

Leave of Absence

Tuesday, January 29, 1991

SENATE

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The Senate met at 1:30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence from today's sitting to Sen. Motilal Moonan, Sen. Herbert Atwell, Sen. Felix Rampersad and Sen. Allan Alexander. I have also granted leave of absence to Sen. Father Winston Joseph for the period January 17 to February 28, 1991.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have been advised that His Excellency the President has appointed Mrs. Diana Mahabir-Wyatt to be a temporary Senator with effect from January 28, 1991, and continuing during the absence from Trinidad and Tobago of Sen. Fr. Winston Joseph.

I have also been advised that his Excellency the President has appointed Mr. Trevor Belmosa to be a temporary Senator during the absence from the Senate of Sen. Motilal Moonan with effect from January 28, 1991.

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Mrs. Diana Mahabir-Wyatt and Trevor Belmosa.

PETITION

Leprosy Relief Association

Sen. Gerald Furness-Smith: Mr. President, I have the honour to present the petition on behalf of the Trinidad and Tobago Leprosy Relief Association. I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

Petition read.

Question put and agreed to, That the promoters be allowed to proceed.

PAPERS LAID

1. Report of the Auditor General on the Accounts of the Government Employees' Provident Fund for the year ended December 31, 1984. [*Sen. Alloy Lequay*]
2. Report of the Auditor General on the Accounts of the Government Employees' Provident Fund for the year ended December 31, 1985. [*Sen. A. Lequay*]
3. Report of the Auditor General on the Accounts of the Government Employees' Provident Fund for the year ended December 31, 1986. [*Sen. A. Lequay*]

ORAL ANSWERS TO QUESTIONS

The following questions stood on the Order Paper in the name of Sen. Wade Mark:

Foreign Consultancy Fund

3. Could the Hon. Minister of Finance kindly state:
 - (a) The number of foreign consultancy firms employed by the Government between the period January, 1987 to December 1990;
 - (b) The number of foreign consultancy firms earmarked for employment in 1991;
 - (c) The specific purposes of their engagements;
 - (d) The existing and projected costs of these firms to the taxpayers of Trinidad and Tobago; and
 - (e) Whether the reports of these firms are accessible or made available for public consumption?

The Minister of Finance (Hon. Selby Wilson): Mr. President, I would like to crave the indulgence of the Senator. The answer is not yet ready, and I had a discussion with him on it. I hope to have it ready in two weeks' time.

Sen. Mark: Mr. President, I have no difficulty in agreeing with a postponement of the question. However, I do not know if it is a trend that is developing, but we seem to be heading for a number of postponements of questions. The questions are placed on the Order Paper well in advance. In the future, I would suggest that even though the civil servants might be under some pressure, that at least even if a postponement is sought, it not be that extended, three weeks or two weeks from today. For instance, if an answer cannot be

provided at today's sitting, I suggest that at the next sitting of the Senate such an answer should be made available.

I understand some of the difficulties as outlined by the Minister. Hopefully, after this second experience, we would have a free flow of answers coming thereafter.

1.45 p.m.

Severance Payments

4. Would the hon. Minister of Labour, Employment and Manpower Resources kindly state:
 - (i)
 - a. The quantum of outstanding severance payments owed to workers by public and private sector employers;
 - b. The names of the companies and/or employers involved;
 - c. The number of employees affected;
 - (ii) Whether the Government is satisfied that companies have been meeting their moral and legal obligations to their employees under the Retrenchment and Severance Benefits Act and, if not, what measures are being instituted to ensure same?

Manufacturing Sector

5. Could the hon. Minister of Industry, Enterprise and Tourism kindly state the likely short and medium term impact on the manufacturing sector, given the new trade liberalization policy as it relates to:
 - a. The size of the sector;
 - b. The employment level;
 - c. The ratio of imported inputs to total inputs?

Sen. Alloy Lequay: Mr. President, I have been requested by the hon. Minister of Labour, Employment and Manpower Resources to seek a postponement on this occasion for one week. The Minister has indicated that he will be ready to respond at the next sitting of the Senate. If you will permit, Mr. President, the position is the same with this question. The Minister of Industry, Enterprise and Tourism also seeks a postponement for another week.

