independence constitution in 1962, speaking in a radio interview, said ‘I will find it incredible that each and every one of the six of us who after all has some little knowledge of the law, should misconstrue this simple bill’.”

Mr. Speaker, I am not here to question the ability of the Attorney General, but when I am faced with six eminent jurists telling me one thing, and the Attorney General telling me something else—I have a mind of my own—and I weigh it up, I am afraid that I cannot agree with the Attorney General because I am persuaded by the arguments of these six jurists.

In some Member’s previous contribution, it was said—somebody who was the Chief Justice. The Chief Justice, again, in a very unusual step came out publicly and said: “it is my duty to fight this Bill”. These are no ordinary people questioning the intent and purpose of this Bill. For one reason or the other, the Attorney General seems bent on proceeding with it. One of the major planks which he talks about in this Bill is that it will cure and make things transparent. As I said before, transparency is not the hallmark of this Government’s performance to date.

The *Newsday* of Friday, February 26, 1999 puts it very nicely. I would like to read this editorial into the record.

“It is highly ironical that while the Government is seeking to extract transparency from the four Service Commissions, it is steadfastly ignoring calls for transparency in dealing with scandals in which high amounts of public funds are involved.”

1.55 p.m.

“Where it conveniently suits the Government to champion the cause of transparency—even to the point of fomenting an unnecessary and disturbing controversy—it plunges forward compulsively waving the banner, but where

transactions in the State sector stink to high heaven and the need for transparency in the public interest becomes urgent and compelling, it chooses to studiously evade the issues.

We have made the point before, that the Government must stop playing this kind of cynical game with the population of Trinidad and Tobago. The Attorney-General claims that it is necessary to have transparency in the administrative operations of the Service Commissions, so he lumps these bodies with Government ministries, statutory authorities and other State enterprises in a Bill that would subject their decisions to the scrutiny of parliamentary committees.

Now, who are the personnel executing the functions of the Service Commissions and whose administrative conduct will now be subject to such examination? They are prominent and respected citizens who have been appointed by the President after consultation with the Prime Minister and Leader of the Opposition. For the most part, they are professionals selected both for the experience and wisdom they have acquired from notable careers in the public and private sectors and for their unquestioned integrity and dedication to serving the country.

Having accepted the President's summons to operate Commissions which enjoy total independence under the Constitution, they will now, when the Constitutional Amendment Bill becomes law, be compelled to face the indignity of having their administrative conduct scrutinised by politicians sitting in Parliament. And what comprises their administrative conduct if it is not the administering of their mandate to appoint, promote, transfer and discipline officers in the various arms of the public service?

The danger in imposing that form of transparency on the Commissions has been exposed by six of the country's most eminent jurists, but the Government has dismissed their view and is proceeding irregardless.

It is a dramatic and telling coincidence but while the AG was defending Government's measure in the House on Wednesday, insisting on the idea of transparency, the Joint Consultative Council was announcing that it will soon be calling on President Robinson to launch a commission of inquiry into the controversial Piarco Airport Development Project. One of the targets of this inquiry would be the award of the main contract valued \$150 million to the

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NYC consortium which leaders in the construction industry believe to be illegal since it was based on the decision by Cabinet.”

Mr. Speaker, here again this article is putting a lie to the fact that if the Government is so bent on transparency, why is it that the things which are most obvious and need investigation do not become transparent? At the end of the day it is a question of trust. The reason why I think most of the people in this country are fearful of this Bill before us is a question of trust. Can we trust the Government? I know the Government and its supporters will say yes. I submit to you, Mr. Speaker, the Government of the day to date has a credibility problem that they have not themselves addressed for the benefit of the country.

Mr. Speaker, in the *Express* of February 25, 1999, Keith Smith has raised this issue. “The real issue is trust”. He says, and I will just quote part of it:

“But what I find curious in all this is how could Mr. Maharaj and, by extension, the government not know that what they are parading as an administrative move, was going to be seen as political interference and I find it curious in the same way that I found it curious, that the government should not have anticipated the furore that its media attacks would have created, and the unease that it would engender and the undemocratic smear that would so unnecessarily stain and sully the Panday administration.

I mean if Mr. Panday was supposed to have one thing, it was finally-tuned political instincts and yet, as we have seen, there has hardly been a measure of any account that has not eroded this administration's popularity and influence which is not to say that, coming in new as they were, the job was ever going to be easy but I, for one, hardly could have expected that they would turn out to be such a bunch of innocents forever getting lost like so many babes in the political woods.”

Again, Mr. Speaker, this editor, reflecting the views of so many of us in the country, puts the matter down to one of trust; and I think he is right.

There is one last article which, to me, is a very important one and this comes from a “Letter to the Editor”. This, I think to some extent, is the view of the small man of the country. It is found in the *Express* of Monday, April 12 at page 19. It is headlined “Too much, too soon”.

“The Government can have little trouble in passing its Act to amend the Constitution and exert the supervision they want over State enterprises and the

Service Commissions. After all, since these are human institutions, they may well need review from time to time.

But Government must not do like the hungry (greedy) little boy who took such a huge mouthful that he could not chew it; they had to smack him on the back and get him to cough it out else he would have choked to death. Obviously, he should have taken smaller pieces, eaten more slowly, chewed the food more thoroughly and he and everybody would have been happy. It's good manners and good nutrition sense to take smaller mouthfuls and eat slowly.

The Government can do the same. They can start off with State enterprises and the Cabinet over both of which they have right of supervision. Later, when transparency, accountability and efficiency are achieved with these, they may then turn to the Service Commissions which on purpose were removed in the Constitution from the Government's supervision and control.

There is that vital factor called 'perception'. This is the picture formed in people's minds based on their interpretation of what they see, hear, read and experience. Everybody doesn't have the same perception of the same thing but the general perception of people gives you general public opinion.

The perception of large numbers of people in this country is that the Government has not acted with transparency, accountability and efficiency in important areas of the people's business. NFM, NP, Soodoo (sic) and many other names easily trip off the tongue. Clearly, then, the nation would be unwilling and afraid to trust this Government as well as other Governments before and after, to claim power over the Service Commissions. What they are saying generally is, 'Exercise transparency, accountability and efficiency in State enterprises, Ministries and Cabinet, then they may trust Government, this one, later ones, scampish ones, upstanding ones, all kinds, to develop and implement strategies for supervision of the Service Commissions'.

"Couldn't we take it slowly, then? It isn't good to choke!"

This, to me, Mr. Speaker, is what the man in the street, the man at whom all this legislation is aimed—here he is appealing to the Government to take it lightly. What he is saying here is this. It is not that there are no problems with service commissions. I think we all agree that there are administrative problems with service commissions. Why do we not address that in the legislation dealing with service commissions? It is fair to say that in the service commissions delays in

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appointing people and making decisions are some of the major concerns. Well, there is a simple way of attending to that.

Do not bring legislation to the Parliament which ultimately will politicize these service commissions. Amend the legislation dealing with service commissions giving them time constraints. In other words, somebody has applied to the service commissions for a transfer or promotion or what have you; make it mandatory for the service commissions to address that particular issue in a specific period of time and, having addressed it, they must also give reasons. There is nothing wrong with that. I think we all want that. I think that is what we want to achieve.

Do not bring the commissions before Parliament to politicize the process. Amend the legislation so that the legislation has teeth. It gives the commission a certain time frame within which to make a decision, to report on matters and they can say that in their report. Why bring the service commissions before a parliamentary committee?

Mr. Speaker, I am a fairly young parliamentarian and I have come to this Parliament and seen on occasions the way Members on both sides of the House behave and I would not want—I hope that we do not ever bring people outside from the service commissions to witness what goes on here. And I have said to people on many occasions, perhaps it is a good thing that Parliament is not televised in its entirety because what goes on here, Mr. Speaker, I am sure we are not all proud of. You yourself, Mr. Speaker, having sat in the Parliament in the 1960s, more than anyone else would observe the great difference between the Parliaments of when you were an active parliamentarian and this one. I hope that all of us in our own way can make a deliberate attempt to improve the Parliament and I would not want to expose members of any commission to what goes on here.

Mr. Speaker, let me, in winding up, reiterate that the premise on which this Bill is based is false. There is, in fact, judicial review. The decisions of commissions are open to the scrutiny of the court. The Ombudsman, Mr. Speaker, has all the powers, right here in the Constitution, to deal with all with which this Bill seeks to deal, with the exception of the Judicial and Legal Service Commission. As I said, the Attorney General, being a lawyer of some note, he is a competent lawyer, must know that section 93(3) of the Constitution gives the Ombudsman who, again, let me repeat it, is an officer of the Parliament, certain powers. He makes his report, it comes here, and it is sometimes debated, seldom not. The Ombudsman has the

powers to deal with all these matters, with Government departments, with those Ministries and other bodies and enterprises owned and controlled by the state.

2.10 p.m.

If the Government wants to tighten up something, go to the Ombudsman, give him the power, give him more teeth.

The Bill amends the legislation dealing with service commissions, puts time-frames. As I said, I am sure that speakers after me will raise this concern about service commissions not giving reasons or reporting on a timely basis. That is easily achieved by putting it in the legislation. By doing what we are doing here, attempting to pass what is proposed, that is not going to make the service commissions do it any faster than they are doing it now. Consult—the Prime Minister has the power under the Constitution, he can consult with these people.

I noticed recently the commission, headed by Mr. Kenneth Lalla, was in consultation with the Cabinet. That is a good thing. Find out what can be done to improve the commissions and the regulations relating to these commissions, but do not expose them to political interference or what may seem to be, or what could easily be, political interference. It must not only be done—as the Attorney General would know—it must be seen to be done.

You bring these people in front here, and for one reason or another, they do not like a decision. The natural human thing to do is to try to attempt to scandalize the people. We see it here every day in the Parliament, Members scandalizing one another. Do you now want to extend that to independent people; people who served on service commissions? I am talking about all Members, we all do it, and I am saying that is not something to which we should aspire.

Let me close by warning this country that what I have said before dealing with service commissions, I do think that is the crux of the matter. This legislation, to me, is aimed at the Judicial and Legal Service Commission. [*Desk thumping*] We have to be very, very careful. This is the last hope that separates the people from the politicians. It is an independent commission, they are our judges, appointed by the President in his own deliberate judgment after consulting with the Prime Minister and the Leader of the Opposition.

I hope this Government will not reach the stage where we have to interfere with the Judicial and Legal Service Commission. It is the last hope that we have, and I pray and hope that the Government will see the wisdom of not going this

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route. I repeat, I am not saying that we do not need to look at the commissions. They are like every other institution, they need correction and cure, from time to time, but the way by which the Government proposes to do it is flawed, and it will politicize those commissions.

I urge the Government to go to the people, let us have a wholesale review of the Constitution, do not attempt to politicize these service commissions. Mr. Speaker and Members, I thank you very much for your attention.

Dr. Fuad Khan (*Barataria/San Juan*): I would like to thank you for recognizing me, and I promise you that I will make a very brief contribution and not pad it with any ideas or newspaper clippings of third party people.

Mr. Speaker, it was a sad day when I sat in my constituency office and I had been giving one of my constituents a letter of recommendation [*Interruption*]

Mr. Manning: And injections.

Dr. F. Khan: And I gave him, Member for San Fernando East, some injection, as you quite rightly said. I gave my constituents letters asking the service commissions what has happened to their applications of 15, 10, and 5 years. And each time I would not get a reply from these people at the commission, or I would get third party answers from my constituents, which I must raise, that the commission's people said that these letters are a waste of time and they do not recognize them. I raised this point because I stand here as the Member of Parliament for Barataria/San Juan, thinking and knowing that I am a *bona fide* elected Member for the people of Barataria/San Juan. Also, I believe that every single one of us in this House of Representatives, as we sit here, is a *bona fide* representative who is elected by the people. And it is my view that if you are elected by a people to do their business, you should have some say in the direction and progress that this business takes.

Now, it is fortunate at the time when the Constitution was drafted, I think in 1961, that certain safeguards were placed at that point in time that gave solace to a people who thought that they might or might not be victimized. However, as you know, and I have seen myself in the last four years, people can write certain things down, but then, control other actions. One has to ask a simple question, why is it—I am not casting aspersions on anyone—I am just asking a simple question: what is the fear of—I would say my Opposition colleagues and the newspaper people, who have written those negative articles—of letting the *bona fide* Members who are represented by the people question certain activities in relation to ministries,

statutory authorities, enterprises condoned or controlled by or on behalf of the state, service commissions *et cetera*? What is the fear? I do believe that representatives—and it is not just Government representatives—of both Houses should have an input in asking why certain things are happening, or why certain things are going wrong, and what is the reason.

I have had the opportunity to serve on the Public Accounts Committee, headed by my colleague from Diego Martin Central, and I must commend him now for bringing 1998 material, finishing it off and trying to reach our material at this time. He has been doing a good job of getting rid of the backlog. In the Public Accounts Committee and the Public Accounts (Enterprises) Committee, we are bogged down by accounts that have long gone and there is absolutely nothing we can do about it, except to sit, speak and ask what can be done in the future. And, maybe, ten years from today there may be young parliamentarians looking at our accounts.

What I am saying is that if we have Joint Select Committees to look into these matters as urgent interests, you may find that although reports would be laid in Parliament, people of this country who think that they are being—I would say a stronger word—victimized or not given their just due, would have proper representation in this House and the Upper House. In doing so they would feel a certain sense of hope: hope that when they go to a government department, ministry, statutory body, *et cetera* and they receive, as we would say, “rotten” service, good service or service that is not becoming of public officers; promotions that they would not be able to appeal, because of cost; and entry into the service commissions—police commission, teaching commission—that they have a voice somewhere.

My dear friend from San Fernando West said that they can go to the Ombudsman. The Ombudsman needs reports, but when I read the Ombudsman’s reports I see how long it takes for matters to be determined. In some instances I have seen that people have died before their matters have been resolved. I think, looking at this piece of legislation, the Constitution (Amdt.) Bill, the amended version says Joint Select Committees of the House of Representatives who were basically elected by the people of this country to do their work, would be the ones asking questions on administration, powers and methods of functioning and the criteria adopted by these bodies and how they exercise their functions.

2.20 p.m.

Mr. Speaker, I was speaking to a Member of the Opposition and we came to the same conclusion that there is a certain lack of respect for Members of Parliament. We face a daily barrage of insults and actions by different people; we are asked various things and we are responsible for the moving of a constituency as well as a country. This is our country. This is a country whose direction we have to determine. We have to determine if the direction is going to be positive or if the problems of the past are going to shackle us in such a manner that we cannot go forward.

It is all well and good to stand here and say that this is not a good Bill. It is all well and good to say that we should go to the people to look at the Constitution, but that takes time. We may quote newspaper articles on various people's ideas—third party ideas—but those are their ideas, and these people have a way of getting their ideas to the newspapers. Still, we do not hear from all of the newspapers. My friend from San Fernando West took pains to read a letter about a “small man”. Mr. Speaker, anybody could write what they want and sign “small man”—I am not casting any aspersions on the Member—but it is the job of the editor of that newspaper to determine what goes into that newspaper, and if he does not like what one is doing or what one is, he determines what goes in and that is what the people read.

It is very easy to control a population's mind by what they see, what they hear and what they read. *[Interruption by Mr. Hinds]*

Dr. F. Khan: I do not interrupt you when you are speaking. Please do not interrupt me. Mr. Speaker, it has been said in psychology that if one says something or if one writes it down as a lie and it is published, once it is in the black and white printed language, people believe it.

Mr. Imbert: Ramesh prove that! *[Laughter]*

Dr. F. Khan: If one wants one's ideas to be propagated in full, all one has to do is get somebody who one knows in the newspaper business to publish one's articles and they are read.

We say there are legal luminaries. The Member mentioned the legal luminaries. I respect all of those gentlemen; I have spoken to them, but they are afraid of something that they have projected to believe is going to happen. I will explain projections, Mr. Speaker. This is a condition of which we are all guilty. We get an idea, we believe it in our heads, we go through in our heads what actions will take place, we find the actions in our heads—they have not happened yet—and then we

believe what is going to happen because we assumed it and we react to it. So, unfortunately, I believe that these gentlemen projected, as they say, devils and they reacted to the devils they projected.

In the Parliament of South Africa there are investigational parliamentary committees—and if the Member were to take time to read about the Service Commissions of Britain, he would understand why we want to change them. I will read something from it:

“The National Assembly and National Council of the Provinces have committees responsible for oversight of governmental departments and consideration of legislation...”

They are called portfolio committees. These portfolio committees monitor, investigate and make recommendations on the departments of Government, and they went on to list all the departments here.

I searched the Parliament of New Zealand and the Parliament of Britain and they have similar things. Mr. Speaker, the Bill that has been drafted in its present form is a Bill that I do believe will represent a certain amount of fairness and give the people of this country a certain amount of hope. I will mention one thing here. Being a medical doctor and a parliamentarian, I have asked about actions taken against certain qualified constituents in the Human Resources Department in the Central Regional Health Authority, and what comes back to us is that once a Member of this Government sends it, things are not happening—I am not blaming anybody.

There are people in the statutory bodies, the commissions and the whole area of Government today who are biased towards certain actions. As I was speaking to one Minister, he told me how things are happening. It goes up the system and the Permanent Secretary recommends certain people. When this happens, the Lord alone knows how the recommendations take place.

I was a consultant at the Sangre Grande Hospital. I was told to grade certain members and I graded them according to what the form said. The people from the commission came to me about certain people who they wanted to promote and said that (1) to (5) is a grading pattern. If somebody was fair and okay, I would put (3), excellent would be (5) and good would be (4). However, in the service commission system it does not work like that, and if that idea was not explained to me, I would be giving people (3)s, (2)s and (1)s, because this only came to me

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about certain people they wanted to promote. So, this just goes to show that one can doctor and move a system depending on what one wants it to do.

I am not casting aspersions on the Members of the Opposition or on anybody, I am just demonstrating the straight facts. In every single political system, I have realized that below the representation are people who have their own agendas, ideas and biases. I ask, are we going to continue in this manner and be afraid of the shackles of change, or are we going to take this by the horn and decide that this is the way we are moving for the progress of this country and to give the people of this country hope?

Mr. Speaker, I thank you.

Mr. Kenneth Valley (*Diego Martin Central*): Mr. Speaker, I join this debate at this time, firstly to assist my colleague—and if I may say, my friend—from San Juan/Barataria.

The Member started his contribution by making the point that as a representative performing his functions in his constituency he had cause to write on a few occasions to the service commissions asking for information with respect to certain constituents and he has had no response. I think that after listening to the Member for San Fernando West, the Member is now advised, or is better informed that, in fact, those letters were directed to the wrong party and those letters should have been directed to the Ombudsman, because that is the function of the Ombudsman.

Mr. Speaker, what we are hearing coming out of this debate is this concept that there is no recourse for what the service commissions may do. I think that after listening to my hon. friend from San Fernando West, that case is really being dismissed. Even in the newspaper advertisements—and there is obviously another issue as to who is paying for the advertisements, whether it is the Government or the UNC. If it is the Government, we have other types of questions to ask about whether this is being paid for out of governmental funds rather than from the UNC funds. I am referring to this advertisement in the newspaper and on the television: “Let us give our future some hope”. But that is an aside and we will deal with that. What I am saying is that if they want this advertisement on that matter, it should be paid for from the UNC's funds rather than governmental funds. That is a separate issue and we will deal with that.

The point I am making is that, again, the whole idea behind the advertisement is suggesting to the population that there is this lack of accountability, a lack of

transparency and so forth, when, as a fact, as my colleague pointed out, in our Constitution there is that office of Ombudsman. Mr. Speaker, under section 91(1) of the Constitution, it says quite clearly:

“There shall be an Ombudsman for Trinidad and Tobago who shall be an

Let us understand that. The Ombudsman is an officer of Parliament. I am emphasizing the point because the whole intent of this legislation, the Constitution, is clear: to keep politicians out of certain things, nevertheless, knowing that there ought to be someone looking over, as it were. So, the independent Ombudsman’s office has been established.

A person is appointed to that office by the President after consultation with the Prime Minister and the hon. Leader of the Opposition. And that person's function, Mr. Speaker, is extremely clear. It says under section 93(2):

“The Ombudsman may investigate any such matter in any of the following

And under (b) it says clearly:

“where a Member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that the person or body of persons specified in the request has or may have sustained such injustice.”