Questions, by leave, deferred.

Mr. President: Hon. Senators, before we move on, in fairness to all Senators, but particularly Sen. Mark, may I state that the Standing Orders provide that not more than three questions can be put on an Order Paper in the name of any one Senator for a sitting. I think Sen. Mark has a long list of questions qualified for answers. It means that if questions are put off for a week or two, the other questions that are also due cannot appear on the Order Paper. So I would appeal to the Ministers concerned to try to facilitate the Senator but at the same time I will remind him that the Chair or the Standing Orders cannot force a Minister to answer a question.

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Mr. President, I seek your kind leave and the leave of hon. Senators to make slight adjustments to the sequence and to take Bill No. 3 first and then the rest will follow in the same manner. The request is being made since the Minister of Finance has another important call later in the afternoon.

Assent indicated.

STAMP DUTY (AMDT.) BILL

Order for second reading read.

The Minister of Finance (Hon. Selby Wilson): Mr. President, let me take the opportunity to express my appreciation to the hon. Senators for permitting the change in the order of the agenda before the Senate this afternoon.

I beg to move that a bill to amend the Stamp Duty Act, Chap. 76:01, be now read a second time.

Following the Eighth Meeting of the Conference of Heads of Government of Caricom in 1987, the hon. Prime Minister announced that Trinidad and Tobago would grant exemption from stamp duty on goods satisfying Caricom area origin criteria, where those goods were imported from Caricom states which grant exemption from similar taxes to products imported from Trinidad and Tobago.

It was also decided to grant stamp duty exemption on a bilateral basis to those items in trade to which paragraph 10 of Article 14 of the Annex to the Treaty of Chaguaramas applies. This decision was implemented with effect from July 1, 1987 by the Stamp Duty Exemptions Order No. 3 of 1987. This Order continued in force for a 12-month period and was followed by the Stamp Duty Exemptions No. 6 Order 1988 and subsequently by the Stamp Duty Exemptions No. 6 Order 1989.

Mr. President, the purpose of the bill is to include the provisions of these Orders in the body of the Stamp Duty Act and to amend the Stamp Duty Act to enable the Minister of Finance, by order, to add to, or remove from, the list of Caricom states which may be afforded exemptions from stamp duty as circumstances change, and new members of Caricom grant similar exemptions to Trinidad and Tobago imports.

Clause 2 of the bill amends the First Schedule to the Stamp Duty Act by renumbering paragraph (l) as paragraph (n) and inserting a new paragraph (l), under the heading "Exemptions" to include goods of common market origin produced in any of the states listed in the Fourth Schedule. The paragraph also empowers the Minister to amend the Schedule, by order.

A new paragraph (m) is also inserted to exempt from stamp duty, goods which are consigned to a member state of the Caricom community and treated by Trinidad and Tobago as being of common market origin under paragraph 10 of Article 14 of the Annex to the Treaty establishing the Caribbean community.

Under paragraph 10 of Article 14 of the Annex to the Treaty, member states can import goods free of customs duty as though they satisfy the common market rules of origin even when they do not in fact satisfy Caricom area origin criteria, provided that similar imports consigned from other member states are accorded the same treatment.

Under paragraph (m), goods which receive this treatment by Trinidad and Tobago are also granted exemption from stamp duty provided that the state from which the goods are consigned, grants exemption from similar taxes to Trinidad and Tobago. In other words, Mr. President, exemption from stamp duty is granted on the basis of reciprocity.

I wish to emphasize that these exemptions are already in force and, as I said, have been in effect since July 1, 1987. The purpose of the legislation is merely to empower the Minister to amend the Schedule of States from time to time as our trading relationships with our Caricom neighbours change.

Mr. President, one of the main objectives of the Treaty of Chaguaramas is liberalization of intraregional trade by the removal of barriers such as duties which act as obstacles to the importation and exportation of goods between member states, and the removal of stamp duty on goods imported from within the Caricom region is an indication of Trinidad and Tobago's commitment to Caricom.

Since the passage of this bill in the other place, it has become necessary to propose certain minor amendments at this stage. The amendments, I believe, have been circulated. They relate to paragraph 1, where we change, "Fourth Schedule" to "Fifth Schedule", and in subsequent parts of the bill change all Fourth Schedule references to Fifth Schedule references.

Mr. President, I commend this bill for the support of hon. Senators.

I beg to move.

Question proposed.

Sen. Robert Amar: Mr. President, the bill that has been put forward today is no doubt a very important step towards developing the inter-Caribbean relationship. We, on the Opposition side, feel very happy that the Government is looking towards this integration in a very serious way, and we feel that it would be very meaningful to the development of the Caribbean states.

Seeing that this has been in force since 1987, is it possible for the Minister to show us what has been the trend of this whole situation relative to this reciprocity? Let us see in this game of trade what position do we hold in the benefits that we give our neighbour countries relative to what we get and in which sector of the industry are we strong in relation to our weak sector. Maybe we can also get some feedback as to what the Minister of Industry, Enterprise and Tourism does in order to make our position stronger because this trade situation is one where we have to work together. It is not that Trinidad and Tobago must afford the privileges of only allowing our partners in the Caribbean to be bringing goods into our society and getting these preferential benefits, but what are we accomplishing on the reverse, relative to this whole situation? If one can examine this one can realize whether or not this particular thing is working to our benefit or to our disadvantage.

1.55 p.m.

The development of the Caribbean definitely needs to have positive steps towards achieving these things. The Minister's movement in this area must be commended. I feel that we will definitely look towards seeing what will happen with regards the results. We have a situation, however, with which I have to be concerned, somehow or the other, because we have different levels of operation within the Caribbean. These levels of operations relate to income earning; strata levels; cost of labour; cost of goods and raw material and negotiated deals. When

I look at this, I want to be able to tell that the Ministers—one is the Minister of Finance and the other is the Minister of Industry, Enterprise and Tourism—are keeping their fingers on the pulse so we do not have things like the Dunlop/Goodyear issue which took place recently, where we had a friction between Jamaica and Trinidad and Tobago. Whatever the problem might have been resulting in one going one way and the other going the next way because of whatever problems may occur, there are many other areas in this whole issue that need to be addressed.

In total, although this is commendable and we support it, I do not feel that there is a problem in letting the Minister have the autonomy to decide which of these people, if they are not working within certain parameters, are to be exempted, and those who are working within better parameters to be added. But I think we need to make sure that the Minister has his fingers on the pulse and that he can, at least, give us some periodic up-dates as to what is really taking place in this common market relationship with the Caribbean.

Finally, I would tend to believe that we have to be very cautious as to the future development of our industrial development. We have to be aiming and targeting where our strengths are so that we can develop the Caribbean market knowing what we are best capable of doing. I do not know if the Minister, in relation to the countries that he has selected, has looked at what their strengths are and what ours are. I commend to the Minister that we do a matrix on the strengths and weaknesses of these islands and do a kind of cross-reference chart so that when we have to address this particular situation in the future, we would be able to address it with meaningful information and we can make the right decisions to our own industrial development.

On this note, I would like to say that we support this particular venture. We hope that everyone else will support it because I believe it is to the benefit of our Caribbean integration. I hope that the notes and the information that I have shared with the Minister could be taken in good stead and be looked at in that way and I hope that we can get some report from him with regard to the effects since 1987 to now. I thank you.

The Minister of External Affairs and International Trade (Sen. Dr. The Hon. Sahadeo Basdeo): Mr. President, I certainly had no intention of rising on what I consider to be a rather routine matter which we discuss in this Senate from year to year, but as the hon. Senator made his contribution, I recall only too well that last week in this Senate other comments of a similar nature were made; to

some extent comments that had a direct nexus to the matter before the House at that time. I thought that I would crave your indulgence on this particular occasion just to make a brief intervention to respond, as the Minister responsible for Caricom matters, to some of the issues as I understand them, that have been raised by my friend opposite.