So, Mr. Speaker, one sees quite clearly that the Constitution has contemplated the Ombudsman operating on behalf of parliamentarians who may have cause to investigate on behalf of a constituent. Therefore, my friend from San Juan/Barataria had no difficulty. By simply using the provision of the Constitution, he could have written the Ombudsman who, because of this provision in the Constitution, had to investigate and get an answer.

He made the point that in the Public Accounts Committee we are looking at matters as far back as 1988; that is some 11 years ago. I feel assured that if he had used this method—because honestly, even if we have a parliamentary committee, who knows whether we would not have the same type of delays with respect to the investigations—the Ombudsman's office must be much more effective, in terms of the use of the time.

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So, Mr. Speaker, one sees quite clearly that a situation like that falls under the ambit of the Ombudsman's office and there is absolutely no need to have parliamentary committees to do that sort of thing.

2.35 p.m.

Mr. Speaker, I know that there are certain senior persons on that side who at times really misdirect or give bad advice to the younger Members, and this seems to be a situation to get to the real purpose. Someone seems to have thrown in a few other things in this legislation and attempted to convince his colleagues that this legislation is valuable, because you would now be able to answer questions from your constituents that the people have a right to know.

Mr. Speaker, I want to say that the more one looks at this legislation the more one is convinced of its true intent, which is to get to the Judicial and Legal Service Commission.*[Desk thumping]*.

If one were to look at the Explanatory Note with respect to this legislation—and Mr. Speaker, of course, I am aware that the Explanatory Note does not form any part of the Bill, but it is extremely interesting to look at the Explanatory Note. Listen to what it says:

“This Bill, for the removal of doubt, seeks to amend the Constitution by adding thereto, a new section 66A for the purposes set out below.”

And the purposes set out below deal with section 129 of the Constitution, Service Commissions and their unfettered powers and so on, and it goes on to refer to the “form of unrestrained power” of the Service Commission.

Mr. Speaker, I note up to this point in the Bill there is no mention of the ministries or other departments of Government or the state enterprises. It says clearly that the intent is to bring 66A to deal with section 129 of the Constitution which deals with the Service Commissions. That section has nothing to do with ministries and departments and so on and it goes on—and I am going to come to section 66A, but what they want to do, somehow is, to make the Service Commissions, which are provided for in that section 120, accountable, so the real target is 129 and I am going to come to why they are using section 66A in a while.

The point I am making is that as an afterthought or as a sham they then throw in the ministries and departments, so that, perhaps, they tell us and the others on this side that we are talking about corruption, but nobody is getting a chance to

investigate corruption and they tell those on that side, “well listen we are getting a chance to investigate what is happening in service commissions, and so on.”

Mr. Speaker, this Bill has absolutely nothing to do with ministries, departments, state enterprises or what have you. We have already made the point, with respect to the functions of the Ombudsman, but in addition to that the Attorney General is well aware of section 119 of the Constitution. Section 119 of the Constitution provides for the Public Accounts (Enterprises) Committee, so that a mechanism exists already in our Parliament, to supervise, to oversee us and so on—the ministries, departments, statutory authorities and state enterprises. Understand that! I am aware of the arguments that the Member for Couva South has had over the years with respect to the inadequacy of that section.

He never argued that they were inadequate. What he has argued for is committees for each department of Government, and we have counselled him on a number of occasions that in Parliaments where there are 526 Members, because of the workload and different issues and so on, there might be that need to have separate committees for each department. But if he would do some research he would see that they all started with the fundamental public accounts committee and after some time because of workload, there was a need to have different committees doing the same functions of the Public Accounts Committee that were done at the departmental level.

If the Member for San Juan/Barataria would do a bit of research he would realize that in the South African Parliament, which is much larger than our Parliament and a country which is much larger than Trinidad and Tobago, there might very well be the need for these different departmental committees.

In our situation—*[Interruption]* that is not what I am saying Member and you know that—the point I am making is that with a population of 1.2 million, with a Parliament of 36 Members, there is a Public Accounts Committee and a Public Accounts (Enterprises) Committee. Before we had the PA(E)C we had simply the Public Accounts Committee and as we developed the state companies and, because, I assume that the workload would have been too much for one committee, then there was another committee formed, the Public Accounts (Enterprises) Committee, to take care of that.

Mr. Assam: You can tear up that Public Accounts (Enterprises) Committee.

Mr. K. Valley: You understand, all right, fine, but that is not the difficulty. The difficulty with the committees in Trinidad is that because there are 36 Members and when there are so many Ministers—

Mr. Manning: And no backbenchers on the Government side.

Mr. K. Valley: —there is difficulty holding meetings and Member you are well aware of that, so that putting more and more committees would not solve your problem.*[Desk thumping]*.

Mr. Speaker, the other matter is, when we look at section 119 of the Constitution, we see clearly that the framers of the Constitution provided that these committees be chaired by a member of the Opposition. In the case of the Public Accounts Committee, the Member must be a member of the Opposition from the Lower House, and in the case of the Public Accounts (Enterprises) Committee he must be an Opposition Senator.

Mr. Speaker, when you look at the Bill before us and clause 3, you do not know how this thing is going to work, because it is so vague—and I heard this morning that somebody made the point that the Leader of the Opposition said that the Committee ought to be chaired by an Opposition Member and that the Member for San Fernando East ought to know that cannot happen in the system.

Mr. Speaker, could you imagine that you have a committee like this to investigate problems in a government department and so on, and it is to be chaired by a Minister, or a Government backbencher?

Mr. Hart: Talking dotishness.

Mr. K. Valley: The stupidity of the whole argument! But when you read things that you have not thought about, that is what happens.

Mr. Speaker the issue also is one of jurisdiction. We have an entrenched provision at section 119, saying that there must be a Public Accounts Committee, Public Accounts (Enterprises) Committee that is going to look at accounts and so on, and you remember that it was the same Public Accounts Committee that was able to look at the WINSURE matter and put it back on track, okay?

Now, if there is a committee which, in order to change or alter you require a two-thirds majority, and you bring this new joint select committee and you say it is under the legislation by this simple majority, what is the jurisdiction? What matters would fall under this committee, and what matters would fall under the Public

Accounts Committee and the Public Accounts (Enterprises) Committee? How are you going to decide that, and who is going to chair the committee?

Mr. Speaker, the whole matter is so transparent—I think is the correct word—that you can see clearly that was not the intent at all, that was merely saying: All right let us put that in; I can use an argument there. Because, Mr. Speaker, if one wanted to increase the level of accountability and transparency with respect to the ministries and departments, one would have wanted to do a few things.

2.45 p.m.

There might have been further amendments to section 119, there might have been the strengthening of the Ombudsman's legislation. The Ombudsman's Report is laid in this House and seldom we pay it any mind. If one really wanted accountability and transparency, one might have wanted to say, for example, that the Ombudsman's Report should be sent or referred to a new or restructured Public Accounts Committee with widened powers so that the parliamentarians can consider that report and bring a report to the Parliament. That is what one would want to do. There was no need to bring new legislation with respect to that because the new legislation is in conflict with section 119 of the Constitution and since that is an entrenched provision, I submit that was to hold sway.

I think I should go directly to this point. This Bill suffers from two major defects; the first one is that there is an attempt in this legislation to do indirectly what cannot be done directly. I think it was last week Friday, Mr. Speaker, when you correctly counselled me when I was making the point. You told me that I could not, unless there was a substantive motion, allege corruption on any Member. And when I picked up a newspaper you told me quite correctly, the fact that I could not do it directly, I could not do it by quoting the newspaper. Do you remember that, Mr. Speaker? I think this is a typical example of an attempt to do indirectly what one cannot do directly. I think in cricket, it is called "l.b.w.". The rulings in cricket are when you bowl a ball and it hits the stump you are out and, therefore, to avoid the ball hitting the stump, you put your foot, that is "l.b.w.", and you are still out.

Mr. Speaker, when you look at this legislation and the Government tells you that it is going to amend section 66A. Section 66A is amended to get to section 129. Let us look at section 66 which deals with a "Money Bill". It says in section 66(1):

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“In sections 63, 64 and 65 ‘Money Bill’ means a public Bill which, in the opinion of the Speaker, contains only provisions dealing with all or any of the following matters, namely:

- (a) the imposition, repeal, remission, alteration or regulation of taxation;”

It is dealing with a Money Bill.

Mr. Speaker, what is the word, is it *youstrum generae*? I think that is the rule. Trying to slip in something in section 66A having nothing whatsoever to do with that part, no bearing. The intent is to affect the powers of service commissions which are in section 120.

Mr. Speaker, I do not know Latin because you have to learn Latin to know it, but I know common sense because you do not have to learn that, and obviously if you are trying to affect the powers of service commissions whose powers are entrenched in the Constitution, and can only be altered by a two-thirds majority of this Parliament, you cannot do it by saying I am altering section 66A because one has to look at the effect of the legislation. The effect of the legislation is to take something away, however small from what is in that section, and since you are doing that, it requires a special majority because that section is a protected section. That is the first reason this Bill can go nowhere. We are wasting time in Parliament debating this Bill. Even if it is passed, as soon as it gets to the courts, it would be struck down. The Attorney General knows that. He is trying to fool his colleagues. He knows it is not going anywhere.

The second effect is that the Bill fails to recognize the important concept of the separation of powers which is enshrined in our Constitution. Mr. Speaker, what I find extremely strange in this legislation is here we come to look at important matters affecting our Constitution, the service commissions and so forth, and there seems to be a complete absence of any regard for what was said by the Hyatali Commission.

In 1987, you would recall that the Government at that time appointed Sir Isaac Hyatali with a team to look at our Constitution which he reviewed and he had much to say about the judicature as well as the service commissions and here we are dealing with legislation having an impact on the Judiciary and/or no bearing on the commissioner.

Mr. Speaker, I am quoting from paragraph 241 on page 45 of the Isaac Hyatali commission. It says under the heading “Separation of Powers”:

“Under the Constitution, which is declared by section 2 to be the supreme law of the Republic, the constituents of State power are the Executive, the Legislature and the Judiciary. Each is given thereunder separate and distinct spheres of constitutional functions, powers and responsibilities.”

242. As such they form three distinct pillars of our constitutional structure each independent of the other and inviolable, but functioning together to support and maintain the rule of law upon which the soundness of our sovereign democratic State rests.”

Mr. Speaker, what this Bill is attempting to do is to breach that separation. It is attempting to have some kind of parliamentary oversight on the Judiciary. During this debate, one hears from time to time that the intent is not to interfere and all this sort of thing, but as a fact, having been in this Parliament for some time and having listened to the views expressed by the Member for Couva South and the Member for Couva North, I am aware of their clear position.

Let me simply refer to some of those views. I would quote first the Member for Couva North speaking on June 11, 1993 on the Police Complaints Authority Bill and this is what he had to say. He was not the Prime Minister then, and he would not be the Prime Minister for long either. *[Interruption]* I certainly do not call 2000 long or earlier.

Mr. Speaker, this is the Member for Couva North, he was making the point that in Trinidad and Tobago the attempt to set up an impartial body is not going to succeed. He says:

“I think the learned Attorney General knows my views, I told him at another place recently what I think about an independent authority in a small society. It is really an impossibility.”

So understand that. First of all understand that they do not believe in independent service commissions. Then he goes on to expand. He says:

“In Trinidad and Tobago, this country is too small in order to have anything like an independent body.”

So all that is going on here is to ensure that this body, if it is not going to be independent, is in their favour.

“I am casting no aspersions. We interface at too intense a level. Because of our smallness, operating in crucible-like conditions, we interface too intensely to have anything like an independent body.”

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It goes on, Mr. Speaker. He says:

“That is the argument that we have been using in this House for the past 15 years. Not one day! For the past 15 years we have been arguing in this House for the setting up of parliamentary committees that will oversee—if you want to use that word, if you do not want to use supervise—”

So this thing about coming to interfere with our independent service commissions has been a bee in their bonnet for some time and I think it dates back to around 1972 when there were certain incidents and, since then, certain persons seem to have fallen out with the Judicial and Legal Service Commission.

3.00 p.m.

Mr. Speaker, we can go next to my hon. friend from Couva South speaking on the Administration of Justice debate, March 25, 1994. I think, I should go to his opening because this is a motion he raised in 1993 but continued in 1994. In his opening contribution, Mr. Speaker, these are some of the views expressed by the Attorney General.

“I would like to state, very categorically, that the delays in the administration of justice would never be solved by the mere provision of additional courts, more judges, modern technology”.

That is what he was saying then. But he tells us now that—anyhow.

“There is a much more fundamental problem affecting the administration of justice. I do not know, whether this government has the courage to deal with it. It bears directly on the question of delays, and unless it is redressed, the problem of delays would not be solved. The problem concerns the ability of the judiciary as a whole.

Our system has permitted persons who did not achieve distinction at the bar to be entrusted with judicial functions. Some of these judges were appointed, despite the fact that they did not have the conventional qualifications”.

You understand. You know, this is an attack on the Judiciary that we are hearing today. [*Desk thumping*]. You understand. That is what it is, Mr. Speaker. This is not simply a committee that wants to oversee, no. They say “supervise”. What they really want to do, is simply to interfere, Mr. Speaker. It goes on.

“I am saying that the system that operates is a secret system and one of my proposals would be, having regard to what I am saying, to have a more open system.

Madam Speaker, I am illustrating these facts to show that if we have a system whereby the Judicial and Legal Service Commission is accountable to a body, and there is an open system, we may be able to eliminate the perception that something wrong may have occurred. I understand it...

We had a situation where a person was appointed to the Court of Appeal over the heads of other judges, and when it came to the appointment of this Chief Justice, he was the most senior person.”

Mr. Speaker, an attempt here to set the stage for the control of the Judiciary. Listen to the next statement, Mr. Speaker.

“I would like to advocate that the Judicial and Legal Service Commission should have representatives of the Member of Parliament.”

You understand. An independent arm of the state. I have quoted Sir Isaac Hyatali, a former Chief Justice, Chairman of the Elections and Boundaries Commission.

Our Constitution recognized that distinction between the Judiciary, the Executive and the Legislative; and even while in our system, there is a hyphen they say, the buckle that fastens, the hyphen that joins, the executive to the legislative, and in fact, we have kept the Judiciary separate and apart because we know the importance of a separate judiciary.

What this Member has been advocating for some time, is that he wants to be on the Judicial and Legal Service Commission. The next thing you know—he gave himself silk the other day. The next thing, he will make himself Chief Justice. [*Desk thumping*]. You understand, Mr. Speaker. Understand the diabolic plan that is behind all of this.

Some people have no shame. Could you imagine you nominating yourself for anything? Could you imagine? You are Attorney General, you say “well fine, I take silk”. How come you have not given Kamla silk?

Mr. Speaker: Order, Order.

Mr. K. Valley: Understand it, Mr. Speaker. I want to repeat that. “I would like to advocate that the Judicial and Legal Service Commission should have representatives of Members of Parliament.” That is what this gentleman wants, Mr. Speaker, you know.

It continues:

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“I would, therefore, suggest that the Judicial and Legal Service Commission should be a more accountable body. Right now it operates as a constitutional dictatorship; and any system of Government...(page 22) seems to be missing.

Further on, Mr. Speaker:

“one sees that the whole point about the functioning of the Judicial and Legal Service Commission is that there must be more accountability in order for the system to operate fairly.”

In other words, if we had such a system, where the Commission knew that if it made an appointment it would have to account to Parliament as to what kind of appointment that was, why it is, and may be we could even consider—and I would like to advocate a system that for judicial appointments, we must have the American set-up whereby they must subject themselves to public scrutiny, so that we can see whether they are proper appointments. The mere fact that you have such a machinery would make the system such, that persons who are not fit to be appointed judges are not appointed.

Mr. Speaker, I would come to what the Hyatali Commission had to say about that. But before I do that, you see while he was saying that, listen, I just want some accountability and so on. Remember what our good friend the Member for Couva North was saying. He was saying “listen man, you cannot have any independent body”. Really what we want, we wanted a system where—that is his view, but my friend’s view is that you must have a parliamentary oversight; because when you have a parliamentary oversight, you have both sides that are arguing. You do not have any independent authority any longer. What you have, is a system such that you are talking about sharing the spoils of office.

Listen how he expresses it, Mr. Speaker—when you have the Parliamentary Committee that is supervised by the commission, it would be able to say, ‘hold on Mr. Minister, upon what criteria has this man been appointed? Well, we know somebody who will be able to fulfill that criteria much better than he. Now, they telling me about no interference. If that is not interference, what is?’

Let us examine him too. Let me repeat that, Mr. Speaker, and this is the person who is now the Prime Minister of our country. This is his view. He says that listen—remember his argument was, that you cannot have an independent body. Therefore, what you are going to have is the Parliamentary Committee that would supervise service commissions; and that when it comes, the Parliamentary Committee would say,

“hold on, Mr. Minister: upon what criteria has this man been appointed?” Well, we know somebody who will fulfill that criteria much better than he.

Let us examine him too. It is because of that conflicting interest, you would escape what I term impartiality. So that he wants to escape impartiality.

That is the argument that we have been using in this House over the past 15 years. So understand, Mr. Speaker, the genesis of all of this.

3.10 p.m.

Mr. Speaker, the Constitutional Commission—the Hyatali Commission [*Interruption*] Yes, I have that too, you know me. I am coming to that. Do you think that I am not coming to that? The Hyatali Commission, this is what they had to say at page 47, paragraph 253:

“Procedure for Appointment of Judges. With respect to the appointment of judges we took notice of at least three suggestions advanced to improve the procedure for selecting them. The first was that the Law Association should be consulted before an appointment is made; the second was that the names of candidates being considered for appointment to the Judiciary should be published in the media for the information of the public; and the third was that the candidates proposed for appointment to the Judiciary should be subjected to an enquiry or examination in public by a Parliamentary Committee to determine their suitability for such appointment.”

Who do you think suggested that last one?

Mr. Hinds: The Attorney General and the Prime Minister.

Mr. K. Valley: 254:

“We think that there is abundant good sense in the proposal that the Judicial and Legal Service Commission should consult the Law Association through its President before an appointment is made to the Bench of the Supreme Court. We think so, because the candidates for such offices are by and large recruited from the legal profession which is regulated by the Law Association and over the members of which the Association,...”

“which”, is missing

“...the members of the Association, subject to the jurisdiction of the judges, exercises disciplinary control under the Legal Profession Act 1986. In any

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event, it is likely to be his colleagues who know a candidate for judgeship best both on a personal and a professional basis.

The Association is consequently by far the best source from which reliable information and references can be obtained to assist in assessing the merit of those who are being considered for judicial office.”

Mr. Speaker: The speaking time of the hon. Member has expired.

Motion made, That the hon. Member’s speaking time be extended by 30 minutes. [Mr. M. Joseph]

Question put and agreed to.

Mr. K. Valley: Thank you, Members of the House. Mr. Speaker, the commission continued at page 255:

“We did not think, however, in a society such as ours and for the reasons stated in the next three paragraphs that the other two proposals qualify as improvements on the present system...”

That is, that their names should be published or that they should be subject to a parliamentary committee.

Of course, given the time, Members can read it on page 48. The Constitution Commission is clear that is not what we want. That is not what we want to do—that there is an independent commission and we should, of course, be governed by that. As my colleague made the point, that yes, there is always improvement, and we are all for improvement. We say, however, if you want to do certain things; if you feel that there is a case then you need to come directly in any case.

The Member for Siparia, when she made her contribution, referred to our attempt at amending the Constitution in 1994.

[MR. DEPUTY SPEAKER *in the Chair*]

Mr. Deputy Speaker, really, in my opinion the Member of Parliament misled the House considerably. The Member of Parliament claimed that the Bill which was brought here in 1994—a Bill which said very clearly that its purpose was to alter the Constitution that we were requiring a two-thirds majority on the Bill. That was clear. We came—quite different from what is happening here today. But, the Member claimed that in that Bill—as she said at 2.45 - 3.00 p.m.

“They intended to abolish the Police Service Commission,... and politicize the

When one looks at the Bill which came here one would see that Bill was informed, again, by the same Hyatali Commission.

The Hyatali Commission—when it looked at service commissions [Interruption] I am coming back to it. I am taking the first point. I am saying that Bill was informed by the Hyatali Commission. As a fact, everybody knew at that time something had to be done with respect to the Police Service Commission. That was recognized also by the Member for Couva North, in that same Police Complaints Authority Bill. The Member made the point that there was need for reform of the Police Service Commission. The fact of the situation is that there was lengthy discussions between the Government of the day at that time—the PNM government—and the Opposition, with respect to the formulation of that legislation. There was compromise with respect to that legislation. What we wanted to do, quite simply as the legislation states, is to reform the service commission—not abolish. To reform the service commission. The Member is aware of that because she quoted from the legislation. The legislation is quite clear that the intent was to reform the service commission and to put disciplinary control of the Police Service Commission in the hands of the Commissioner.