Mr. President, I do not think that we on this side have to over-emphasize what is now considered a contemporary fact of life in Trinidad and Tobago, *vis-a-vis* our neighbours in the context of the integration movement.

The fundamental reality is that with respect to commitment with the integration movement this country cannot be faulted. We have lived up to expectations, expectations that have been enunciated in Government policy ever since 1986. This cuts across our political policy with respect to the integration movement, our economic and commercial policy as they relate to the integration movement and more particularly, our commitments by way of strengthening the institutional linkages under the various mechanisms in the Chaguaramas accord.

Sen. Amar talked about the need for us to transfer to the country, information relating to trade performance, if I understand him. In other words, we have made certain preferential arrangements that will help to facilitate trade in the area and he wanted, as I understand it, an update as to whether we give more than we get, or reciprocally, whether we get more than we give.

Mr. President, I want to put it into the record that since 1987, the trade performance of Trinidad and Tobago has been one that we on this side of the House, and I think the country at large, should be very proud of. We have done everything in our power, not only to accept and facilitate the functioning of the trade and commercial regime, but by so doing, I think it is well recorded that our inter-regional trade performance has improved considerably when we look in comparative terms at the trade performance prior to that era. That is not something that one must be proud of on its own merit. I think one of the contentious issues in Caricom today—one of which will be discussed at the upcoming meeting at the Council of Ministers in Georgetown next week—is whether or not Trinidad and Tobago has not really monopolized in inter-regional trade.

We have made it very clear that one of the fundamental tenets of commercial relations in the Caribbean will be predicated upon the principle of competitiveness. We have instilled this in our manufacturers. We have made it very clear so that if the trade is in our favour, it is certainly a reflection of the challenges which the

business sector has taken up and to which they have been trying to adjust, notwithstanding the many constraints in the national, regional and international economy.

For the edification of Members, I just managed to have, by chance, in my bag, a reflection of the trade figures very briefly. I may say that in October, 1988, a regime of free inter-regional trade in conformity with the terms of the Chaguaramas Treaty came into effect, and on that basis, even prior to that, in 1987 inter-regional trade increased by eight per cent thus reversing the decline which had begun in 1982 in Trinidad and Tobago.

In 1988, it increased by 14.6 per cent overall and 28.6 per cent in the non-petroleum sectors; in 1989, the recovery continued with total inter-regional imports, increasing by 24.9 per cent and non-petroleum imports increasing by 39 per cent. This latter increase was a reverse of the trend which began in 1986 when trade in petroleum declined by 55 per cent. The decline in 1987 was three per cent and 28 per cent in 1988. During 1989 inter-regional trade constituted 9.2 per cent of total regional trade.

2.05 p.m.

I say this just to make one simple point; that it is a matter which concerned us in 1986/1987 and we are relating to that problem in a very positive and constructive manner and we hope that when the common external tariff is introduced and when all the other mechanisms are put in place, we would be able, not only to see a distortion in terms of trade in favour of Trinidad and Tobago, but in fact there would be much more of a commercial equilibrium, notwithstanding the fact that there are resource constraints in terms of trade and economic performance more against the smaller countries, more particularly the OECS, than Trinidad and Tobago and Jamaica in this particular case.

Sen. Mansoor: Mr. President, does the Government have any plans to take care of the more recent developments in certain Caricom countries which have fallen on rather hard times and which perhaps are unable to reciprocate in terms of relative positions of trade? I do not want to be too specific but it is quite common knowledge that certain of our Caricom partners are unable to meet the financial obligations of trade in accordance with the statistics that you have mentioned. Does the Government intend to do anything to facilitate credit, for example, to those countries?

Dr. Basdeo: Mr. President, at the present time, there are two matters to which I presume my honourable friend happens to be alluding. One is whether or not we are putting in place any sort of facility to seek the interest of Caricom in the spirit of Caricom inter-regional trade co-operation. That matter is at present being considered by Trinidad and Tobago in collaboration with other Caricom countries but in addition, with countries in the circum-Caribbean area—more particularly Mexico and Venezuela. We will have more to say about that in due course.

The second issue to which I think he is also alluding, if I intuitively get him correctly, is the question of trade relations with Jamaica and what kind of facility the Government of Trinidad and Tobago is considering in order to deal with that matter. I may say that I had a meeting with the TTMA of Trinidad and Tobago, which followed a meeting I had with my honourable friend, the Minister of Finance, relative to the cover which EXICO could provide to manufacturers in this country since fiscal and monetary measures taken in Jamaica have negatively affected the ability of importers from that country to pay the bills for goods imported from this country.

We have been working on that matter as well and in due course Cabinet would be considering the need to support the guarantee which we promised to EXICO so that it can provide a wider range of cover over a longer period of time. That matter is also being addressed.

Having answered those questions, there is one final point that I would like to make before I sit. In order to demonstrate our commitment to Caricom trade and by extension the impact which industrialization will have on trade as a whole, Trinidad and Tobago has signed the Caricom Enterprise Regime and the Caricom Industrial Programming scheme. We have ratified both of those protocols which is really testimony of our abiding commitment with the Caricom Treaty under the Chaguaramas accord. So that in all these ways, Trinidad and Tobago is conducting its relation within Caricom positively, constructively and within the meaning of the Chaguaramas agreement. Therefore, I assure my honourable friend opposite that we are not in any way taking the matter of Caricom trade lightly. We have done all we can in the circumstances; we have done everything over the last three years to demonstrate that not only are we the leader in setting the tone for the integration movement, but we have gone beyond by even making concessions to our Caricom partners in order to pull them along. If that becomes necessary even in the circumstances, we are prepared to give them a sympathetic ear. What we will do in the context of the present impasse is yet to be determined

but I can tell you that the Government of Trinidad and Tobago will not sit idly by and see the regional integration movement falter. Thank you very much.

The Minister of Finance (Hon. Selby Wilson): Mr. President, there is very little I can add to the contribution made by my hon. friend and colleague Sen. Basdeo. I would like to caution that there appears to be a temptation to ensure that Trinidad and Tobago obtains the best side of the stick on every occasion that we deal with Caricom. As said on the previous occasion, if we are to integrate and function as a bloc in the Caricom region in this dynamic world environment, then the islands, including Trinidad and Tobago, must be prepared to win and lose some of the battles.

On the particular issue before the Senate, the bill really deals with reciprocal arrangements and it only applies to countries within the Caricom region which have agreed to relieve us of stamp duties or any other duties in addition to the customs duty on goods. So it is a reciprocal arrangement where one country relieves us of tax, then on the other hand, we are agreeing to relieve that country of similar taxes on goods imported into Trinidad and Tobago.

As Sen. Basdeo said, the balance of trade in the Caricom region has been in the favour of Trinidad and Tobago. I do not have the specific details item by item to satisfy the query raised by Sen. Amar in terms of how well we are doing, except to say that when the aggregate of the trade was taken, Trinidad and Tobago enjoyed favourable balance of trade with the rest of the Caricom islands.

In addition, in respect of the Gulf crisis and the likelihood of oil prices rising to astronomical levels, I caution that such a situation would indeed affect regional trade among the Caricom countries principally because the non-oil producing Caricom islands would then have to pay more for their oil imports and their energy imports and, therefore, they would have less resources to support their normal trade patterns with Trinidad and Tobago. Indeed, it will affect the trade relationship between Trinidad and Tobago and the Caricom countries and that might be affected adversely in that in the event that should take place, Trinidad and Tobago would then have to find markets other than Caricom to export their goods and services. Indeed, we might have an obligation to come to the rescue of some of the Caricom countries in order to preserve the trading links which we have established with them and in order to ensure that our manufacturing sector can continue to enjoy some acceptable level of operations so we would not be affected too adversely by that eventuality.

In summing up, I appreciate the comments made by the Senator but I still like to caution that we cannot talk of integration and at the same time look at it as what Trinidad and Tobago is giving up. We will win some and lose some of the battles but in aggregate what we are trying to do is to promote the trading patterns and the integration movement in the region in such a manner that all the islands would benefit and we as a bloc would be able to compete and protect our own interest from the developments of the external world.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in Committee.