Even the new commission—the reformed commission—was supposed to have eight members; six of whom were to be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. How can one claim that the PNM wanted to politicize that service commission when six of its members were appointed by the President after consultation with the Prime Minister and Leader of the Opposition?

The other two members, Mr. Deputy Speaker, one was the Permanent Secretary, Ministry of National Security; and the other was the Commissioner of Police—all in keeping with concepts of modern management, having the head of the body on the commission. The Member made a lot of noise about the fact that there was no attempt to amend section 126 which stated that a public officer ought not to be on a commission—that is an amendment that one could have taken in committee.

The point is to say that they intended, as the Member said:

“to abolish the Police Service Commission and secondly to politicize the functioning of the Police Service Commission.”

The very thing that they are accusing the present Bill of trying to do is completely misleading and false. The Member is aware of that because she had the

legislation. The legislation, as I said was [*Interruption*] It is not true? I have the legislation here. I will read every clause for you. I will read every clause for you. The legislation is here. I would just read a few of the clauses. I will go through the Explanatory Note. First of all:

“The Bill seeks to amend the Constitution for the purposes of the reformation of the Police Service Commission...”

How many executives? One. What was the composition of the commission—eight, six of whom were appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

3.20 p.m.

But who was the executive? Is he a political appointment? He is the permanent secretary. I am sorry, Mr. Deputy Speaker, but that is misleading the House and attempting to continue to mislead the House. The purpose of that Bill was to reform the Police Service Commission, to confer disciplinary powers on the Commissioner of Police and to establish the Police Service Appeals Tribunal. Mr. Deputy Speaker, one is saying, “Here is a problem.” Everybody acknowledges that there was a problem in the police service. [*Interruption*] That is right, the Commissioner made the point that he was a toothless bulldog. He had no disciplinary power. I would read the Commissioner's words in a while.

Here we are asking, “What are we going to do?” We are going to give the commissioner the authority to discipline his men. He had powers also to delegate certain powers to officers under him in order to exercise disciplinary procedures. It was stated that there would be a commission comprising the Permanent Secretary, Ministry of National Security, the Commissioner of Police himself and six other members appointed by the President, Mr. Deputy Speaker, after consultation with the Prime Minister and Leader of the Opposition, observing the principles of independence for which the PNM is known.

The PNM was here when we brought the 1962 Constitution. The PNM was here when the Republican Constitution came in 1976 and at that time, remember, we had every seat in this House. If we had your type of mentality, Trinidad and Tobago would have been a completely different place today. But, you see— [*Interruption*] I am telling you— [*Interruption*] Paradise? You know, all now so— [*Interruption*] I mean— [*Interruption*] Understand that. [*Interruption*] Understand that. In 1986 at least for two years there was a government with 33

seats and they did not attempt what you are attempting; understand that. That is valid. *[Interruption]* It is 17-17. You got the minority of the votes. Understand.

Mr. Deputy Speaker, I do not know how much more time I have but I would like to place on the record, quickly, the point that this 1994 legislation was informed by the Hyatali Constitutional Report. This is what Sir Isaac Hyatali had to say.

“One of the most pressing problems in the Police Service today is the question of the morale of the officers. This morale is heavily dependent upon the actions of the Police Service Commission....Quite apart from the fact that the Police Service Commission Regulations are in need of amendment, there is the need for greater participation by the Commissioner of Police and the more senior officers in the administration of the Police Service itself to remedy these problems....”

The complaint has been made that disciplinary proceedings take too long to be concluded under the existing system which reposes the ultimate power of disciplining a police officer in the Service Commission. It is felt that the disciplinary procedure should be speeded up, and to achieve this, there should be a greater degree of delegation to the Commissioner of Police and the more senior officers. In addition the Commissioner of Police as head of the force should be vested with wider powers of discipline, subject to the Police Service Commission’s power of review.”

So that, being informed by the views of the Commission, a Bill came to the Parliament after lengthy consultation and ultimately compromising, Mr. Deputy Speaker, with those on the other side.

If one looks at this Bill one will see that we also agreed that the Commission will be accountable to a committee of Parliament in relation to the performance of its functions. Compromise, Mr. Deputy Speaker. You understand? And even after all of that they did not support this legislation. I am making the point, which I made earlier, that this legislation had nothing to do with the government departments or the statutory bodies or the state enterprises. I am making the point now that it has nothing really to do with the other service commissions other than the Judicial and Legal Service Commission because they had every opportunity in 1994 to work towards reform.

When one looks at this Constitution Commission Report, one will note that the real problem is not one of parliamentary committees. There are other problems

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with the service commissions. If the Government were serious with respect to the problems associated with the service commissions, it would have informed this Bill before the House today with the recommendations of the Hyatali Commission. That has not been done. Therefore, we can see clearly that the other service commissions were just thrown in there, as it were, to tell people, “Listen, if we have that,”—that is what they tell you, “ent”? They will say, “If you have a problem you could use this because we now have the parliamentary committee. You can ask them a question”.

Mr. Deputy Speaker, as I said while you were away, that can be done now. One writes the Ombudsman rather than the service commission. The Ombudsman must respond. That is in the legislation. One does not have to write the commission. Do not let him fool you with that, Mr. Deputy Speaker. His real intent is to get at the Judicial and Legal Service Commission because since 1992 he feels they had done him in and he is trying to get back at them since then. That is what it is. Do you understand? [*Interruption*] Imputing improper motives? I am not, Mr. Deputy Speaker.

Again, if one were to look at the recommendations of the Constitution Commission, one would see on page 64, with respect to the Police Service Commission, the recommendations for the Bill of 1994 were all in keeping with those recommendations. That Bill was so informed. I want to make one other point with respect to my hon. friend from Couva South. I referred previously to the debate on the administration of justice and I dealt with what he said in opening.

Let me quote one or two matters with respect to the winding up of that debate on March 25, 1994, Mr. Deputy Speaker. He is making the point and he was telling us—remember I said with the Police Service Commission we compromised with the then Opposition because they asked for parliamentary committees and we said, “Yes, we are going to give you one because we want to get on with modernizing the Police Service Commission”. He is making the point here:

“When the police reform proposals came up the Government was prepared to make the Police Service Commission, which is an independent commission, accountable to Parliament. It was prepared to do that. If it is that the government is prepared to make the Police Service Commission accountable to Parliament, why is it that it does not want to make the Judicial and Legal Service Commission accountable to Parliament? Madam Speaker, do you know why? Because in order to pass the Police Reform Bill they had to get the Opposition's support. So they

are not prepared to be reasonable and act in the public interest when they do not have to get the Opposition's support.”

He was pointing out clearly that the only reason in 1994 there is this committee in the Bill, about which I heard another Member talking this morning, is simply as a compromise to get the basic legislation passed because we were convinced that there was need for reform in the police service and we were convinced that what we were doing was in the right direction. Even after stretching our hands to meet them, they did not support the legislation.

He continued, Mr. Speaker:

“They are prepared to allow the Police Service Commission to be accountable, but the Judicial and Legal Service Commission, which only has to appoint—and for the Government to say that by doing that they would interfere with justice, as a matter of fact, when one looks at studies on the judiciary, one sees that governments are like machinery in which weak and sycophantic [*Interruption*] judges can be appointed”

[*Interruption*]

Hon. Member: Sycophantic.

Mr. K. Valley: I cannot worry. I tell you what, I have common sense. [*Interruption*] I know exactly what you want to do. I may not be able to pronounce “sycophantic” or whatever it is but I have common sense. I know exactly what you want to do and you are not doing it. [*Interruption*] Thank you, Mr. Deputy Speaker.

With respect to that, Mr. Deputy Speaker, I simply want to quote the then Attorney General's response to the Member for Couva South at that time. The then Attorney General, Keith Sobion, said:

“A comparison was made between the Government's approach to the Police Service Commission and the suggested approach to the Judicial and Legal Service Commission. To explain the position, we had sought to provide a mechanism for reporting to Parliament of the Police Service Commission. To make a comparison of the Police Service Commission and the Judicial and Legal Service Commission, is to compare apples with oranges. That is what it is.

There is a fundamental difference between a body which is performing an executive function and a body which is performing a judicial function, and whilst we, as the Government—the Cabinet—are responsible to the Parliament

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and we come here to answer questions raised by Members on the other side, that is the control that the Parliament has over the executive function. There is no such control over the Judiciary. So to compare what one does with the Police Service Commission and to suggest that the same methodology be adopted with the Judicial and Legal Service Commission is to miss the point completely.”

The point is—[*Interruption*] Mr. Deputy Speaker, I just want to tell him that I visit you from time to time.

The point is that one has to make a distinction between the service commissions, which are really human resource management agencies of the government, the executive, as distinct from the Judicial and Legal Service Commission which performs a simple function—same human resource management and so on—but for a separate arm of the state; and that is the fundamental difference, Mr. Deputy Speaker. The whole intent of this legislation is to merge or to blur the line between the Executive and the Judiciary, a line which ought never to be blurred in a country having a proper respect for the rights and freedoms of citizens, of life. I thank you, Mr. Deputy Speaker.

3.35 p.m.

The Prime Minister (Hon. Basdeo Panday): Mr. Deputy Speaker, I cannot let this Bill go through Parliament without adding my contribution thereto. [*Interruption*]

Mr. Valley: I want to hear you on InnCogen.

Hon. B. Panday: I have spoken at length on this issue, as is evident from several of my speeches that I made in the past having been read by the Member. I congratulate him for reading well, and I want to confirm my belief in every single thing that I have said. [*Desk thumping*] At least, they may accuse us for being wrong, but they cannot accuse us for being inconsistent; that is what they cannot do. Our argument then, is our argument now.

Mr. Deputy Speaker, I do not intend to go in all this bacchanal and nonsense that people who are charged for smoking marijuana and so forth, get into. I am not going to do that. I intend to deal with this Bill. What is the purpose of this Bill? What is the mischief [*Interruption*]

Mr. Deputy Speaker: Member for Laventille East/Morvant, an incident happened on Monday, if you would recall, and the Speaker made certain rulings. I

wonder if you could just take that guidance and continue how you are behaving very well today, okay?

Hon. B. Panday: Whenever legislation comes before a House to be passed, there is one question that legal minds ask, even when judges are interpreting the law, they ask: “What is the mischief that this law was intended to prevent?” Therefore, I think, that is how we should approach this Bill. As I say, I do not intend to make allegations against anyone. And I intend to read for you the original Bill, because I suspect that there are people in this House who do not know, who are unaware that the original Bill has been amended, taking into consideration all the arguments that were raised after the original Bill was introduced into this House. As a matter of fact, my friend from San Fernando West was reading an article written on the original Bill—nothing to do with this Bill. I want to read the original Bill and to show how the Government has adapted a new Bill to take into consideration the fears of those who have offered constructive criticism to this Bill. The Explanatory Note of the original Bill says:

“This Bill, for the removal of doubt, seeks to amend the Constitution by adding

It went on to say that :

“Section 129 of the Constitution confers on a Service Commission unfettered power in that no one can question, in a court of law—

- (a) whether a Service Commission has validly performed any of its functions under the Constitution; or
- (b) whether a member of the Service Commission has validly performed any of his functions in relation to the work of the Commission.”

The original Bill had said:

“This form of unrestrained power now seems incompatible with the principles of accountability, transparency and openness in a free and democratic society.”

You would have noted that:

“The new section 66A will enable the House of Representatives or the Senate to appoint Select Committees or Joint Select Committees to investigate and report to the House or the Senate or, in the case of a Joint Select Committee, to both Houses of Parliament, on the powers and methods of functioning of, and criteria adopted by, Service Commissions, and also on the powers and methods of functioning of, and criteria adopted by, Ministries, Statutory

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Authorities and enterprises controlled by or on behalf of the State or in which public money is invested.”

That part of this Bill has not been commented upon at all. So I take it that the Opposition agrees to that part of the Bill.

“The Bill, therefore, by providing for the establishment of Select Committees and Joint Select Committees to investigate and report to each House on the powers of Service Commissions and other public bodies seeks to give effect to the principles of accountability, transparency, openness and access to information held by public bodies generally.”

That was the Explanatory Note to the original Bill. The original Bill, Mr. Deputy Speaker, spoke of an addition of section 66A (1):

“(a) in addition to any other Select Committee which each House is empowered to appoint under its Standing Orders, each House may appoint Select Committees or Joint Select Committees, to investigate and report to that House or to both Houses as the case may be, on the powers and methods of functioning of, and criteria adopted by, Service Commissions, Ministries, Statutory Authorities and enterprises...”

I am asking the Members to tell me whether they have any objections to Ministries, Statutory Authorities and enterprises being subject to this Bill, or is their concern only with the Service Commissions, because if it is, then it shortens my argument.

The original Bill had said:

- (b) any Committee appointed for the purposes set out in paragraph (a) shall have—
 - (i) the same powers as those of a Commission of Enquiry appointed under the Commissions of Enquiry Act;

As I recall that was something which evoked protests, that if the enquiry was going to be held under the provisions of the Commissions of Enquiry Act, then people would have been forced to give evidence on oath; they could be summoned and they could be jailed for contempt of court—am I right, Mr. Attorney General?—they had to produce documents and so forth. That was an objection. That is no longer in the new Bill. That is why I said they do not know what they are talking about on the other side. They have other motives for resisting this Bill,

to which I shall come. So, there is no provision under the Statutory Commissions of Enquiry Act.

“(c) each Committee may appoint to itself or a Sub-Committee...”

And so forth.

In the new Bill, all these allegations that were made under the old Bill—I better read it, because I think there are just too many of them in this House who have not read this. They are probably hearing this for the first time.

(2) Notwithstanding paragraph (1)(b), a Minister or a Chairman of the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission and the Teaching Service Commission may in his individual discretion determine whether or not to appear before...”

So, it is not forcing the heads of commissions to come. Because of these criticisms the Bill was amended and, the new 66A(1) says: in addition to the Committees which the House can appoint.

As you realize, Mr. Speaker, the hon. Member for Diego Martin Central rightly pointed out that this Bill is being brought under a provision of the Constitution that deals with the powers and privileges of Parliament. And because we bring it under that, they say that we are trying to get the man out by l.b.w., instead of hitting the wicket. I did not know that was against the cricketing laws. If you cannot hit the wicket, get him l.b.w., catch him out! [*Desk thumping*]

The problem is that they cannot catch!

If you can amend the law in a particular way, which is legal, why not then take the legal approach to amending the law? If they feel that this law is unconstitutional, then they may wish to incur costs again, and they may bring action to test the constitutional validity of this Act. That is easy: people have done it before on several occasions. If they genuinely feel that we are breaking and violating the Constitution by bringing this Act here, then they are free to go to the courts for a declaration, that the Constitution has been violated. That is so easy. But no, they do not do that, Mr. Deputy Speaker.

I am referring now to the new Bill:

"in addition to any other Joint Select Committee which Parliament is empowered to appoint under the Standing Orders, Parliament shall, within one calendar month—"

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Again, it begins to change the whole format of it.

"(i) after the commencement of the Constitutional (Amendment) Act, 1999;"
that is this.

"(ii) of the first meeting of the House of Representatives after any General Election, or soon thereafter as the Parliament may resolve, appoint Joint Select Committees to inquire into and report to both Houses of Parliament in respect of—

(A) Government Ministries,

(D) Statutory Authorities,

(E) Enterprises owned or controlled by or on behalf of the State, and

(F) Service Commissions.

3.45 p.m.

Mr. Deputy Speaker, they talk about interference. If they speak of interference, then they are saying that the whole Parliament—including the Independent Senators, the Senators of Opposition, the Opposition Members—is an organization in total disrepute in their sight. Parliament has people who want to interfere.

This is not a committee of the Government that is being set up here. This is a Joint Select Committee of both Houses of Parliament—the House of Representatives and the Senate. Who do they represent? They represent the people. So, their argument is that the people, through their representatives, have no right to know. [*Desk thumping*] That is the danger of this argument, yet they talk of democracy. But you see, the people have no right to ask!

Mr. Deputy Speaker, the inquiry may be in relation to the administration, the manner of the exercise of their powers, their methods of functioning and the criteria adopted by them in the exercise of their powers and functions. Do the people of Trinidad and Tobago, in a functioning democracy have a right to these answers? That is the issue! If they have a right to these answers, who are more qualified to receive these answers than their representatives; the Parliament of this country? [*Desk thumping*]

It continues to say: “for the purpose of this section an enterprise shall be taken...” and so forth. There is nothing about the Commissions of Inquiry Act. It is important, Mr. Deputy Speaker, and I quote:

“Subject to this section the Standing Orders of the Senate and the House of Representatives shall...

(3) ... a Committee may regulate its own procedure”

Here we have the two Bills before us, and having got the two Bills before us, we will see that this Bill, the original Bill, attracted criticism because it made reference to service commissions and the commissions of inquiry. That has been changed to empower Parliament to appoint joint select committees of both Houses to ask questions and to monitor any ministry, any statutory authority and any enterprise.

I ask the Opposition, do they object to the monitoring of these latter bodies? I do not see how they can. They have made all kinds of spurious allegations against this Government, against Ministers, against bodies, against the Prime Minister, Members of Parliament and state enterprises. They have made all kinds of allegations. Now, for the first time, they will have an opportunity to have their allegations investigated by Parliament. What are they afraid of? [*Desk thumping*]

Mr. Valley: We already have that!

Hon. B. Panday: So, if a Minister is corrupt they can bring the Minister before this committee; if the Airports Authority is corrupt, bring the Airports Authority before the committee; if they say that NIPDEC is corrupt, bring NIPDEC before the committee; and if they feel that the Minister of Public Utilities is corrupt, bring him before the committee! [*Desk thumping*] [*Interruption*]

Mr. Deputy Speaker: Members, the Member for San Fernando West, if you were listening to him, made a very good contribution appealing for order in the House. I think you should get a copy of his *Hansard* and look at it, and at the same time, look at rules for Members not speaking under Standing Order 40.

Hon. B. Panday: They have accused my Minister. If the Minister of Finance is involved in corruption, bring it before the committee! It is a Joint Select Committee of both the Senate and the House of Representatives.

Mr. Deputy Speaker, I suppose and suspect that the real reason for the Opposition's opposition to this Bill is because it will expose them in all their political nakedness for all to see. When they make allegations, they will have to prove them. [*Desk thumping*] That is the whole purpose of their objection to this Bill.

It is clear that the Opposition, the PNM, intends to fight the next election on two issues. We hear them in this Parliament and everywhere else. It is clear that the Opposition intends to fight the next election on the two issues of corruption

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and race, and they fear that if there is a Commission like this, they will not be able to make those allegations because people will ask them why they do not take it to the committee to prove their point. *[Desk thumping]*

That is why we are setting up this body. It is for the Opposition—not for us—so that they can bring before that committee anybody they find corrupt, and they will not be able to make a statement in this Parliament anymore to talk about racism and corruption. They will not be able to do it anywhere, unless they are prepared to put their mouths where their mouths are, or where their mouths should be!

Mr. Deputy Speaker, they have a problem in that they cannot attack this Government on its performance because this Government has done more in three years than they have done in 30 years! *[Desk thumping]* That is what is eating them, so they have to find two issues: corruption and race, and if we hear them speak, we will see that they are harping on this all the time. Therefore, we are now setting up an institution to say, “Come prove it. And if they do not prove it, thou

They know they cannot criticize us on performance. We have improved infrastructure; reduced unemployment; managed the economy as it has never been managed before; our business people are now more prosperous than ever; we are opening up more markets for our business people than have ever been done before; as a result of our new foreign policy, we have reduced the level of the poor and impoverished; we are revolutionizing the education system and educational opportunities and have introduced distance learning. We have strengthened the administration of justice and provided the police with vehicles to fight crime. *[Desk thumping]*

Mr. Deputy Speaker, this committee is the greatest justification for the allegations against this country on those vehicles—the Cherokee jeeps. When they made this allegation, we sought to appoint Mr. des Iles and the Leader of the Opposition launched a most vicious and violent attack on the question of his integrity because his wife was the head of the public service. So, we instead appointed Mr. Jim Davis, a judge, and when he reported and I came to this House and read the report on those Cherokee jeeps, they attacked the judge! *[Desk thumping]* The said that he reported wrong.