2.15 p.m.

Mr. Chairman: Before we proceed I just want to bring to the attention of Senators, especially the new Senators, that they would have seen a photocopied page with amendments which were made to the bill in this House. So the bill before us is the bill as amended by this amendment made in the House on December 28, 1990. Today we have to deal with the new amendments that are coming up.

Clause 1 ordered to stand part of the bill.

Clause 2.

Question proposed, That clause 2 stand part of the bill

Mr. Wilson: I would like to substitute the word "Fourth" occurring in line six for the word "Fifth". Also, substitute the word "Fourth" occurring in the margin with the word "Fifth".

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the bill.

Clause 3.

Question proposed, That clause 3 stand part of the bill.

Mr. Wilson: I suggest the following amendments: Substitute the word "Third" occurring in line 2 for the word "Fourth". Substitute the word "Fourth" occurring in the margin, for the word "Fifth" and substitute the word "Fourth" occurring in the heading in line 3, with the word "Fifth".

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the bill.

Question put and agreed to, That the bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment, read the third time and passed.

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Mr. President, I apologize for the absence of the hon. Attorney General and request a 10-minute suspension of the sitting. I am assured that he is on his way.

Mr. President: The sitting is suspended for approximately 10 minutes, we will resume at 2.30 p.m.

2.20 p.m.: *Sitting suspended.*

2.30 p.m.: *Sitting resumed.*

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Order for second reading read.

The Attorney General (Hon. Anthony Smart): Mr. President, I apologize to you and Members of the Senate for being somewhat late this afternoon. It seems like my timing was just a minute or so off—or even less than that, but I do apologize for the break. Sometimes, you expect Members of the Senate to engage in lengthy debate and they surprise you and they do not and when you are least expecting them to engage in debate, they do. Let us see what happens this time around.

Mr. President, I beg to move that a bill to amend the Supreme Court of Judicature Act, Chap. 4:01 be read a second time.

This bill seeks simply to amend that part of the Supreme Court of Judicature Act which provides specifically for the number of judges that are to be on the establishment of the Supreme Court.

As the law is at present, the Act provides for some 15 judges. Sometime in the course of 1990, the Government took a decision, on the recommendation of the Judiciary, to increase the establishment in the court from 15 to 16. That decision was taken and it has become necessary as a result, to amend the Act to allow for that increase. We have found that it seems unnecessary, whenever a decision is to be taken in the future to increase the establishment, it seems to us and I think it seems to all of us present here in the Senate, that if a way could be found to avoid having to come back to the Parliament to increase the number of judges, that way should be found.

In our respectful submission, this bill seeks exactly to do that. What it does is increase the number of judges from 15 to 16 in order to enable the decision taken by the Government to be put into effect. What it also does is to further amend the law to allow for the President of the Republic, by Order, to increase the number of puisne judges so that if in the future there is need to increase the number of judges, that can be achieved by the President making an Order and so increasing the number of judges. That is in fact what this bill seeks to do and in those circumstances, I beg to move.

Question proposed.

Sen. Gerald Furness-Smith: Mr. President, I had some misgivings about this bill in respect of clause 2(b) whereby we are to give the President, by Order, the right to increase the number of judges. Now that is a very usual device to prevent the Government having to come back every few years or months to Parliament. Normally, I would have no objection to it, but we are dealing here with the judiciary which is a very important part of our Constitution and elaborate steps are taken in our Constitution to keep the judiciary entirely free from governmental, political interference of any kind at all. When the Act says the President, this means the President, on the advice of the Cabinet. So the Government of the day would have the right at anytime to increase the number of judges.

Now, up until now under any of the Governments we have had, I would have no worry about that at all; there has never been any suggestion at all, as far as I am aware, of the Governments we have had trying to interfere with the judiciary. That principle I think is well understood and has been respected. But, it could be suggested that the Government—and I am not speaking of this Government, some Government in the future which may like to adopt different standards—might think to themselves, well we do not like the judges, we cannot find any judge amongst our present judges who is suitable for our purposes to take certain cases, therefore

we will increase the number of judges and put one or two people there who suit us. Now I am not suggesting for a moment that this Government, or indeed the last Government would think of doing such a thing, but our Constitution and our laws have been drafted not for this kind of Government, they have been carefully drafted to protect us in case a different kind of person gets into power at some stage.