What must we do on our side when they make an allegation, we set up a Commission of Inquiry to inquire into the matter, the Commission of Inquiry reports and they do not agree with that? We then say, "Okay. Investigate it for

Not only have we provided the police with vehicles to fight crime, we have repaired the Coast Guard vessels. When we came into this office, every Coast Guard vessel was down and the drug lords were having a field day. I do not know if it was probably by design. Motor vehicles were changing hands.

Mr. Deputy Speaker, the Coast Guard vessels are now repaired. Because of the capacity of this Government to run the affairs of this country, two 82-foot cutters have been donated by the United States. They are in Trinidad right now receiving Trinidad colours, and I shall launch them on Friday morning at 10.00. *[Desk thumping]*

In addition, we expect at the end of this month one C26 airplane, and another later on in the month so that we can have the capacity to intercept the drug lords. We have put radar all around this country, so that for the first time, this country and this Government can see what is taking place with those ships and boats. *[Desk thumping]* We did not have the capacity to intercept, so we are now developing that capacity. We have a joint command centre that looks at our coastline. There is no other country in the whole of the Caribbean that can see its entire coastline from one spot. We can! *[Desk thumping]* So, we see why they have resorted to this kind of attitude.

We have built more pavilions and more playing fields than ever —thanks to the Minister of Local Government. And so, Mr. Deputy Speaker, we are beginning now to understand why it is that the Opposition is taking this position when they advocated similar measures which my learned Attorney General will address after me.

With such a record of performance, how can the PNM ever defeat this Government? *[Desk thumping]* Except they resort to these cheap devices, but we are smarter than they are. We will provide the mechanism for them to put their mouths where their mouths are, so if they make allegations against this Government, they better start proving them. That is what this Bill is about, and people have not argued about that. That is the only way to respond to the false and malicious allegations upon which they have embarked.

Mr. Deputy Speaker, I tell our accusers to put their mouths where their mouths are. They better prove their false allegations or forever hold their peace.

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That will be the end of the PNM. We tried other things. We tried to set up tribunals, commissions of inquiries but they would not accept it. No matter what we set up, they would not accept it. When we said we were going to revoke the airports contract, we revoked it and handed the matter over to NIPDEC. They said that NIPDEC was corrupt. No matter what we do, they will never be satisfied. If they said that NIPDEC was corrupt, they would be forced to bring NIPDEC before this committee.

4.00 p.m.

[MR. SPEAKER *in the Chair*]

Mr. Speaker, how many times in this House have you heard them talk about the Flour Mills. Well investigate rice! Investigate dog rice do what you want. But you are making allegations no matter what people say. Investigate the airport, I am giving you an opportunity to do that. Investigate NIPDEC, InnCogen and National Fisheries. Maybe that is what you are afraid of—investigate National Fisheries,

Hon. Member: —BWIA. [*Desk thumping*]

Hon. B. Panday: I hope this Act is retroactive—

Mr. Maharaj: It does not limit any part of it.

Hon. B. Panday: —and the questionable activities on the islands you might be able to do that too! You will be able to investigate anything! That is what this Bill is about. [*Interruption*]

Mr. Speaker: Order.

Hon. B. Panday: I now turn to the service commissions and I repeat what was said in the original explanation that in a modern democracy no institution of the state should be above scrutiny. [*Desk thumping*].

They have talked about transparency. This Bill is about transparency. No state organ will be able to hide behind the protection and say we can do what we want and nobody can ask questions about it. That is what this Bill is about.

Mr. Speaker, they say, that is interference—to ask for decisions. To ask why you made these decisions is not to interfere with the decisions, it is to get information about the decisions. When you interfere with the decisions then you interfere with the body, but when you say ‘why did you do that?’ You are not

telling them to do anything else, you are not enforcing them—you are not interfering with the decision, you are asking for reasons why they have come to that decision.

Mr. Maharaj: And the people are entitled to know that.

Hon B. Panday: Mr. Speaker, who better than the Parliament of this country to ask those questions? Who better?

Mr. Speaker, only today, if you look at one of the newspapers today you would see that there is a public servant who is suing the Government for the actions of the Public Service Commission—many, many years after and so on—this is on the newspapers today. Mr. Speaker, that would have been a matter that could have been sorted out so easily, instead of people having to go and hire lawyers, expensive lawyers like those on the other side there—which I suppose they probably want—to fight their cases.

Generally, the people who are taken advantage of, are the ones who are least able to afford legal fees in order to fight their cases, because they are poor. A man 'lose' his job and when he 'lose' his job after three, four months, he cannot even buy food, he is going to take a lawyer to go and do a judicial review!

Mr. Maharaj: Even the Leader of the Opposition cannot pay legal fees.

Hon B. Panday: Even the Leader of the Opposition cannot pay his legal fees against you, Mr. Speaker. *[Laughter]*

Mr. Maharaj: He is begging. *[Desk thumping]*

Hon. B. Panday: So I do not want to put people in that kind of position. A simple organization where the man need not have a lawyer, need not have anybody he may merely come and give his evidence and say whatever his problems are, and so forth.

Mr. Speaker, another matter. I want to ask my friends this. In all seriousness, when we came to office three years ago, we found that there were some 20,000 persons employed in the public service on a temporary basis for some 20 years. Mr. Speaker, you mean nobody is entitled to ask the Public Service Commission, will you kindly tell me what happened? Why is it that there are 20,000 temporary workers in the public service for over 20 years?

Mr. Maharaj: The human suffering that is caused.

Hon. B. Panday: The human suffering that has been caused.

Mr. Maharaj: And they are not concerned about that?

Hon B. Panday: And you mean the people of Trinidad and Tobago do not have the right to know why you have encumbered the public service in this kind of way? Why have you made us charge taxes on people to pay temporary workers for 20 years. If there were vacancies, fill them. Mr. Speaker, sorry—

Mr. Speaker: Members, the basis on which we should be operating in this House is on the basis of hearing the other side. Nobody is asking you to accept what they say, but I am simply asking—I am pleading with you—please, could we hear the other side? I suggest, with the greatest deference, that by trying to drown out what is being said, does not make it untrue, or less effective. I ask you please, hold your fire and I promise you that there is nobody, who is now making noises who will be prevented from speaking.

Mr. Maharaj: Unless they spoke before. *[Laughter]*

Hon B. Panday: Mr. Speaker, there are thousands of public servants who are acting in jobs—

Mr. Maharaj: Acting for 20 years!

Hon. B. Panday:—acting for long periods of time. Do you mean the people of Trinidad and Tobago do not have the right to ask why? Why are these people acting for 10—12 years, why? That is what this Bill is about.

Mr. Speaker, vacancies have not been filled in the teaching profession. They have not been filled in the public service and everywhere. The people's education is being stultified. Mr. Speaker, as parliamentarians, I am sure that every parliamentarian has received complaints from people of a particular area that the school does not have any teacher and, therefore, their children cannot be educated.

Mr. Speaker, this is a simple Bill that will ask the service commission whose job it is, will you kindly tell us why? Is there a problem? Is there something we can do so that our children can be educated so that vacancies in the public service can be filled?

Mr. Speaker, we are not trying to abolish the commission; that is what they tried to do.

Mrs. K. Persad-Bissessar: That is right.

Hon B. Panday: My friend, the Hon. Attorney General, will soon speak about that. They wanted to abolish the service commission, and we say no, no, the

service commission is there leave them there, but all we asked is please, if there are questions to be asked, the people of Trinidad and Tobago through their parliamentary representatives are entitled to ask those questions. That is all this is about.

Mr. Speaker, now that we have come to grips with this Bill, I ask them, stop playing politics, but, then I should not have asked them that. It is their business to play politics. They think that they will make me look good. The Leader of the Opposition thinks he will make me look good if he supports this Bill. The Leader of the Opposition cannot even make himself look good but he wants to make me look good. *[Desk thumping]* But that is beside the point, Mr. Speaker.

The people of this country deserve this Bill. We have held a poll on this issue—a private poll has been conducted by us on this issue and I want to assure you that the vast majority of the ordinary people in this country approve of this Bill as protecting their rights. *[Desk thumping]*

Mr. Maharaj: The same way they did not support the hanging Bill and look what happened.

Hon. B. Panday: Their idea is, do not support anything, do not support the Bill that will hang criminals, and so there are criminals in the jail today who cannot be executed because of one single reason: the Leader of the Opposition and those on that side who refuse to support a Bill we brought to this House to remove the spurious arguments that they are raising in order to avoid the death sentence. The Opposition must be totally blamed for this. *[Desk thumping]* So their idea is, they do not care. They do not care what happens to the people of this country; they do not care about crime, suffering people, workers who are working temporary, so long as they oppose in the hope that it will make us look bad—little do they know that every time they oppose a bill which we put forward, their stocks decrease. They have not noticed what is happening in the Caribbean today. Most Opposition parties in the Caribbean today are being wiped out. Do you know why they are being wiped out, Mr. Speaker? They are being wiped out because they are opposing progress. You only have to look at Grenada. *[Desk thumping]*

4.10 p.m

One only has to look at Grenada and one will see. The distinguished Prime Minister of Grenada, Dr. Keith Mitchell, when I spoke to him I said, “I think I have to come to you for some lessons, Sir, because you seem to be very capable of wiping out the Opposition”. And he said: “No, no I did not do anything to the Opposition, they did it to themselves. That is to say, every point we raised for the

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betterment of the people, they objected to it and when the time came the people paid them”.

Mr. Speaker, in Barbados, the distinguished Leader of the Government, the distinguished Prime Minister of Barbados has almost knocked the Opposition senseless. This is a trend that is taking place in the Caribbean where Caribbean people are becoming politically very sensitive and where they see there are Opposition parties that are obstructing the Government, do you know what they do? They wipe out the government and they give the ruling party a constitutional majority to make whatever change they had. It happened in Venezuela.

Mr. Speaker, if they wish to go against this Bill let them, I have a duty to perform and my duty is to come before this House and put legislation before it which I believe to be in the interest of the people. The consequence of the result is not mine, it is the House.

Mr. Speaker, every day I come to this House, or every day I go home I say: “Lord grant me the wisdom and the intelligence to do my duty, and the courage and strength to do it.” Nothing else matters. That is what is happening here today. We are doing our duty and they may vote for it, or they may vote against it and in the end, the final arbiters of what takes place in this House are the electorate of this country, and they would pay an awful price when that time comes.

Mr. Bereaux: Mr. Prime Minister, I want to ask you a question.

Mr. Speaker: Order please!

Mr. Bereaux: I just want to ask a question. I just want to ask for a simple explanation.

Mr. Speaker: Order please!

Mr. Martin Joseph (*St. Ann's East*): Mr. Speaker, I sat here and listened to the contribution made by the Member for Couva North, the Prime Minister, and the only way I can characterize that presentation is of the ultimate in deceit and deception. [*Desk thumping*] I would tell you why I say it is the ultimate in deceit and deception. It is because the Member for Couva North gave the impression that this Bill is designed to do all these things with respect to treating with the extent of corruption and to deal with issues with which the people of Trinidad and Tobago are concerned, and especially Government Ministers.

Mr. Speaker, I am glad that the population of Trinidad and Tobago is not going to get fooled and caught up with that presentation made by the hon. Member

for Couva North because the same parliamentary committees he is establishing to do all these things, the Government would have the majority on those committees. He does not say that, the Government would chair the committees and determine and set the agenda of those committees.

Do you expect, Mr. Speaker, that the Prime Minister would be investigating the Minister of Public Utilities, or the Minister of Local Government whom he publicly praises as the “Sheriff” in terms of the performance of his behaviour? Never, Mr. Speaker. It is a farce. *[Interruption]*

Mr. Speaker: Hon. Members, I appeal to you once more that the question of holding your peace applies not only when the other side is speaking, but also when your own side is speaking. It is disruptive to the proceedings and I ask you please, quite clearly, the Member for St. Ann's East is quite capable of making his contribution without being goaded and harassed by others. I ask you please would you allow the Member for St. Ann's East to be heard by those of us who want to hear him? Please continue.

Mr. M. Joseph: Mr. Speaker, I think it is worth repeating because as Members on this side have indicated in their contribution, clearly the intention of this legislation is not as the Prime Minister, the Member for Couva North, indicated. The intention is not to allow persons who have been found to be in corruption to be provided with some mechanism for which that corruption is going to be investigated. The purpose of those parliamentary committees is not intended to do that whatsoever. *[Desk thumping]*

Mr. Speaker, you heard Members on that side, in making their contributions, indicate that persons who applied to service commissions have no idea as to what has happened to their application, and persons who are temporary have no means of knowing what has happened to their particular situation. The establishment of these parliamentary committees would in no way address or remedy those situations, so that impression is deception and deceit.

Mr. Speaker, as far as we are concerned the establishment of this legislation is worse than the disease—the cure is worse than the disease. If the intention of this legislation, as stated by those on that side, is to bring relief, or to determine why service commissions have not been able to treat with their issues, as I said earlier on, this legislation would not do that. Not only that, we have already established that there are mechanisms already in place to deal with Government ministries,

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statutory authorities, and enterprises owned or controlled by, or on behalf of the state.

The Member for San Fernando West and the Member for Diego Martin Central in their presentations made it clear that we have legislation on the books that allows the Ombudsman to deal with those issues. With respect to Government ministries, and the other statutory authorities, we have the Public Accounts Committee and the Public Accounts (Enterprises) Committee which are established to deal with these things. What then, as the Member for Couva North indicated, what mischief is this legislation intended to address?

Mr. Panday: Mr. Speaker, would the hon. Member for St. Ann's East show me in this Bill where it says that the Government would chair the committees?

Mr. M. Joseph: It does not say that, but in contributions made by other Members, it was indicated in terms of the composition of it, the Members indicated how it was going to be comprised. *[Interruption]*

Mr. Speaker: Order please!

Mr. M. Joseph: Mr. Speaker, the Member for Couva North indicated that he asked what mischief is to be addressed or prevented by this piece of legislation and he said that we may accuse them of all kinds of stuff, but they are not inconsistent. That is absolutely correct because my colleague from Diego Martin Central, in making his contribution indicated the thinking of both the Member for Couva North and the Member for Couva South in terms of what their positions were some time in the past.

Mr. Speaker, I am going to quote the Member for Oropouche because I think we need to put it in the record so the population can see the sinister moves of the leaders of the UNC. When we were debating the Public Officials Bill on Tuesday, July 15, 1997, the Member for Oropouche, the Minister of Planning and Development, in making his presentation, made certain comments—but before I get into the details of his comments, I think we need to put on the record for all, because the Member for San Fernando West made that point when he pleaded with us not to ensure that this piece of legislation is passed because of the sinister motives behind it.

The point was made by the Member for Diego Martin Central that during a particular period of this country's history, the People's National Movement controlled this entire Parliament. It had all 36 seats. The PNM had an opportunity then to introduce legislation if it was undemocratic and not concerned with the

democracy of this country; it had the opportunity then to do all sorts of things as it related to the Constitution.

The NAR, during the period 1986—1991 at one point in time had 33 seats and they did not interfere with the Constitution of Trinidad and Tobago. The UNC has a minority Government with only 17 seats, and the attempt it is making to interfere with the Constitution in the worst way, makes one wonder what would happen to this country, heaven forbid, if it had a majority.

Mr. Speaker, the Member for Oropouche in making his presentation on the Public Officials Bill made the following statement. I think it needs to be placed on the record so that, as I indicated, the motives behind the UNC's efforts of dealing with this Constitution will be clear. The Member for Diego Martin Central, as I said earlier on, talked about the contributions made by the Member for Couva South and the Member for Couva North over the years. Listen to the contribution made by the Member for Oropouche on Tuesday, July 15 at midnight and he went on to Wednesday, July 16 1997. We were dealing with the Public Officials Bill and if you recall, this Bill was brought to extend the time for the Commissioner of Police. This is what the Member for Oropouche had to say:

“Let us look at the reality of the situation in this country. It was the same Constitution that gave the Prime Minister who is head of the executive a veto power over certain critical appointments, whether it is a permanent secretary, a chief technical officer, a commissioner of police or a deputy commissioner of police. Why was that veto power given? If it were felt that the judgment of the Police Service Commission or the Public Service Commission was such that it ought not to be questioned, and they were acting in the best interest of the country, why would the Constitution give a veto power? It is simply because it was felt that the executive should not be so totally hamstrung that it was at the mercy of a commission in terms of identifying key personnel to run the administration.”

Mr. Bereaux: Mr. Speaker, I am being disturbed.

Mr. Speaker: I want to indicate what is being done is not right. Members could get up and go behind the Chair and speak, but while a Member is on his legs, for four Members to be gathered, not just *en passant* on saying something to each other, but carrying on a conversation and laughing and the like, is not right. I ask please, that you discontinue that.

Mr. M. Joseph: Thank you, Mr. Speaker. I continue:

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“This whole question of independence has to be taken within that light. It is not that we are arguing a case that they ought not to be independent, but we must look at the reality of the situation and not talk in a manner as if we are constructing a myth in terms of administration.”

Mr. Speaker, the Member for Oropouche was making the point that the Government ought to be in a position to be able to do certain things for which they had a difficulty in terms of the commission not allowing them that total leeway, and he was saying on this whole question about the independence of the commission, that it ought not to have that degree of independence. That was the first point he was making.

4.25 p.m.

He also went on to say Mr. Speaker:

“I just rose to clarify a few points, not to get into any long debate. However, there are some critical issues we have to address and that is the role of the Executive vis-a-vis the bureaucracy and other institutions in the society. Currently, there is a Constitution and there are certain rules and conventions by which the Government is guided and one has to work within those rules. But certainly, the question has to be asked whether this is the best arrangement for the effective administration of the Government of Trinidad and Tobago”.

Clearly signalling also Mr. Speaker, the various institutions and the manner in which these various institutions operate.

Later on, I would speak specifically to those institutions; and that is the role of the executive, the role of the service commissions, the role of Government Ministries and departments and the role of the Parliament—because they are all interrelated.

So again Mr. Speaker, he is indicating that there are difficulties with the manner in which the present arrangements are as they relate to the executive and the service commissions. He continues:

“The model that we have adopted from Britain with respect to the public service where the Minister is the only political head and all others are permanent representatives who are appointed by—that is only one model among the democracies of the world. There is the model in the United States where, with a change in administration a significant level of members in the

bureaucracy leave and political appointees come in to execute the work of a new administration—and this is the point.

Mr. Speaker, I do not know if they would get up and say that is a creeping democracy in the United States. In Europe there are similar models. I want to quote from a book called *Comparative Government and Politics* under the heading “The Reach of Political Appointments”. After all, the politicians are responsible to the country at large. They have the final responsibility as to how the Government works, how the administration performs and so forth. Therefore—this is the punch line. Therefore, they ought to have some measure of discretion in terms of the people who are going to effect the policies and programmes that were put in place”.

So clearly, Mr. Speaker, he had indicated his wish that when administrations change that they ought to have the say as to who the key people in the various public services ought to be.

Mr. Speaker, clearly the intention of this piece of legislation is their attempt, again, at interfering with the various commissions.

The UNC Government can say what they want, but their actions clearly contradict what they are saying. So that the deceit and the deception that I talked about; and the fact that the Member for Couva North came and gave the impression that we are opposing because we do not want people to be able to have access or to be able to deal with the question about corruption, nothing could be further from the truth.

What about this Cabinet Minute 2868 of October 29.

Procedure concerning the Employment by
Ministries/Departments of Persons on a temporary basis.

“Ministers be fully informed and their prior approval obtained before Ministries and Departments engage persons on a temporary basis to fill positions that are either established, temporary or contract;

Ministers submit for the information of Cabinet, bi-annual reports in respect of persons engaged on a temporary basis in their respective Ministries”.

Mr. Speaker, since this Government came into existence they have been interfering in all of the established norms and procedures governing the employment of people in the public service.*[Desk thumping]*.

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This piece of legislation is no different. The intention is quite clear, Mr. Speaker.

Mr. Speaker: Hon. Members, the sitting is suspended for half an hour.

4.30 p.m: *Sitting suspended.*

5.04 p.m: *Sitting resumed.*

Mr. M. Joseph: Mr. Speaker, just before we took the tea break, I was making the point of establishing the real motive of this UNC Government for bringing this legislation to the Parliament at this time. I indicated that the Member for Oropouche, during his presentation of the Public Officials Bill, on Wednesday July 16, 1997, gave us a clear indication. He raised the issue of the difficulties in trying to establish what he referred to as the proper relationship between the political arm; the bureaucracy and the policing administration in any society. I think I need to quote again, for the record, the way in which he put it. I think that is central. It is germane to the whole argument as to what it is that we are treating with here. He said:

“Mr. Speaker, the experience varies from country to country...”