Some kind of Saddam Hussein, and if that situation—God forbid—ever arose, it is little things which they could exploit, little crevices in the Constitution, to get their way. Now, I know it may seem to everybody that this is a rather obscure fine point, nevertheless, I do not think we should do this. All it is asking to do is to increase the number of judges. As it stands at the moment, we know that they are catching hell to find a judge to appoint, let alone appointing extra people but we do not know what the future may hold.

I am submitting that this proposed amendment is wrong in principle and I ask the honourable Attorney General to rethink it. If from time to time we need more judges, I suggest that we do it the full way and come back to Parliament. Thank you.

Sen. Wade Mark: Mr. President, the honourable Attorney General indicated that the present amendment which we have before us is very simple and very straightforward and he would probably not anticipate in any serious debate on it. We on this side, however, want to deal with some points that were not even mentioned by the hon. Attorney General. We would probably have to highlight some of these points during this presentation.

One would assume that the purpose of amendment before us is to improve the efficiency of justice in Trinidad and Tobago. One would also assume that the administration of justice is to be improved in that process and of course the backlog of cases would be reduced as a result of the proposed amendment.

There are some realities that must be faced. Whilst we have not been told exactly what is taking place in the area of justice in Trinidad and Tobago, I would dare say, that justice and the administration of justice in the country are in some degree of shambles. It seems in the process of seeking to increase the number of judges from 15 to 16, we would get some degree of efficiency. We have moved

from a process of crisis to chaos in the administration of justice in Trinidad and Tobago.

2.40 p.m.

It is quite unfortunate that the hon. Attorney General would attempt to simply ignore what is taking place in that particular arena today. In the *Express* of Friday, January 4, there was a bold headline entitled "Justice Shut Down In Trinidad and Tobago" and it has been shut down virtually up to this time because of certain industrial relations problems that exist at the level of the Attorney General's Department. We are all aware of the problems involved in that particular exercise. We cannot be talking about justice because I am assuming that the increasing of judges from 15 to 16 would contribute to the process and a more efficient administration of justice in Trinidad and Tobago. I am saying that we have some conditions that are bordering on the abominable, in the system of justice in Trinidad and Tobago.

Again, in the *Trinidad Guardian* of Friday, January 4, "South lawyers give Government January 15 deadline". That is the headline. What was this deadline about? It was about conditions at the Supreme Court at San Fernando. We cannot separate the issue of increasing the number of judges from 15 to 16 without focussing on the conditions under which those very judges have to operate and how justice is administered in the process. There appears to be a lot of confusion in that area because that San Fernando Supreme Court building is at a standstill at this time. I cannot tell you if the lawyers have carried out their threat when they provided a deadline of January 15.

The conditions of our courts today, whether it is the Magistrate's Court, whether it has to do with the Industrial Court or the High Court, in many respects, are very poor. Apart from the fact that working conditions are poor, you have a situation where library facilities are inadequate. If we have to continue to attract persons of high calibre and quality to the law benches to become high court judges, we have to focus on the issue of remuneration. It must be sufficiently attractive.

What is happening is that you have a situation where state attorneys have downed tools. They are operating from information within but they are not coming without. So they are not appearing in the high court of the land. Maybe for emergency cases but they have not been attending the high court. Now it means to say that when we are talking about justice in Trinidad and Tobago we have of necessity to focus on improving the conditions of those judges and magistrates.

It is a fact that many magistrates have resigned. One, I understand, is leaving to go to the United States of America shortly, if she has not gone as yet. What is very sad about this whole episode, however, is that while there appears to be some difficulty in meeting the allowances and increases for state attorneys, we see where private practitioners seem to be going from rags to riches. This is justice Trinidad and Tobago style. So the attorneys cannot get an increase and they are like a political football being kicked from one foot, but you have private attorneys reaping millions of dollars. Now this is extremely worrying but it is taking place in Trinidad and Tobago today.