He was responding to the hon. Member for Port of Spain South who interrupted him with a question.

“Hon. Member, could you tell this honourable House what obtains in other countries that are members of the Commonwealth Parliamentary Association of which there is an active branch here?”

He responded by saying:

“Mr. Speaker, the experience varies from country to country, and depending on the country and its history, the level of penetration into the bureaucracy varies, it is not standard. However, we have heard a debate here today which seems to be so unrealistic in terms of what actually happens and what happens in other jurisdictions in the relationship between the political arm and the bureaucracy; in the relationship between the Executive and the policing function, that makes one feel that somehow we are living in another country; we are not living in a country which is seeking to come to terms with effective government and effective governance in this society.”

Mr. Speaker, he is saying that is one of the issues. I think that there is another area of concern. Let me just back up so that we could characterize, what I would

call, the first area of concern as that which treats with the relationship between the various stakeholders; that is, the role of the executive; the role of the government ministries, departments and agencies; the role of the service commissions and the role of the Parliament.

If you listen to the contribution made by the Member for Point Fortin today, and if you listen to the contribution also made by the Member for Barataria/San Juan and other Members on that side, it seems as if their focus was—it is the whole question of efficiency and effectiveness of the operations of government departments, agencies *et cetera*, for which the Public Service Commissions have a responsibility. It can be seen that is the second area of concern. They are saying that to address this efficiency and effectiveness problem, we are now going to establish parliamentary oversight.

Mr. Speaker, I submit, and those of us on this side—in terms of our argument—submit that the cure that they are proposing is worse than the disease. As a result, the only conclusion we could come to is that there is some ulterior motive behind the issues. We have also maintained that the service commissions need to be revisited. The Constitution is clear in terms of what is the responsibility of the service commissions. Basically it states at section 121:

“(1) Subject to the provisions of this Constitution power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments, and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Public Service Commission.

Mr. Speaker, in a modern day like this, and the way in which modern management needs to be practised, it is quite clear that some relationship need to exist between the responsibilities of the service commissions and also the responsibilities of the various government departments and agencies *et cetera*. Clearly there is need for that.

However, we do not believe that this piece of legislation will in any way address that. It will not address that. As a result, if this Government is really serious about improving the efficiency and the effectiveness of the operations of the government departments and agencies and the operations of the Public Service Commission, then a different type of approach needs to be looked at. My friend, the hon. Member for San Fernando West, made certain types of suggestions. He

said, for example, the service commissions, perhaps need to be given certain kinds of time-frames in which they need to respond *et cetera*.

Mr. Speaker, the Member for St. Joseph indicated what are my ideas. I do not think we need to reinvent the wheel, and governments throughout the world are grappling also with this problem of improving on the performance of their administrations or improving the performance of their bureaucracies. In approaching these problems what most governments have found is that the problems are rooted in the fact that they have an industrial era of bureaucracies that is existing in an information age. As a result, there are structures, systems and procedures in place that are dated—that have been in existence 10, 15, or 20 years. Given today's modern organizations, these things need to be reviewed. We need to design organizations for environments of now. There is need for the question about how do we determine the extent to which these organizations are able to add value, efficiently and effectively so that it could be done at reduced cost; cost in terms of resources *et cetera*.

Perhaps the best example that is being used now, as a government that successfully attempted to reinvent itself, is the United States. There is a book called *Creating a Government that Works Better and Costs Less—The Gore Report on Reinventing Government*. Let me just quote a couple parts of the book where it treats with the question about dealing with the inefficiencies and ineffectiveness that comes about from these bureaucracies for which we are attempting. They identified at least four areas which they suggest need to be looked at if it is that we want to improve on the performance of these agencies.

- “1. Cutting Red Tape;
2. Putting Customers First;
3. Empowering Employees to Get Results; and
4. Cutting Back to Basics: Producing Better Government for Less.”

Before I say something on each one of them, I think it is instructive that we should look at a former head of the public service, Reginald Dumas, who, in an article dated Thursday, November 12, 1998, made some comments under the heading *Retooling the Public Service*. Let me just quote a couple parts of that article. He was responding to the fact that the public service was celebrating its National Public Service Week. He made the point:

“Addressing the Public Service Career Management and Succession Planning Workshop a few days before the week began, Mr. Mark was reported as saying that the Cabinet was very “concerned about managerial capability and capacity in the Public Service. The indications are that there is currently inadequate managerial support for the implementation of the Government’s priorities”. The Service had to be restructured to “go beyond bureaucracy and

He continues:

“One of the recommendations I continue to make is for an amendment to section 85(1) of the Constitution so as to place on Permanent Secretaries the responsibility to manage, not merely supervise their Ministries. Another recommendation is that the senior reaches of the service should be thrown open to public competition. That too would necessitate constitutional change. For too long now too many mediocre public servants have been rising without trace to the top on the basis of seniority and of middling reports which the Public Service Commission then tells you with a straight face justify promotion on merit.”

Clearly, we are totally in support of the fact that there needs to be a reform.

It is now history that during the Manning’s administration, we established, for the first time, a Ministry of Public Administration with the intention of reforming the public service.

5.15 p.m.

Of course, when this Government came into existence some year and a half lapsed. I remember the Minister of Public Administration coming here and criticizing my colleague, the Member for Port of Spain North/St. Ann's West, the former Minister of Public Administration, and talking about how that was such a waste of time and the resources used were such a waste of time so that there was that hiatus, that long period before.

Perhaps if the Government had continued the reform policies that we had put in place, Mr. Speaker, I should not say chances are we would not be here debating this legislation because of the devious nature of the legislation. The point is that the spin they are trying to put on the justification of this will not be able to stand scrutiny. So that, clearly, there is a need for the continuous reform of the public service. We indicated that there was also a need to review the operations of the

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service commissions. However, Mr. Speaker, that does not require the parliamentary oversight that this Government is proposing in this piece of legislation.

I am saying that if the Government is serious, if its intentions are pure, if it is really concerned with the manner in which these interrelated agencies operate, then it will bring comprehensive legislation that truly addresses it. For one, there will be no need for the establishment of any parliamentary committee, as suggested, because, as we have indicated, the two parliamentary committees already in existence are designed to treat with that, the Public Accounts Committee and the Public Accounts (Enterprises) Committee. The Ombudsman is there. All we are suggesting, Mr. Speaker, is that there is need for upgrading and improving.

I was talking earlier on about the four areas suggested; cutting red tape, putting customers first—and we are hearing in various Ministries talk about the fact that we need to put customers first—empowering employees to get results and getting back to basics. If these four areas, Mr. Speaker, are addressed, what this will achieve? The result of this is that it will allow us to be able to treat with the problem that is being branded, you know. It is interesting that prior to the Member for Couva North entering into this debate, the entire focus of all those on that side, who participated in the debate, had nothing to do with corruption. It had nothing to do with allowing officials to come before those parliamentary committees.

That was not mentioned by any single person who participated in the debate on that side. Everybody said they had constituents who wrote them and said they wrote the public service some years ago, they got no reply; or people applied and got no reply, one had people's appointments and people who were acting for some time. That was the gist of the arguments of all those persons on that side and they indicated that by us disagreeing we do not care about the poor person, we do not care about the person who has to wait a long time to get some response, and that is not the issue of the public service commission.

Mr. Speaker, I think it is so ironic that if the Government's policy is that because of certain circumstances it cannot appoint people permanently or it cannot hire people, I do not think that is the fault of the public service. The Public Service Commission is only responding on the basis of the needs and the demands of the Ministries. I cannot understand how you are blaming them. *[Interruption]* Exactly. They cannot pay, they cannot promote, they cannot do these things. So it is a ruse and that needs to be brought to the attention of the population *[Interruption]* Yes, also the size of the establishment, the size of the public service.

So that, I am saying that was the gist of the argument made by all Members who participated in debate until the hon. Member for Couva North came here today and brought a whole different argument, saying that we are not concerned about persons who we accuse of being corrupt, *et cetera*, and now they are establishing a mechanism to allow that to take place. [Interruption] Exactly. We have existing mechanisms. They set up mechanisms. The classic example is the airport where a report came here and what happened? What happened? What happened? Nothing happened.

We asked the Minister of Energy to conduct an investigation into the Soodhoo matter. [Interruption] Big so. When it comes here he says, what, it is libelous, he cannot present it. I mean, it is ridiculous, Mr. Speaker. This is what I am saying. I am saying that notwithstanding all that they say, notwithstanding the spin that they put to their arguments, the population is wiser and smarter and they will not believe them because they are judging them not by what they say but by what they are doing.

They all are going to continue to do those things that will so irritate the population—and let the Member for Couva North believe that we are going to be swept away. If he believes we are going to be swept away why does he not call an election now? We are asking him to call an election now. Mr. Speaker, let me give you and the national population the assurance. I am talking here now and I know it is going to be in the *Hansard* [Interruption]

Mr. Speaker. Order please, order please! Order, please!

Mr. Joseph: It is going to be in the *Hansard* and I can assure you that when the next general election is called the UNC is not going to win the next general election. I am sure about that. It is going to be because of the manner in which they have managed the affairs or the manner in which they have mismanaged the affairs of this country during their period of time in office. I thank you, Mr. Speaker.

Mr. Hedwige Bereaux (La Brea): Mr. Speaker, I did not intend to join this debate, having regard to the very copious statements and cogent arguments which were put forward by my colleagues on this side. However, when I tried to catch the eye of the hon. Prime Minister, the Member for Couva North, to have him clear up some statements, he either did not see me or in the noise he did not hear what I was trying to do and you yourself felt I might have been causing problems. But you would notice today I have been most circumspect in my behaviour, Mr. Speaker.

Mr. Speaker: I would say to the hon. Member that it is not only today, I could vouch for you that you have been on your very best behaviour for the longest while; up to today, that is; up to today, that is. I was speaking to the Opposition Chief Whip. You have been on your best behaviour but the Opposition Chief Whip would make me believe that it was up to the time you got up to speak.

Mr. Bereaux: Well, Mr. Speaker, maybe it is because of the places to which I have gone in the very recent past, because I normally try to adopt a new stance. However, Mr. Speaker, I really would like to join this debate.

First, Mr. Speaker, the Constitution of Trinidad and Tobago and, in particular, those provisions which touch on the service commissions, has been there since 1962. The hon. Prime Minister indicated that in law we must find out what is the mischief that a particular law seeks to deal with. We had the provisions in the 1962 Constitution and we had the provisions in the 1976 Constitution and the mischief has always been, from the time of the Marlborough House Conference, that certain persons, because of the very cosmopolitan nature of our country, were concerned that they would be mistreated in their quest for jobs and in their opportunities for advancement in certain areas.

Based on the principle which we have inherited from the British, not all in the Colonial times were bad and some people still believe that certain things that were done were very good and because of the principle inherited under the British system where the public service remains constant and serves each government as the government comes into office, we have seen that system works well. It works well because a Minister comes in and the Minister is new but the permanent secretary and the public servants under him or her, as the case may be, have been in the job and they carry out the function of government; in fact, some say, in spite of the Minister. I do not want to be uncharitable but there are several examples opposite where we can clearly say that the departments are running, notwithstanding the Minister.

We have seen, therefore, Mr. Speaker, that the Constitution and those provisions of the Constitution, in particular section 129 and the powers such as the inability to question the actions of the service commissions in court to a certain extent—although we have seen even the Judicial and Legal Service Commission has been questioned and questioned successfully in court such as in the case of a former Chief Justice and his action in respect of Mr. Justice Crane. So we know

that all the provisions are there, but notwithstanding that the service commissions have served us well.

We also know that a constitution, because it deals with people, and because things and circumstances change from time to time, sometimes we think that the Constitution must be flexible and we look at the Constitution from time to time and we may believe that we want to change certain elements of it. From the speeches I have heard from the Member for Oropouche, in particular, and some others, it is quite clear that they are looking to move more in the direction of the American and other constitutions whereby, one, from the time a government gets into power certain senior officials of the public service move out in order to allow the new government to bring in its new policies.

If that is what we want to do, fine. Let us put it in the proper way before the people of Trinidad and Tobago and let us assess it. On a previous occasion the PNM sought to do certain things with respect to the Police Service Commission and we bent backwards to accommodate the then Opposition. We did not succeed and there were cries about tinkering with the Constitution. We have had an assessment of the Constitution by a Constitutional Review Committee in 1987. I appeared before that commission at that time to give evidence also and to make comments and a report was laid here.

If now this Government comes in new—although they say that they had a mandate for change, which they do not have, Mr. Speaker. They had a mandate for change when it was an NAR/UNC coalition. They do not now have a mandate for change because they do not now have the NAR element in their Government substantially. But that is the politics of it, Mr. Speaker. I am saying that if they believe they want to change the Constitution, do not try to do it surreptitiously. Come forward and let us deal with the change.

I know the hon. Attorney General has certain incendiary propensities with respect to the Constitution, but I want to give him the benefit of the doubt. I want to give him the benefit of the doubt that he did that like a true Virgo, in a fit of rage. I do not believe he wants to do that now.

5.30 p.m.

Also, I cannot tolerate a trick; his trying in a manner to amend the Constitution in a way he very well knows—experienced lawyer that he is—that it cannot be done. No amount of excuses and trying to wish away the situation by the Member

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of Parliament for Couva North that sections 62—65 deal with Parliament and could therefore deal with certain amendments to Parliament. He knows very well that it is not only the words but the intent of the section, and the intent is to whittle away, in some measure, the powers of the service commissions. The hon. Member for Diego Martin Central dealt with that. Notwithstanding he does not pretend to be a lawyer, in my own view, he dealt with it most appropriately, and I am not going to try to gild the lilly by going further into the Constitution itself, nor to delay this Parliament.

Mr. Speaker, I am saying that the Member knows very well that is not the way to do it, and he tells us to take it to court because he knows we have a large bill from when we took a matter to court on a previous occasion—which he knows very well that he should pay. We are not going to take it to court. We are certain that if you do it—and we do not want you to do it in that way—if you do what you are planning, then somebody else will do it, and cost the country money. When you are not in Government we may have to face that. So, we are calling on you not to do it.

Mr. Speaker, I want to also deal with the statements made by the hon. Prime Minister when he properly referred the other matter which this Bill seeks to do, that is to provide an oversight to the various ministries and statutory bodies and so forth. He came out glibly and sounded very much like he does on his political platform and pointed out that, “If you think that a minister has been corrupt then we could deal with him. Call him before the commission; and if you think something is wrong with National Flour Mills, you could get it here before the commission”.

Mr. Speaker, I want to spend a little time on that issue, but first the way a parliamentary committee is set up—joint select or any ordinary parliamentary committee—is quite clear. Because of the configuration of the House there are a majority of Government members, and there is a minority of those in Opposition to the Government. Normally, except in the Public Accounts Committee, and the Public Accounts (Enterprises) Committee, there is the Chairman who has a casting vote, who is a member of the Government. They have not said how these committees are going to be configured.

If they really wanted to encourage us to believe that what the Prime Minister said is correct, knowing the wild politician that he is, I could hear him saying something like, “Listen, we are going to give them the chairmanship, the majority

or an equal number in the House”, or, “We would not give the Opposition the majority, but we will bring in Independent Senators who would provide the majority” No, he does not say that, and I am not going to tell him to say that. He knows what he needs to do to satisfy the country that he is speaking the truth or he intends to do what he says he is going to do.

Mr. Speaker, there are several good orators, politicians and lawyers on the Government Benches, whoever they may be, that could put their arguments well, but, unfortunately, it is not the song, it is the singer. [*Desk thumping*] This country today has reached a stage where it finds it difficult to take the Government at its word. [*Desk thumping*] I did not want to inject all this into the debate, but the hon. Prime Minister did. He said they are operating so well, and I am giving you an example of why people do not take the Government at its word.

Mr. Speaker, I am over 60 years of age now, and I am drawing a national insurance pension. I planned on receiving \$1,055 per month, based on the statement made in this House by the hon. Minister of Finance, but on Monday I understand—unfortunately I was unable to be here when this great and important debate took place on the National Insurance (Amdt.) Bill—my colleagues did the country proud, in respect of that. The point is that we have been told, that we would get \$100.00 more per month or something like that: \$80.00, in some cases, and \$100.00 in others. It was a clear statement in the national budget! However, we did not have someone from the Government coming to us to say, “We are unable to do it because of the finances, we miscalculated” or something like that. No, not that. We are just being told that we misunderstood it. One Bailey, or somebody else—who is not a Member of this House—said that we misunderstood it. Therefore it appears to be a constant state of smoke and mirrors. [*Desk thumping*]

In light of that, Mr. Speaker, how definitely can we believe what they are saying? We are saying to the Attorney General and the hon. Prime Minister, “Do not try that. We do not believe you and we have good reason”. He then had the audacity to come here and talk about handling of finance. The only handling of finance this Government knows how to do is the misappropriation of it. That is what they are experts at. I did not go down this route, this route was taken by the hon. Prime Minister, the Guru himself. He talked about how they were handling drugs and crime. I do not know if they do not talk to each other. I do not know if Cabinet Ministers, when they meet, do not listen to the smaller Members of the Government—the peewats, if I may use a colloquialism. I opened my newspaper

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today and saw my good friend. *[Interruption]* I am a little older than he but we went to the same school, but he went after me. I saw the headline “Crime Fighter Minister”, Manohar Ramsaran. I am not going to take it up and show him, but I am quoting from the *Daily Express* of Wednesday, April 28, 1999. This is what he had to say:

“Ramsaran leads crusade against crime in Central”.

This is the crime that they had stopped or are reducing. I do not represent Central. I am originally from Central but I left there quite a while. Hear what it says:

“People in the Munroe Road and Bejucal districts have been calling me...”

This is the Minister saying that.

“and they are frightened because of the recent spate of crime, including rapes, in the area. There was a similar situation in Charlieville last year and we were able to fight it by setting up neighbourhood watch groups.”

And he is calling on persons to do it.

“Two of the gunmen who came out of their car fired shots at the businessman who returned fire before fleeing the scene, leaving the keys in the ignition of his \$130,000 Lancer car. The men took the car.”

I am talking about a resident of the area.

“A shaken Mandansingh speaking from his home told the *Express* the entire incident happened in less than a minute. ‘One of the men came in first and pointed a gun at two of the guys at the counter. The other three then ran in and told everyone to lie down on the ground.’”

Nobody is happy about things like that, but I am hearing from the hon. Prime Minister what they have done for crime. I heard him talk about what they did for drugs.

5.40 p.m.

The Prime Minister does not say that Dole Chadee was arrested for the murder of the Williamsville family under the regime of the PNM and that Clint Huggins, the star witness, was in custody during the time of the PNM and the only time he actually got murdered—in fact, there was an attempt on his life before to quiet him, and as a result of a sting operation under the administration of the PNM, we arrested some people who were convicted recently. He did not say that during a

carnival period when the UNC had just come into power that Clint Huggins was murdered. They attempted, I am certain—advised by a good lawyer at some time—to so disfigure his body that it would not be identifiable and the deposition would not have been able to be read. As fate would have had it, something happened.

Mr. Speaker, then the hon. Prime Minister said that they would be able to bring the people from the Airports Authority here and question them. We do not have to do that. Justice Deyalsingh—and I must give kudos to the hon. Attorney General, he agreed to appoint him—did that for us. The hon. Prime Minister came and said that the chips would lie where they may, but the fancy talk is not what I am going to get into. The facts are that the hon. Prime Minister indicated here that he would take action and that he would stand by whatever came out of it. What happened? Nothing.

In fact, they came in here busy and they supported a petition which permitted the UNC financier, Mr. Ish Galbaransingh, to use the reports and statements made in this honourable House to try to get away in court. That is what they did! We always say, “We will know you by your deeds”. They could say anything. Talk is cheap. It is what they will do! And we have ample evidence of the way they behave when they are under pressure and when their friends are in trouble.

We must be the most naive people to believe that we will ever be able, with the way the committee will be configured, to ever come here and impeach, in any form or fashion, one of their colleagues—I was going to say blue-eyed boys, but I will not go into that. It would be a case of himself to himself. It is like the magistrate, “Himself told himself, you are charged for speeding” in the calypso sung by the Mighty Spoiler. That is what we will be facing here.

Take for instance, the hon. Member for Toco/Manzanilla came to this Parliament and revealed blatant misuse of public funds for transporting UNC activists to two big meetings which they had. He raised it in this House. And we were treated, Mr. Speaker, to the gross disrespect and disregard for all the principles of decency, transparency and everything else by the Minister of Local Government! [*Desk thumping*]

Mr. D. Singh: Lavalin!

Mr. H. Breaux: I will deal with that shortly. Since the Minister raised the topic, I will come to it. We had a problem whereby the Minister of Finance came

to this House and did not speak the truth. It was proven that he did not speak the truth, and there is a standing rule that any Member of this House who does not speak the truth should be censured.

Mr. Manning: Turn in his portfolio!

Mr. H. Bereaux: Yes. Turn in his portfolio. There are a number of them who have done this time and again. I did not want to interfere with the Minister of Agriculture, Land and Marine Resources, but since he believes that he must obstruct me, he also did not speak the truth to this honourable House. And what happened? Nothing! So, how are we, Mr. Speaker, in the light of all of this, to say that we could expect any sort of fair play, any sort of equity, or any sort of proper dealing with this committee which they want to put in place? No, Mr. Speaker!

Since I heard a Member of the other side mention Lavalin, I am going to answer him, although I am on my legs and they did not get up to do it. I will tell him that the Lavalin contract was drawn up by Rajendra Ramlogan at the insistence of Minister Finbar Gangar when he was working at Petrotrin, and the crookedness started there. *[Desk thumping]*

Mr. Speaker: I simply want to say to the hon. Member that I am having some difficulty in relating that to the issue with which we are now dealing.

Mr. H. Bereaux: I am having some difficulty myself, but being the polite person I am, since I was asked, I am just answering.

Mr. Speaker: But the hon. Member knows better than I do that he must ignore asides.

Mr. H. Bereaux: Mr. Speaker, I will take your reminder and do that. *[Laughter]*

So, here we are in a situation where the hon. Prime Minister came here and said that we could deal with the National Flour Mills issue. But, we did not have to deal with that here. The Chairman of the Board of National Flour Mills was dealing with the \$30 million rice and bicycles, but when he got a forensic accountant to come in and look at it, the fact is that they removed that firm of accounting from doing work from every single state enterprise in Trinidad and Tobago. *[Desk thumping]* And now they come here to tell me that!

How in the name of what is logical and reasonable could they expect us to now accept this kind of thing? Everything he pointed to, I will point to it too. Take, for

instance, he spoke about planes. What about Briko? The attitude in the airport? *[Desk thumping]* We could bring them here. They know it. We brought the proof. And what did they do? They did nothing.

There is a saying: “Fool me once, shame on you. Fool me twice, shame on me”! Well, I would not say that this Government is fooling us or fooling the people, but they have been ignoring the people and going about like a bull in a China shop—or should I say like Ali Baba in a treasury! *[Laughter]* *[Desk thumping]*

They expect us now to believe that they would permit us to properly interrogate any of their Ministers here. We know, at best, that we will not be able to do it and that all they want to use this for is just a big window dressing to make it appear as though they are doing something about corruption. But normally, people change, and I would like this Government to give us a signal that they really intend to do something about corruption. I do not want them to listen to us. I want them to listen to the hon. Attorney General who is going to defend this and do just what he said they should do in respect of the airports contract, and I will be satisfied. We on this side will be satisfied. *[Desk thumping]* Give us a signal!

The hon. Prime Minister talked about good management and good performance. We had the education situation. They came busily and decided they were going to have something to do with the textbooks. Then, there was a fiasco and it came about because the Minister interfered. The hon. Prime Minister got up here and made all sorts of statements. In addition, he pointed out that they would report it to the Fraud Squad and so forth—they would be brought to book about the books, and to this day, the situation exists in the country where, Mr. Speaker, the parents of the children have paid money for bad, shoddy goods as a result of recommendations by the Government, and nobody has been compensated. Nobody! So, how do they want us to agree or to believe that we could question them?

Mr. Speaker, they talked about our having facts and being able to get the facts. I came in this Parliament on several occasions making points about the Parrylands situation and the poisonous gas in the air. I was ridiculed, laughed at and a number of things, and finally, a report was done. That report is dated January, 1999: Site visit and Recommendations on the Petrotrin/Parrylands South Trinidad Secondary Recovery Project. This report was done by Dr. Robert Romano and Isabelle Romieo, PAHO, WHO, Washington DC.

5.55 p.m

Mr. Speaker, these are the conclusions they came to and we had nothing to do with it. The conclusions are:

“The observed health effects in the children, teacher and surrounding population in Parrylands are compatible with exposure to H₂S and VOC’s”

—meaning voluntary organic compounds:

“This population has experienced repeated acute exposure, but it is also subject to subchronic exposure, which may lead to more severe health outcomes.

A large proportion of the population exposed is highly susceptible, in particular young children. The fact that this population lives, for the major part, in poor housing conditions with potential concomitant exposure, means that these children are at risk of poor nutrition, particularly with regard to micronutrients that are essential for growth and immunologic response, all of which increases their susceptibility to chemical exposure.”

I want you to hear this:

“In addition, because of the suspension of school, these children have lost almost one (1) year of learning, and those who need to take the common entrance exam for entrance to secondary school will be penalized by this loss of learning. The Ministry of Education should seriously consider viable options...

It is also important to consider the psychological impact that these repeated health events have had on the children, teachers and the surrounding population. A ‘fear’ of another serious gas emission is present in this population, which is cause for serious permanent stress. Teachers are very dedicated to their mission, but fear to return to school; parents do not want to send their children to a place with potential harmful effect on their children; and children are scared...”

Mr. Speaker, this is a report. Petrotrin is still denying they caused damage to the children. Petrotrin is still not willing to pay—how will they pay? Who are we going to believe. The Chairman of Petrotrin is busy contributing the Company’s money to Miss Universe Pageant but will not pay the poor, hungry and sick children.

Mr. Speaker, the Prime Minister spoke about the economy and this is what he said and let me make sure, I am not misquoting him—

“that we are more prosperous than before.”

The Member for Point Fortin, I have not attacked him because I sought to do something and I do not normally waste time to attack people for nothing. So do not worry with that—I do not have time with that, I am dealing with this.

Mr. Speaker, they said that they are more prosperous than before but yet, Caroni cannot pay their workers. [*Desk thumping*] and the Minister of Finance was told to find \$18 million to pay Caroni workers but worse than that Mr. Speaker, Petrotrin is sending home people. The economy is better off but there are all these situations. Caroni is today a ward of the Treasury. [*Laughter*]. Take for instance, he is saying we are better off.

Mr. Speaker, I am now to get back after I have dealt comprehensively with this piece of nonsense or should I say this piece of conmanship which the hon. Prime Minister tried on us.

I want to say in no uncertain terms that there has never been a body or institution in a country where politics is immune from oversight or change. But change must be meaningful and the first thing that must happen when we are seeking to change any of the institutions in a country is that we must come to it in a forthright and honest manner, so that we will all know what we are going to do.

The hon. Attorney General is an attorney of some years experience. He knows that there must be a full discovery of documents and we must bring all the issues down and the stakeholders must consider them and if that is done, yes, he must come with clean hands too—and when all that is done Mr. Speaker, they would not have to spend large sums of money to advertise on the television in order to tell people about what this Bill will do. If the Bill is intended to do certain things then after full and complete discussion, all the good that this Bill is supposed to produce will manifest itself.

Mr. Valley: Who is paying for the advertisement?

Mr. H. Breaux: No, the Government gets free advertisements from each television station from time to time; I have checked it out. I do not know how to fire the Board of Film Censors, I do not have that [*Laughter*] so if you want to know what I do not know, I will tell you I do not know. [*Laughter*].

Mr. Speaker, as I was saying that will not happen—what we would see is a number of people coming up with options and we may very well find that this entire House, based on the behaviour of the population, would have to support a

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good and proper amendment to the Constitution, properly researched and debated with the opinions of all the people of Trinidad and Tobago encompassed therein. I thank you, Mr. Speaker. *[Desk thumping]*

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, it has been a long haul and one that has lasted some weeks in a debate that has generated a lot of controversy in a very important area of the Constitution.

Mr. Speaker, I would attempt to answer the comments which have been made in respect of this Bill by reminding this honourable House what this Bill is about. We have heard a lot of what the Bill can do and what it will do but I want to be able to say what this Bill is about and the best way to do this, is to look at the printed paper which is the basis for justifying what this Bill is about. Mr. Speaker, the Bill empowers the Parliament to appoint Joint Select Committees to enquire into and report to both Houses of Parliament in respect of—I am reading from the Bill—“government ministries”—now Mr. Speaker, I think everybody knows what Government ministries are—“statutory authorities, enterprises owned or controlled by or on behalf of the state and service commissions”. Let us forget the service commissions a bit.

Miss Nicholson: But why!

Hon. R. L. Maharaj: We are coming to that, let us deal with the governmental aspect first. Government ministries, statutory authorities, enterprises owned or controlled by the state in relation to their administration, powers, methods of functioning, criteria adopted by them in the exercise of their powers.

6.05 p.m.

Mr. Speaker, this Bill therefore gives the joint select committee of Parliament that is appointed, the power to look at the administration of any government ministry—not only the administration, but the exercise of their powers, the methods of functioning and any criteria. So if the ministry, or any part of it is functioning in a corrupt manner, the joint select committee could look at that. There has been no proposed amendment by the other side to say take out service commissions and leave government ministries.

As a matter of fact, the Opposition is against the whole Bill so they come here and want to make allegations of corruption. For example, the last speaker made allegations of corruption, but they do not want the machinery to investigate the allegations of corruption. The reason for that is that these committees would not only be able to investigate and examine matters which happen under this

administration, but which happened under previous administrations. So I could understand why the Opposition would not support this because they would not want to have Parliament, the people, investigate corruption because they know that they have cocoa in the sun. They do not want that. Mr. Speaker, I am not surprised. They were prepared to do it, now the argument they have advanced, is if that is allowed to happen, then it is going to have the Government controlling the parliamentary committee. I would come to service commissions just now and show how the PNM administration attempted to have a service commission in a bill with a parliamentary committee to monitor it.

Mr. Speaker, here it is this Bill is giving power to the people. As a matter of fact, the duty of Parliament is to examine and investigate every sector of state administration; that is the duty of Parliament and of parliamentarians. What has been happening is that Parliament has not been doing that duty. The people of Trinidad and Tobago have been short-changed over the years and this Bill is to give them real representation, but the Opposition does not want to give the people true and real representation because then they would have to tell their supporters, we put allegations of corruption, we sent for the books, we sent for the files, but there is no proof of corruption.

Mr. Speaker, it is common sense. It does not need a Member for Diego Martin Central or a Member for San Fernando East with that long and distinguished experience in Parliament. Any ordinary person would understand that if there is an allegation of corruption in a ministry, what is the duty of the Minister? He calls for a report and he gets a report. If the ministry is alleged to be corrupt, it is the same people who are giving him the report. The Minister does not have coercive powers to send for files, get investigation, do this. He does not have that, so when he comes to Parliament, he gets the answer which he gets from his ministry. He does not have investigative powers. He cannot call in the police unless there is reasonable cause, because if he does that, and there is no reasonable cause at that time, you will have an action. As a matter of fact, while I was sitting in this Parliament, officers of my ministry came and because there was no reasonable cause, there is a litigation pending and the state will have to pay money. You cannot call in the police without reasonable cause. So you have a situation here now, where the people are impotent, through Parliament, to deal with these matters.

They talk about giving it to the Ombudsman. I am very surprised. Many submissions were made here today about the Ombudsman, but the Ombudsman, under the Constitution does not have the power to enquire into, or question the

policy of the ministry. As a matter of fact, section 94 of the Constitution says so. He does not have the power to investigate service commissions. If you look at the Schedule, he does not have those powers. It is in section 94(1), 98(2) and the Third Schedule to the Constitution. For us to hear from the distinguished Member for San Fernando West this morning that the Ombudsman could do this—it says clearly he does not have the power. I would not read the section, it is there. Any school child could read that, any law school student, but to come here—and that is the Opposition's contention. You do not need parliamentary committees because the Ombudsman could do that, when the Constitution prohibits the Ombudsman from doing that.

The other point, the big point, there was a lot of noise made about the Public Accounts Committee where there are so many allegations of corruption. Has the Public Accounts Committee been able to deal with these allegations? The chairman of the committee is the Member for Diego Martin Central, and if that committee was effective, it could have dealt with the Airports Authority. You would not have had all these allegations. Why is it not dealing with these allegations?

Mr. Speaker, what has happened is that they know it was a Member of Parliament who sat on the steps of the Hall of Justice because of the impotence of the Public Accounts Committee. He knows that.

Mr. Valley: Would the Member agree that it is easier to amend the Public Accounts Committee to give the Ombudsman increased powers than to do what he is attempting to do?

Hon. R. L. Maharaj: Mr. Speaker, he had his chance, I would answer all those when I am dealing with my contribution. The point I am making is that he as Chairman of the Public Accounts Committee and the powers it has—he did not ask for more powers. He did not bring any motion here to ask for more powers. He sat there for three years. They were in Government over the years, did they bring any motion to give the Public Accounts Committee any more powers?

Hon. Member: No.

Hon. R. L. Maharaj: No. They did not do that. Are they interested in openness, transparency and accountability? No. Mr. Speaker, the state of the Public Accounts Committee is not only because of the political impotence of the Member for Diego Martin Central, it is because it has not been able to deal with this thing. It is an institution which has not kept up with the times and, as a matter

of fact, in all countries in which there are parliamentary committees, there are public accounts committees. In Canada there is a Public Accounts Committee, in New Zealand you have it, in England you have it, but notwithstanding that it was felt that people were being denied justice in that parliamentarians were fooling people, they were hoodwinking the population, and Parliament was forced to appoint parliamentary committees to protect the rights of the people. Any Member of Parliament who votes against this Bill is voting against the rights of the people. *[Desk thumping]* We would take it on the hustings.

Mr. Speaker, let me show how unfortunate politics is in Trinidad and Tobago. I proceed to read from a report which I would call the *Draper Report* in which, under the last administration, just before the general election, Mr. Gordon Draper, Sir Ellis Clarke, and Mr. Kenneth Lalla represented the Government of Trinidad and Tobago in Malta to attend a Public Service Management Workshop sponsored by the Commonwealth Secretariat. Arising out of that were certain recommendations which the last Cabinet accepted which included taking away the powers of the service commissions and giving them to Ministers.

I would read from that report, but before I do that, I assume at that time at that meeting, the hon. Member for San Fernando East was chairman of the Cabinet. The hon. Member for Diego Martin Central referred to the 1994 Bill and criticized the hon. Minister of Legal Affairs for what she said. I could not understand the criticism when the facts were against him. It is true that the Member for San Fernando East, as Prime Minister said that if needs be, he would get rid of service commissions. It is true that Government introduced a Bill, which means it was decided by Cabinet, an Act to amend the Constitution of the Trinidad and Tobago (No. 1) Bill of 1994 in which he was saying that the Police Service Commission would be restructured, and that included in the composition would be public officers.

Under the Constitution of Trinidad and Tobago, public officers cannot be members of the Police Service Commission. In the case of Endel Thomas, the Privy Council said the purpose of the service commission is to insulate the politician from the worker: the teacher, or the police officer and, therefore, that is the reason, among many prohibitions, public officers are not included in the commission because the Minister is in charge, or at the head of the relevant department.

Could you imagine having a Police Service Commission with the commissioner of police who receives political direction, and you have the permanent secretary in the Ministry of National Security who is a public officer, when there is a section of

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the Constitution which expressly states in section 126 that a public officer cannot be a member of the commission?

Mr. Manning: There was a board of management that was recommended.

Hon. R. L. Maharaj: The board of management under the Bill would have taken away the powers of the service and given them—[*Cross talk*].

Mr. Manning: He did no such thing.

Hon. R. L. Maharaj: Mr. Speaker, the Bill is here and it is quite clear. The fact of the matter is, whether you want to look at the way in which the Member for San Fernando East or anybody else is looking at it, that legislation was brought to take away the powers of the service commission and give it to a politically infiltrated board.

Mr. Speaker, in order for everybody to know who is talking the truth now, section 122(1) of the Constitution says:

“There shall be a Police Service Commission for Trinidad and Tobago which shall consist of a permanent secretary, the Commissioner of Police...”

So that would have been a new police service commission, they were also creating a management board in which there would have been political control. That is what they were doing. Here it is, they were in effect, taking away the independence and the hon. Member for San Fernando East could sit here and allow his Members—I do not mind the Members who were there before, but these new Members—to know that he has done this, to get up and say that the PNM policy was not to take away the independence of the service commission; and they are still saying it is true.

Mr. Speaker, I do not intend to go through the rest of the Bill. The records are clear that the hon. Member for San Fernando East as Prime Minister of this country and as Leader of the Cabinet took steps and tried to pass a law in Parliament to take away the independence of the Police Service Commission to gain political control of it because he wanted to have a particular commissioner of police.

6.20 p.m.

So, here it is—as a matter of fact, the then Attorney General said that when this Bill was passed the members of the commission would be automatically fired. That is on record, you know that. I have it here, and the Member sits there, and allows those junior members who came for the first time into this Parliament to

come and say, it is not the policy of the PNM to take away the independence of the Police Service Commission.

Mr. Speaker: Order, Order.

Hon. R. L. Maharaj: Mr. Speaker, it seems as though some of the Members of the Cabinet at the time, did not know what was happening. Either they did not understand, and I could understand why they probably did not understand, because they have not understood this Bill. And I have left it for several weeks for them to read it, study it. Read it morning, night and day—all the time—and they still do not understand the Bill.

Mr. Speaker, imagine people on that side got up today, the hon. Member for St. Anns East, and said a committee like this would not have the power to investigate corruption in a ministry. Imagine that! That is how far untruths would be able to be perpetuated by that side—to get up in this Parliament because the press was there; and they know that sections of the media would like that kind of bacchanal, to say that this Bill would not allow them to publish in order to investigate corruption.

That is not all you know. They say that they are in principle against this Bill, because parliamentary committees must not investigate a service commission. Parliamentary committees must not have anything to do with service commissions because they are independent, they are sacrosanct, and if you investigate them, you are touching their independence. You are going to take away their independence. As a matter of fact, how could you have independent members of these commissions, these great and distinguished people—I have no doubt that they are great and distinguished—coming in the precincts of the Parliament to be asked questions about the people's business? That is taking away their independence. Violating their Constitution.

Mr. Speaker, let me read for this House what the PNM administration did. They agreed to a bill, they brought it to the Parliament for the Police Service Commission to be answerable to a parliamentary committee.

Mr. Speaker, Bill No. 1 of 1994:

"The Police Service Commission shall by 31st March in each year submit a report on the Police Service to the Minister who shall cause the report to be laid in Parliament.

The Police Service Commission shall be accountable to a Committee of Parliament in relation to the performance of its functions".

A Parliamentary Committee to monitor the Police Service Commission under that administration. But they parading the place.

Mr. Assam: You should resign. All of you should resign.

Hon. R. L. Maharaj: Parading the place that it is bad, it is bad.

Mr. Assam: Member for San Fernando West, Member for Laventille, all.

Mr. Speaker: Order, order. One second.

Gentlemen and ladies, I am still the Speaker; and I still have the right to rule on these things and believe you me, I do not need the advice or the urgings, or the promptings of anybody in this House to rule. Trust me. That is not the way we deal with it.

The hon. Attorney General was on his feet. He had not given way. The Opposition Chief Whip was trying to get his attention to give way, he was not giving way. Therefore, the business of the Member for Diego Martin Central, was to take his seat. It is simple as that—order. Please continue.

Hon. R. L. Maharaj: Mr. Speaker, thank you.

There are so many things that I want to say, but I want to ensure that I say some of these things because I do not want my time to be absorbed.

Mr. Speaker, the hon. Member for San Fernando East, took a Note to Cabinet in respect of the report on attendance at the Commonwealth Secretariat Workshop Group Meeting in Human Resource Management functions in the public service—Malta from May 15 to 17 1995; and attached to that note, he had a report which in effect the Cabinet agreed to. I will call it the *Draper Report*.

As I mentioned, in the report it talked about service commission reform, and particularly delegation of authority from service commission to line Ministries.

Mr. Speaker, here what the PNM agreed to. The PNM agreed in principle, that the service commission should delegate its authority to line Ministries.

Mr. Manning: Some of its authority.

Hon. R. L. Maharaj: All right, some. But, it said “authority”. It did not say some.

Mr. Speaker, the Service Commissions appoint, promote and discipline these officers. Service Commissions include the Judicial and Legal Service Commission. The service commissions under the Constitution are four. The service commissions are defined in the Constitution. Anybody could read it in the definition section: the Police Service Commission, the Teaching Service Commission, the Public Service Commission and the Judicial and the Legal Service Commission.

So, the service commission reform particularly “delegation of authority from service commissions to line ministries”. So appointment of a judge, appointment of police officer, appointment of teaching officer, and discipline join the line ministries.

Mr. Speaker: Order, order.

Hon. R. L. Maharaj: Mr. Speaker, whichever is the line Ministry, is a Ministry—a Minister. The fact of the matter is, the principle which the PNM agreed to—

Mr. Speaker: Hon. Members, could I once more appeal to all of you, not to behave in the manner which you are exhibiting. It is very simple. If you feel that you must behave like that, I will have no alternative but to suspend the sitting until I feel that we could behave in an acceptable fashion. I am appealing to you, not to cause me to do that.

Please continue.

Hon. R. L. Maharaj: Mr. Speaker, I trust that I would not lose my injury time. That is not the end of the matter. As a matter of fact in this document they also spoke about a report annually to Parliament. So there was this question of reporting to Parliament—service commissions, they are saying independent commissions.

There was a consensus in the meeting, and this is the principle which the PNM agreed to. There was a consensus in the meeting on the need for service commissions to rethink the concept of independence. Now, the members of this team that went—I am not blaming the other two members—but this is the working group. What I am saying is, that the Cabinet of Trinidad and Tobago agreed as a policy that service commissions should rethink the concept of independence.

Mr. Speaker, the working group agreed that the process of appointment and membership of the commission must ensure that persons of integrity and

impartiality are appointed. The commissions, however, must understand that they are an integral part of the human resource management cycle, and therefore must understand the policies and visions of the executive and the impact of this decision-making.

You see, when they come here, and when they say that this is to take away the independence— As a matter of fact, the Government of Trinidad and Tobago has made a policy decision. Service Commissions are to remain. They are remaining. This Bill is not about taking away their powers, reconstituting them. That is what the PNM wanted to do. They are to remain, because they are important in order to insulate the politician from the public service. That is a decided policy. and that is policy in this Bill. What we are saying is that in order to have more effective and better management of the resources, you must have scrutiny of the administrative action of these service commissions, so that people will know what is happening.

6.30 p.m.

Mr. Speaker, you know, it is sad if parliamentarians get an opportunity to scrutinize what is happening, which they cannot scrutinize before, and they say that they do not want it. Because, scrutiny is the most important aspect of a parliamentarian's life. I would want to read what it is recognized as from an authority, a recognized authority on the functions of parliamentarians insofar as critical scrutiny is concerned.

“Judicial Review of Administrative Actions—D Smith, Wolf and Jowell, Fifth Edition, page 37.

Critical scrutiny of policy and administration is perhaps the most important function of the two Houses of Parliament. The criticism is seldom effective unless it is backed by accurate information about the facts lying behind the shaping and execution of policy.”

That is what this Bill is about—to give parliamentarians, to give the people information so that they can have critical scrutiny; to put pressure upon any government which is in office in order to ensure that the people's rights are protected. That is what this Bill is all about.

Here it is we have a Bill giving to the people representatives, the power to scrutinize governmental action; administrative action, on behalf of the service commissions, and the parliamentarians on that side are saying: “we do not want it, we do not trust ourselves; we do not want it, that is not for the benefit of the

people—we do not want it.” That it is better to leave it as it is. Then what do they say?

We heard a lot of talk here today about judicial review. There was no dispute in this case—none whatsoever—that the courts do not, in limited circumstances, have the power to judicially review a decision of a service commission. No one disputed that. As a matter of fact, in my contribution, in presenting this Bill, I agreed—

Mr. Manning: Mr. Speaker, I thank the hon. Attorney General for giving way. If the Attorney General agrees that in the Constitution of Trinidad and Tobago, service commissions come under Part I of Chapter IX, a different part of the Constitution from the Judicial and Legal Service Commission which comes under Part III of Chapter VII, therefore, where service commissions are referred to in that policy to which he referred, it expressly excludes, under the Constitution, the Judicial and Legal Service Commission. Is that correct?

Hon. R. L. Maharaj: I know that the hon. Member for San Fernando East knows that what he is saying is not correct. If he looks in section 3 of the Constitution:

“Service Commission” means the Judicial and Legal Service Commission, the Public Service Commission, the Police Service Commission or the Teaching Service Commission;”

If Cabinet agreed to a service commission, it agreed to all the service commissions. Mr. Speaker, I hope I would not be interrupted. I would want to find out first what the question is before I sit.

We heard a lot of talk about “people could go to court; people could file case, or they could judicially review”. Yes, but the Member for San Fernando West knows that is very limited. It is very limited if there was a breach of the rules of natural justice or if the commission acted without jurisdiction. He knows that. As a matter of fact, I think he knows that we know that. I do not think that there was anybody in Trinidad and Tobago who challenged the court, service commissions and the government, more than I did in private practice. [*Desk thumping*]

Rodwell Murray, the police officer—when the PNM administration with the Minister of Works, walked down to the Ministry of Works and installed somebody there, which the commission should have done, we challenged it too. We know about these things. Yes. Mr. Speaker, let us see—he talked about the matter of

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Crane. The matter of Justice Crane: at this stage, there is a debt owing in cost to Mr. Crane which has been assessed and is under review, of over \$5 million plus interest for legal costs, that is apart from damages. That is apart from the cost to the state—taxpayers' money has to pay that because the commission made errors; they disregarded rules. Here it is, based on that, the hon. Member for San Fernando West is saying that in spite of all that, these distinguished gentlemen and lady should not be answerable to the people for them to find out whether they are doing the people's business properly. Mr. Speaker, if that is the case, then I think that the PNM supporters must question their representative; must tell them that they are not serving their interest.

I want to say—

Mr. Speaker: The Member for Oropouche, may I appeal to you specifically.

Mr. Sudama: Me alone, Sir?

Mr. Speaker: Specifically, because you are leading the charge on the Government's side. I ask you please, please desist.

Hon. R. L. Maharaj: Mr. Speaker, there was a time when this Bill was to be debated the next day and these distinguished gentlemen made a release. In fairness to them, they did send me a copy a few hours before the release was made. Overnight, the newspapers—three editorials without considering the Bill; without looking at the pros and the cons—wrote editorials. I had cause to write to them and point out that the editorials were inaccurate, and they printed the letters. I want to show what some of these same newspapers have written in their editorials about service commissions before this administration took office. Somebody there said—I think the hon. Member for La Brea it is the singer that we are against. That is an important statement. It is because it is a UNC Government, they are against it. If a PNM government introduced a Bill to make a parliamentary committee to scrutinize the Police Service Commission in the media or sectors of the media, nothing is wrong. But, it is the singer. Let us hear what the *Daily Express* said on April 07, 1995, in their editorial "Time to rethink the Service Commissions.

"These Commissions, responsible for recruitment, promotion, discipline and dismissals in the Public Service, the Teaching Service, the Police Service, the statutory bodies and the Judicial and Legal Service, are visibly malfunctioning.

Vacancies are often not filled on time, even in important senior government posts, with the result that, as a calypsonian once put it, “everybody acting”.

This is partly because the Commissions cannot cope with the thousands of promotions they insist on handling themselves. So over 12,000 teachers and 1,000 principals and vice-principals are handled by a five-person Teaching Service Commission which jealously guards its authority to hire, promote and release teachers, even when they are being promoted into other departments in the public service.”

Mr. Speaker, is this not sufficient in itself to show that the people ought to know what is happening?

The Teaching Service Commission, by the employment of teachers, determines what kind of education the children in this country would get. The Judicial and Legal Service Commission, by appointing judges, will determine the quality of justice in this country. The Police Service Commission, by appointing police officers, would determine what kind of law fighters we have. You can go with the Public Service Commission also. Are we seriously saying that these people are sacred cows that you cannot touch them, you cannot harm them? [*Desk thumping*] If that is the case, then we are showing contempt to the people. Because, it seems as though the other side does not understand the concept of why we are here.

We are not here because of what we look like, or whether we could put on a jacket and a tie; or what our names are. We are here because people have put us here. [*Desk thumping*]

6.40 p.m.

Mr. Speaker, we do not exercise the rights of ourselves. We exercise the rights of people and we hold a responsibility and a duty. We have a fiduciary duty to people in order to protect their interests and their interests involve ensuring that the state resources are managed properly . No one, whether he be Chief Justice, whether he be Ombudsman, whether he be chairman of a public service commission, is above scrutiny from the people. [*Desk thumping*] If we are wrong about that, vote us out. We do not wish to be in office, Mr. Speaker, if we are wrong about that, because our duty is to protect the rights of the people. [*Desk thumping*].

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Mr. Speaker, the *Guardian* on July 31, 1998 before all this came about concerning judges and judgments given in the court. The headline is "Justice under fire". I will just read the last paragraph.

"What all this apparently amounts to is a worrisome and unprecedented deterioration in the standard of justice in our country. It is a matter of the gravest importance, one that we expect the powers that be to do something about."

This was in July of 1998 talking about some of the judgments the courts give, call the cases, call the judges and criticising the judgments and the standards and asking for us to do something about it. According to them, do nothing about it. [Interruption] Well if the powers that be do nothing about it, the people suffer. Do nothing about it.

Mr. Speaker, if that is how they run government, we do not run government like that. No one, not even the holder of the office of Chief Justice, whoever he or she may be, is above the right of the people. One of the greatest Chief Justices will agree with that. Sir Hugh Wooding will agree with that because in the Constitution Report he asked for parliamentary committees to monitor and scrutinize sectors of the state. The present Chief Justice, Mr. Speaker, was a member of that commission.

The next point deals with the service commissions. The point has been made here that the Judicial and Legal Service Commission should not be made to account for their conduct because they appoint judges and since they appoint judges it would be wrong because if they fraternize and if they mingle with parliamentarians in the Parliament to answer questions, their independence can be affected. Mr. Speaker, if that is the rule then judges, when they go to cocktail parties, must be put in one section and the politicians in another.

I have been in this country for a long time going to some of these cocktail parties and I have seen judges, politicians, everybody together and they talk. If that is the rule, then one would not be able to have any independent judges in Trinidad and Tobago. As a matter of fact, the real leader of the PNM, Dr. Eric Williams, in 1976 when he wanted to retain appeals to the Privy Council and there were objections from within the party, is on record as saying, "Trinidad and Tobago is a small society. These judges go all about and we want the people to be sure that they could have their decisions challenged in the Privy Council".

Mr. Speaker, I have with me records of other countries. In Canada there is a judicial commission which recommends the appointment of judges and appointments can be made. But in Canada, Mr. Speaker, there is a Senate committee and a House of Representatives committee to monitor and scrutinize the appointment system of judges and the administration of justice. Are we saying in Canada, then, that judges are not independent, that they are interfered with and people do not get justice? Well, if we say that, let us go further.

In South Africa there is a commission to appoint judges and there is also a parliamentary committee to monitor the appointment and the administration of justice. In Uganda the position is the same. Uganda is one of the reform countries in Africa. They have a parliamentary committee to monitor and scrutinize the appointment of judges. Mr. Speaker, this is not a Trinidad and Tobago trend. This is a trend which is happening in the world. As surely as we have a globalized economy we would have to have a globalized judiciary. What happens is that there is a trend where, not only the Commonwealth Secretariat and the Commonwealth Ministers but the United Nations has also been asking for the appointing system of judges to be scrutinized by the people.

As a matter of fact, may I read, Mr. Speaker, where only recently the Commonwealth appointed a working group, which was endorsed by Commonwealth Law Ministers in Malaysia, to look at means whereby one can have accountability of the Judiciary to Parliament and to government. Now, does it mean to say that all the Commonwealth countries which were thinking like that want to interfere with the independence of the Judiciary? It does not mean that. What it means—as a matter of fact, Mr. Speaker, if anyone examines how judges are appointed in most countries, one would see that there is a system whereby the people would have a say, either through some body or through the government.

I have here and will first refer to the proceedings before the Home Affairs Committee of the Judicial Appointments Procedures. In the United Kingdom there is a Home Affairs Committee which scrutinizes the administration of justice and looks at the appointing mechanism of judges. I have the verbatim record here, Mr. Speaker, and as a matter of fact there are three volumes which show that the Lord Chancellor and the Lord Chief Justice appeared. I will read parts of it in a short while; one part being what was said at the beginning, so that we could understand that we are probably behind time when we believe that judges are sacrosanct or the appointment mechanism of judges is sacrosanct.

We must understand, Mr. Speaker, that there is a major distinction. A judge, in the exercise of his judicial functions, that is to say, when he sits in court, if he makes an error he is accountable judicially to a Court of Appeal and to a higher court. However, the trend now is for judges also to be accountable to the population in the exercise of their judicial functions. We have not gone that route but that is the trend now because they are saying there is a movement now in the United Kingdom for judges to appear before committees sometimes to determine whether they are right in their heads, whether they have the proper background with respect to finances, *et cetera*.

These are things that are happening so if you want to stay behind we can stay behind. What we are doing here in Trinidad and Tobago is for the administrative functions of the commission—and, Mr. Speaker, when the chief justice, whoever the holder of that office is, sits as chairman of the commission, he is not exercising judicial powers. He is an administrator then. He cannot lock up anybody for contempt of court then. He does not have judicial powers then. He is exercising administrative powers and that is why some countries even have a chancellor of the judiciary to see about the administration of the Judiciary while the Chief Justice sits in court. But in our country we have a system where the Chief Justice does both administrative and judicial work. So when he sits on the commission he sits in an administrative capacity and when he sits in an administrative capacity and you ask him questions about his administrative capacity no one could say, “Well, he is a judge and he cannot answer that question”.

Mr. Speaker, I would want to read some of the parts that appear in the beginning of this report so that people could understand the importance of having scrutiny of a judiciary and the appointing mechanism.

“The function of the judiciary within the constitution of the United Kingdom is to ensure that justice is done as far as possible, to the parties to civil proceedings and to both defendant and society in criminal trials, within the rules laid down by Parliament and by judicial precedent...

The constitutional role of judges in the United Kingdom requires that they should be impartial, independent and appointed rather than elected.

The public has a direct interest in judges' administration of justice. A judge's work may entail the upholding of the rights of individuals against the interests of large concerns (not least the state); it may, in the criminal courts, entail the removal of an individual's liberty. Judges have a unique responsibility;

public respect for members of the judiciary is important if public confidence in the criminal justice system is to be retained. The Lord Chancellor's Department advocates that not only are skills, knowledge and personal qualities factors that should be considered when selecting judges, but that also the ability of candidates to exercise the necessary responsibilities should be taken into account."

Judges, when appointed, are very difficult to remove. As a matter of fact, no parliamentary committee could remove a judge. A judge's term and security of tenure are secured. There is a special procedure. But when a judge is appointed he is paid from the public purse and if it is a bad appointment or a wrong appointment and that judge can exercise his duty in such a way that he causes injury to people, it is an important fact for the public to consider. That is why the English set-up made it quite clear that judges are not sacrosanct and, therefore, the appointing mechanism of judges should be looked at.

Mr. Speaker, let me read the one in which the Lord Chancellor appeared. This is a Home Affairs Committee, the work of the Lord Chancellor's Department, where the Lord Chancellor was asked to appear and, under the law there, as in all the countries, the committee has the power to summon. If the Lord Chancellor does not appear they could summon him to appear. Anyone here in Trinidad and Tobago, if they have to appear before a parliamentary committee can be summoned to appear. One would expect that they would not give difficulty to appear.

Mr. Speaker, when the Lord Chancellor appeared before the Home Affairs Committee, this is very interesting. The chairman asked him:

"Can I ask you, Lord Chancellor, to set the scene by telling us what you see as your priorities for your term of office?"

(The Lord Irvine of Lairg) Well my priorities, I would say, are to create as open and transparent and as effective a justice system as possible.

3. How are you going to go about that?"

And then he said:

"I dare say you will want to ask me about problems associated with

And he talked about the Woolf Reforms which we know we are doing in Trinidad and Tobago:

Lord Irvine, the Lord Chancellor:

“Let me tell you what the timetable has been so far and reply as fairly as I can. You mentioned at the outset, Chairman, your industry, which of course I commend, in sitting in the Recess so as to ensure the Government is not free of scrutiny in the Recess. Of course your industry can have this effect also: that I cannot give, until matters are cleared by Cabinet—policy matters are cleared by Cabinet—as full an answer as I might have been able to have given had you chosen not to be so industrious and waited until the House resumed,...

He ultimately gave his information and not only the Lord Chancellor, the Lord Chief Justice of England also went. They have a system, Mr. Speaker, in which they filed a report, and this is a matter for Standing Orders amendments which we intend to bring, because when we have to draft the Standing Orders to give effect to this Bill, the Government will have to respond. In the response which the government gave, the government had to answer every recommendation which was made by the Home Affairs Committee and say what it intends to do with it and it is a document filed and distributed in the Parliament. Just for the record, it is “Judicial Appointments Response by the Government to the Home Affairs Committee’s Report on Judicial Appointment Procedures in 1998.”

6.55 p.m.

In the United Kingdom there is a report on the judiciary, “Judicial Appointments Reports.” They have to say how the applications are dealt with, what are the criteria, why they made certain appointments, what they use. The public have this, and the head of the Judiciary in the United Kingdom and all these countries agreed also, that since they have had this system it has improved the administration of justice.

There are people in Trinidad and Tobago who are saying that if you do this it destroys their independence. Since the Opposition has relied very, very heavily on the contents of the document by these six eminent gentlemen, it is my duty to read it and deal with it, to show whether one wants to consider it as being a matter to obstruct, in voting for this Bill. It says:

“We are gravely troubled by a Bill now before Parliament which will subject the proceedings of the Judicial and Legal Service Commission to investigation and report by a Select Committee of Parliament.”

I have just shown you that in countries, apart from Trinidad and Tobago, the appointing body for judges appears before parliamentary committees, but in Trinidad and Tobago, these eminent gentlemen are troubled by that.

“The Bill which is for an Act entitled the Constitution (Amendment.) (No. 3) Act, 1998 remained dormant for over a year but is now scheduled to receive its second reading in a day or two.”

It may be that they have not read or they did not read that there were publications and that people were giving comments. We have learned that it is not because people occupy positions in society that you act and accept everything they say. One has to question, investigate and make up one’s own mind about the matter, otherwise one would have “mimic” people. One has a set-up whereby the Opposition, although in government, they had a policy, as soon as they got these statements it’s “yes, yes, yes, we agree with everything”. Mimic men.

“Since Independence it has been a fundamental policy of our Constitution to isolate and insulate the Public Service and the Judicial and Legal Service from political influence by vesting the power to make appointments of, and to discipline persons in those services in independent Service Commissions. In line with that policy under the Republican Constitution of 1976, power to appoint and remove members of those Commissions has been vested in the President. We consider it unwise to depart now from that policy in relation to other Service Commissions and we are firmly of the view that it would be nothing short of disastrous to do so in the case of the Judicial and Legal Service Commission, which is responsible for appointing and promoting judges and the principal law officers of the State, such as the D.P.P. and the Solicitor General.”

This Bill does not depart from the policy in the Constitution for the service commissions not to be vested with the power of appointment and so forth. It does not take away from any of the powers of the service commissions. It must be an error for it to be thought that this Bill attempts to remove the jurisdiction of the service commissions for the appointment of judges, teachers, magistrates, or whatever it is—members of the public service. I think I could safely say that must have been an error because it is not supported by the Bill.

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The letter also talks about the prospect of Members of Parliament delving into the personal files of persons. If it is that the Opposition feels that individuals' files should not be looked at, that is a matter for when we come to the Standing Orders, as to who should constitute the chairman of the committee, how it should be comprised. This Bill is about the policy. Do you agree that these institutions should not be subject to scrutiny? If you agree to that, vote against the Bill; do not vote for it.

Then it talks about section 129. Our case has nothing to do with review of a decision of the commissions in a court. As a matter of fact, we have not touched that section at all. We are not talking about review, not even political review, we are talking about examining and reporting. We are not talking about judicial and political review, because under the Bill, the committee does not have the power to change any decision, modify it, or review it. So, anything about judicial review has no relevance, with the greatest respect.

Then it goes on in the last paragraph to state—this is a statement that we must accept like that. The final paragraph—

“The explanatory note seeks to justify the Bill by appealing to the need for accountability, transparency and openness in a free and democratic society. Accountability, transparency and openness are beguiling and laudable objectives, but we must be careful what we perpetrate in their name. Do we really wish to make those who appoint and promote our Judges accountable either to those who constitute the Government in Parliament or to those who oppose it?”

Here it is, that these eminent gentlemen are saying that neither to the Government nor to the Parliament must these commissions be accountable. So they must be accountable to no one. When the Lord Chief Justice goes to the committee in the United Kingdom, that is wrong, that is a judicial sin! When the Lord Chancellor, the Chief Justices in Canada, Uganda and South Africa, go—I mentioned that in South Africa there is also a committee—that is a great sin to the people. Is that not why no one could reasonably ask that Cabinet meetings be televised? If that is a recommendation and they want to put that, then we will consider that. We will consider whether Cabinet meetings are to be televised, but that is not a relevant matter for this Bill. As a matter of fact, the court proceedings sometimes are not televised. There is another important principle of our democratic society, that is the independence of the judiciary. That is a cornerstone of our Constitution. Independence of the judiciary does not mean that judges are not accountable.

I want to, very quickly, in the limited time that I have, show how the Government has not been alone. Let us take the Judicial and Legal Service Commission. The Government, in Opposition, has been very consistent and we strongly believe that service commissions must be accountable, even the Judicial and Legal Service Commission. We strongly believe that if there is that kind of accountability, there will be an improvement in the quality of the administration of justice.

I get letters from people every day in my capacity as Attorney General. Cases are pending in the courts for 24 years, 20 years, and they ask for explanations.

7.05 p.m.

Mr. Speaker, Justice Deyalsingh, the judge they are relying heavily on, in a lecture, on the independence of the judiciary and its relationship to fundamental human rights given in 1981 at the Holiday Inn talked about the question of the quality of the appointment of judges in Trinidad and Tobago. He said:

“Whatever the reason, the practice of not following the method of

That is for the criterion.

“...has resulted in an emaciated judiciary and there are real doubts as to whether it fulfils or can effectively fulfil the role designed for it by the Constitution.

The Honourable Chief Justice of Trinidad and Tobago has on more than one occasion spoken of mixing the judicial brandy with water, and apparently this has happened. Coming from the practising bar as I have, I maintained a cordial relationship with practitioners. They speak freely with me as they have expressed serious doubts about the competence of the judiciary.

Speaking about one appointment to the Bench, a practitioner, alluding to the Judge's competence used a colloquial expression which distinguished two parts of the human anatomy. Of course, this was an exaggerated but forceful way of making the point. News about another appointment was greeted with hoots of laughter by a group of very junior practitioners.”

And yet the Judicial and Legal Service Commission must be sacrosanct.

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A Justice of Appeal, Justice Ibrahim, in the Court of Appeal case of Ramsingh Jairam and Krishna Persad in Criminal Appeal No. 35 of 1988 had this to say about judges at page 5. He had to set aside a conviction for murder. I quote:

“Before we conclude this matter, however, we wish to make one observation. In recent times we have seen a number of summings up by some trial judges taking a familiar pattern as in this case here. The trial judge in the first part deals with the general and specific principles of law that are applicable and relevant, but thereafter, he proceeds tediously to read to the jury the entire body of evidence that was recorded in the case. In our opinion, this was not a summing up.”

And he called for the authorities to do something about it.

So, Mr. Speaker, there have been cries for the quality of justice to be improved in Trinidad and Tobago. As a Government, we cannot close our eyes and ears to those cries. As a matter of fact, Camini Marajh in 1992 mentioned in an article in the *Daily Express* on August 2, 1992:

“Now there is kerosene in the judicial brandy.

Judges tell tale of woe.”

Those of you who want to read what the public perception has been of the administration of justice in Trinidad and Tobago can read this.

I am not saying that all of the system is bad. What we are saying is that in order to ensure that there is quality justice in Trinidad and Tobago, the Judicial and Legal Service Commission should be scrutinized in its administrative functions. What we are saying is that in order to also have better management of the other service commissions and what they do, they should be scrutinized in their functions.

Mr. Speaker, there is a very interesting article: “Judging the Judges”, in the *Trinidad Guardian* of February 27, 1994. It has been written by a very distinguished person, whose name I will not call, Mr. Speaker; I hope you forgive me. In that article, the question arose of the Crane case for the administration of justice, and it was pointed out that there was a Court of Appeal judge, Justice Jim Davis, who wanted to get an opportunity to serve for the two years after his retirement. Other judges were given, but he was not given that opportunity, and there was no reason or no explanation. The Commission said that it did not have to give an explanation to anyone.

So, there we had Justice Jim Davis, who sat as a Court of Appeal Judge, indicating that he could continue for two years under the law as a High Court judge. The Judicial and Legal Service Commission had the power to do that. The Judicial and Legal Service Commission was appointing other judges, not as distinguished as he is, to continue and he could not. The public could not get an explanation, yet the Opposition is saying that is very good. They are saying that the commission is justified; that it is all right for the commission to do that to the people of Trinidad and Tobago.

Mr. Speaker, one of the persons who signed that letter, Justice Kelsick, in an article on April 9, 1992 said that the calibre of judges in Trinidad and Tobago could be improved. I will not read all the articles. Five judges had to complain about the commission. They went to the President, the Ombudsman and they were making statements in the newspapers in 1997 talking about the functioning of the Judicial and Legal Service Commission.

To say in this Bill that we are attempting to take away the independence of the Commission is not correct. To say that this Bill is an attempt to review the decisions of the service commissions is not correct. Mr. Speaker, to say that the Bill would, in any way, introduce politicians to make decisions is not correct. What this Bill does is empower parliamentarians to do their duty, and it is only parliamentarians who do not wish to do their duty who would engage in voting against this Bill.

I want, in the five minutes I have available, to read from a book that has been recently published in January 1999, *The Judiciary in a Globalized World*, and to read from an article, *Judicial Independence vs. Judicial Accountability* by a former Chief Justice of India and a man who is a member of the United Nations Committee on Justice and on the Human Rights Committee, Mr. Bhagwatee. He wrote:

“It was said by Lord Acton several years ago that power corrupts and absolute power corrupts absolutely. What he then said holds good for all time to come because it is the pathology of power to be abused and there must therefore be controls and checks on the exercise of power, whatever its character or form.

There must be accountability for the exercise of power because all power is a people's trust and judicial power is no exception.”

He went on:

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“There is a predominant fiduciary component in judicial power and it is this fiduciary component which provides controls and checks over the exercise of judicial power.

Every power holder, whether legislative, executive or judicial, is in the ultimate analysis accountable to the people.”

Whether executive, legislative or judicial, is accountable to the people! [*Desk thumping*]

“This accountability goes with the exercise of power, because the power holder in a democracy, governed by the rule of law, derives its power from the people.

It is the people who are the source of power and through the Constitution in the law made by them. They delegate power to the various organs such as the Legislature, the Executive and the Judiciary, created by them.”

That is the reason for the accountability of the exercise of the judicial power to the people of the country.

“Accountability does constitute a basic and essential component of every power including judicial power. This accountability is not to any particular individual or to any particular Government, but it is the people of the country.”
[*Desk thumping*]

Mr. Speaker, that is the rationale of this Bill, and if we believe in people and the rights of the people, and if they believe that the people put them there, they have to vote for this Bill. But, if they believe that they can treat the people with contempt and that they do not care for their rights, but for their moneys to be utilized in all directions and to not have a say in what kind of justice is administered in this country, what kind of police service there should be, what kind of teaching service there should be, what kind of public service there should be, Mr. Speaker, they are not interested in justice for the people!

Thank you very much, Mr. Speaker. I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Mr. Breaux: Mr. Chairman, we need some time to look at these amendments.

7.30 p.m

Mr. Chairman: Is there any other suggestion that is to be made?

Mr. Maharaj: Mr. Speaker, since there has been threats of legal proceedings, this Government has not only got this Bill checked by the department, but has got this Bill checked by several eminent counsel in Trinidad and Tobago and in the United Kingdom, and the Bill is within the powers of the Constitution to be passed by a simple majority, and it is properly within Part II of the Constitution; "Powers, Privileges and Procedure of Parliament."

Mr. Chairman, I want to make it clear, and I am saying this because in recent times, Members who filed litigation asking the state to waive cost—I am saying this in case the state, and I think I should give notice to the Parliament that this position is in its right place. May I say that any elementary—and I am sorry to put it in this way, but I am forced to do so—person who has any elementary understanding of what is going on would know that an Act is divided into parts.

For example, in Part I of the Constitution, there are certain things dealt with there. Part II deals with powers, privileges, and procedures of Parliament. Section 66A is a new section and it is under the Powers, Privileges and Procedure of Parliament under Part II because the select committees being appointed, which is an exercise of the powers of Parliament, involve the privileges of Parliament and the procedures of Parliament. I do not know where anyone got any advice—it must be from some bush lawyer—to say this has to be under a different section.

With respect to the first point, to move it and put it under another section, we do not agree.

With respect to Government ministries, Government ministries include Ministers and I am not prepared to amend it to put it so, if it does not need an amendment.

The third point with respect to the joint select committees and who would chair it, that is a matter for Standing Orders and we would determine that when that time comes.

Mr. Valley: Mr. Speaker, the Member did not deal with the other point which I made which is 66B.

Mr. Chairman: You had suggested that 66B would now be 129(c)?

Mr. Valley: Yes, Mr. Speaker. Let me say a bit more because what the Member for Couva South has outlined is that section deals with the power and privileges of Parliament. However, 66B talks about putting a responsibility on service commissions that each service commission shall submit to the Prime Minister before October 1 each year. That is putting a responsibility on the service commissions. It is not now dealing with the power, privileges and so forth of Parliament and, therefore, this section has to be correctly placed in section 129 which deals with the service commissions. This is a responsibility placed on the service commissions. I so submit.

Mr. Sinanan: Mr. Chairman, is the Attorney General saying that government ministries include government ministers?

Mr. Maharaj: Mr. Chairman, that is a very superficial look at what I had said. I am saying that what has happened is that with respect to the report to Parliament, it would have to deal with the report, and Parliament would be able to, with the joint select committee, look at the report. In any event, there is an inherent duty on commissions to report to the Prime Minister. That does not necessarily mean that it has to go under that section. We would like it to come under section 66.

Mr. Sinanan: You said government ministries did include government ministers?

Mr. Maharaj: I said government ministries would include government ministers. I would say it again, Member for San Fernando West, if you want me to say it.

Mr. Sinanan: Thank you.

Amendments negatived.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported with amendments.

Question put, That the Bill be now read the third time.

The House divided: Ayes 18 Noes 14

AYES

Maharaj, Hon. R. L.

Persad-Bissessar, Hon. K.

Lasse, Dr. The Hon. V.

Griffith, Dr. The Hon. R.

Sudama, Hon. T.

Maraj, Hon. R.

Rafeeq, Dr. The Hon. H.

Khan, Dr. F.

Assam, Hon. M.

Job, Dr. The Hon. M.

Singh, Hon. G.

Nanan, Dr. The Hon. A.

Partap, Hon. H.

Mohammed, Dr. The Hon. R.

Singh, Hon. D.

Ramsaran, Hon. M.

Sharma, C.

Ali, R.

NOES

Valley, K.

Manning, P.

Imbert, C.

Robinson-Regis, Mrs. C.

Narine, J.

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Hart, E.

James, Mrs. E.

Bereaux, H.

Joseph, M.

Sinanan, B.

Boynes, R.

Hinds, F.

Williams, E.

Nicholson, Miss P.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that this House do now adjourn to Friday, April 30 1999 at 1.30 p.m. when we shall debate the Freedom of Information Bill.

Mr. Speaker: Hon. Members, before we get to that motion, leave had been given to the Member for Laventille West to raise a matter. I call on the Member.

Maryland Hill (Deplorable Condition of)

Mrs. Eulalie James (Laventille West): Mr. Speaker, thank you for permitting me to raise this matter this afternoon. It deals with the deplorable condition of the Maryland Hill resulting in hardship being endured by residents, schoolchildren and teachers, and the failure of the Ministry of Local Government to provide funds to rectify the worsening situation.

Mr. Speaker, approximately nine weeks ago, we noticed a piece of equipment in the area and it scarified a part of the road reaching as far as the school. During this time, the school had two weeks' vacation and that was two weeks after the road was scarified. One would have thought that during the period of vacation, the opportunity would have been taken to fix the road. Instead, it was left like that with no sort of explanation, no communication from the Minister or his ministry. The San Juan/Laventille Corporation had no knowledge of what was taking place

and as it worsened, it aggravated the students, teachers, the parents and everyone in that area. As a matter of fact the Parent/Teachers Association was so aggrieved with the situation that they protested for practically two weeks.

Mr. Speaker, one day during that two weeks, rain fell and if you had seen how those children had to swim through the mud to go home. Many of them could not attend school on the following day because one would have had to clean up the sneakers and uniforms to get them ready for school and they could not go to school the following day, robbing them of their education for that one day.

When I saw how this thing was escalating, I visited them and on a Friday we went to the ministry—two parents, a councillor, an alderman and myself. I was hoping to meet the Minister, he did not know we were coming, but I was hoping to meet him or somebody who could tell us what was going on because we were not being communicated with at all. I think that was gross disrespect. They had no caring for the children whatsoever. They were eating dust every day. Some of the school doors had to be closed to prevent the dust from coming in, and they did not even have the common decency to send and wet the road. It was really terrible, I do not know how some of those children did not fall ill.

However, we did not meet anybody to give us any information on that day and the parents continued to protest along with the children and they said they would keep up the protest until they got action. When I saw that, I felt it was my duty, so to speak, to come here to get an answer from the Minister because we were not getting any answers. That is why I brought this Motion to solicit some response from the Minister. However, I visited the area yesterday around 11.20 a.m and there was no equipment around the area.

7.45 p.m.

Lo and behold, about 12.15 in the afternoon or thereabout, equipment started rolling in the area—Coosal equipment to fix the roads.

Mr. Speaker, if we did not take the action we took, he would not have fixed the road so quickly; and he is coming now with the equipment feeling he could slam down this Motion. But I still had to tell him, how we feel about it. He was really disrespectful—it has nothing to do with me, Mr. Speaker. It has to do with the people I represent. They are the ones who are disrespected.

However, as I said, the equipment is there. At least communicate with the Corporation under which the road falls and let them know what is going on. Up to

this minute, no kind of communication with that region. You see the kind of disrespect. But the road falls under the Regional Corporation. When people ask them, they have no knowledge of what is going on.

Mr. Speaker, I feel that is very bad. You see, they are seeking to make us ineffective. That is what they are doing. The people understand what they are trying to do, and they would not get away with it. So, all the deviousness and all the bad mind, and they feel that they could walk into everybody's constituency and do what they want without telling them anything, is not going to work. Try as they may, they will never get through. They cannot win Laventille.

So, Mr. Speaker, we are happy that they have started the road, but I hope that the entire road will be fixed not only up to the school. That is the only access road to the school, and the teachers travel from either point. The entire road is bad.

Mr. Speaker, that road is a thoroughfare, and a short cut for vehicles coming off the Lady Young Road for people who go to the city to work. It will be very good, if it could be repaired in a very short space of time.

Although I have seen that work has started, I still have to tell him, that we hope that he will not stop until it is finished; and the parents, teachers and students have asked that he makes sure that the job is well done.

Mr. Speaker, I want to thank you for allowing me to raise this matter and I hope that the Minister would ensure that it is done in a proper way and in a quick time.

I thank you very much.*[Desk thumping]*

The Minister of Local Government (Hon. Dhanraj Singh): Mr. Speaker, the Member for Laventille West raised a Motion concerning the deplorable condition of the Maryland Hill. The road in question falls under the jurisdiction of the San Juan/Laventille Corporation. That Corporation is a PNM controlled corporation. It has had three years in which to address the deplorable condition of that said road.

Mr. Speaker, the Maryland Road has been bad for over 15 years. Every year the corporation is provided with funds from the Ministry of Finance, and if the road was in such a deplorable condition, it was the responsibility of the corporation to programme that road as a priority. But, as I said, the corporation has other priorities. They recently refurbished the corporation's council office with

carpet six inches thick. They bought a brand new horse shoe table, and I had to show them that it was termite ridden. You see, my family owns a sawmill, I come from the wood business; and the brand new horse shoe table was termite ridden—bad wood they got, Mr. Speaker. *[Laughter]*.

Mr. Speaker: Order please, order.

Hon. D. Singh: Mr. Speaker, the Member for Laventille West knew fully well that the Ministry of Local Government had taken steps to fix that road. So like the Member for Toco/Manzanilla, knowing that we are going to do some work on the San Pablo Bridge, she galvanized herself to go out there and get public support so she can get some publicity as having done everything to get that road fixed.

Mr. Speaker, you know, every region has a bonded contractor and the quantity of work that is given to a bonded contractor, roads are done on a basis that is prioritized by both the ministry and the contractor.

About a month ago, the contractor was asked to look at the road to see what could be done. But the contractor, having given us an estimate for the road—and I believe the estimate is approximately \$1.3m. to refurbish that road. The road has technical challenges, Mr. Speaker. The road has three or four springs on it, so it requires rubble drains to be built across the road, so that the water would not damage the surface of the road. Our technical people have been looking at it also.

While we were looking at it, and looking at funds, the contractor went on to do a number of other roads in the region of San Juan/Laventille—and Mr. Speaker, I want to put on record here, the number of roads that are being paved in San Juan/Laventille by this Government.

Mr. Speaker, you hear she spoke with councillors, so the councillors could pave some roads, why they could not pave Maryland Road.

If you look at today's newspaper, the following roads have been completed this week and it is the same bonded contractor; but the bonded contractor has limited equipment. He cannot be at two places at the same time. There is one bonded contractor for the information of the Member of Parliament.

Mr. Speaker, Christ Church of Cascade Main Road, Upper St. Francois Valley Road Extension, Trou Macaque Block 22, Upper Plaisance Road, Upper Walton Street, Piquette No. 2, La Fortune Road, Kingston Avenue, Moraldo Street, Third Street Barataria, Second Private Road, Champs Fleurs, Hill Top Lane. These are the roads that were just recently completed.

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Over the last month the following roads were also paved—Abass Ali Road, El Socorro Extension No. 2, Patraj Road and Chankar Extension Temple Street, Paray Street, El Socorro Extension No. 1, Balroop Drive, Hosein Terrace, Don Miguel Extension, Raffique Hosein Place. These also fall under the jurisdiction of the San Juan/Laventille Corporation.

Mr. Speaker, the Member for Toco/Manzanilla, was impatient, so too is the Member for Laventille West, she is impatient and I can understand why. Only recently the Corporation completed works on the abattoir. Mr. Speaker, have you ever been to the San Juan/Laventille abattoir? We are only in office for about three years, Mr. Speaker.

Mr. Speaker: More than three years.

Hon. D. Singh: They have these rusty barrels which they boil the meat or something in it—real terrible. In the heartland of the PNM area everything that was in that abattoir was against health regulations and it is only under this administration, that you see something is being done about the abattoir.

Mr. Speaker, two pavilions were recently opened, and we are also building another pavilion in Barataria, which will be completed shortly, and then we are going on to build another community centre in a place called Chemin.

Getting back to the Member for Laventille West, she said she hoped that we will finish the road. Let me assure you, Mr. Speaker, “we going all the way. We will finish the road, and we will finish with the Member for Laventille West also.”
[Laughter].

7.55 p.m.

Mr. Speaker, as I have indicated, in the Ministry of Local Government, we try our best with the resources that are given to the ministry. The Member for Laventille West indicated she came to the ministry. She never made an appointment to see me. I have no record of her making an appointment to see me. She just came in. It just goes to show you, she heard that I have an open-door policy where anybody could just come in the ministry. So, she finds herself in the ministry hoping to see me. I must apologize for not being there for her on that day.
[Laughter].

Work is progressing on the road and we expect the road to be completed in two weeks' time. This is what our government is about. People must be patient, we are trying our best. The Ministry of Local Government is not dead. It is not like

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what it was before under the PNM. We are delivering and we are about improving the quality of life for all the people in Trinidad and Tobago.

Thank you, Mr. Speaker. [*Desk thumping*]

Question put and agreed to.

Mr. Speaker: I am hearing the Opposition Chief Whip calling for a division, but I know he is not serious.

House adjourned accordingly.

Adjourned at 8.00 p.m.