How can we talk about justice in Trinidad and Tobago when you have prisoners in jail awaiting appeals, people on death row awaiting appeals that never appear to come up, because of the slow process of justice in Trinidad and Tobago.

One of the points I would like to emphasize here today, has to do with the Industrial Court judges, because the Industrial Court is a very important institution in Trinidad and Tobago. The Government is fiddling while justice burns in the country. If we are talking about economic stability and growth, we have to emphasize the importance of ensuring that there is adequate and necessary conditions at the Industrial Court and that the judges are adequately compensated.

Provisions for an Industrial Court were established since 1921, although the Industrial Court was established in 1965 in Trinidad and Tobago. It seems that the Government of Trinidad and Tobago has virtually forgotten the Industrial Court. We are talking about justice and I want to quote—because somehow there appears to be some lawlessness taking place in the land, and we have to rectify this thing—from the Industrial Court Act Part 1 section 4, to emphasize a point which I am going to develop:

- “(1) For purposes of this Act, there is hereby established an Industrial Court which shall be a superior court of record and shall have in addition to the jurisdiction and powers conferred on it by this Act all the powers inherent in such a court.
- (2) The Court shall have an official seal which shall be judicially noticed in all courts.
- (3) The Court shall consist of the following members:
 - (a) a President of the Court who shall be—

- (i) a Judge of the Supreme Court of Judicature designated, with his consent, by the President of Trinidad and Tobago after consultation with the Chief Justice; or
- (ii) a person who has the qualification...to be appointed a Judge of the Supreme Court of Judicature and is appointed by the President of Trinidad and Tobago after consultation with the Chief Justice."

Now the Industrial Court is equivalent to a high court of justice according to the Act.

Dr. Deosaran: I rise here on a point of order, not so much to object but for my own guidance, because I too, would like to say a few words. Could this debate contain such strong reference to the Industrial Court? On that basis if the answer is no, I think I would like your ruling on this.

Mr. President: I am listening to the Member very closely. He is dealing with the general terms of administration of justice, do not mind reference to the Industrial Court. If he is going to start at this stage to go into the details, notwithstanding his concerns for industrial relations, I will have to remind him that the Industrial Court is under the Industrial Relations Act.

We are dealing with an amendment to the Supreme Court of Judicature Act. They are two different Acts, but where you are dealing with the general sort of administration of justice and so on, you can touch on that generally. So I hope that you will be careful.

Sen. Mark: We are talking about justice and the administration of justice. I am saying that the Industrial Court is a superior court of record. The people who are in charge of the court like the President and the other judges, in particular the President of the court, is equivalent in status to a high court judge. Maybe it is an oversight on the part of the Government but that needs to be addressed.

2.55 p.m.

A judge in the High Court has a diplomatic passport. He has a Priority Bus Route pass. He has a tax-free salary. The President of the Industrial Court, who is equivalent to a High Court judge, does not enjoy these privileges.

Sen. Hosein: Mr. President, may I inquire of my good friend who are the people who appoint the judges to the High Court, and the persons who appoint those to the Industrial Court? Also, where did he get this view that the term

"superior court of record" is equivalent to "High Court"? It is rather strange to me, Sir, especially for someone who has been in practice for some time.

Sen. Mark: Mr. President, I am trying to advance a viewpoint at this time in order to show that according to the records and according to the Act, the President of the Industrial Court is equivalent in status to a High Court judge.

I am saying that from the information I have, a High Court judge's salary is tax-free, whereas the Industrial Court judge—that is the President of the Industrial Court—his salary is taxable.

Now, the point I am making Mr. President is that if you are talking about justice in Trinidad and Tobago, we have to talk about justice for all. I am saying that if for some strange reason the judges are not happy at the level of the Industrial Court where, for instance, a High Court judge receives \$9,900 a month, and the President of the Industrial Court receives the same amount, when he is taxed, he takes home \$6,600, and he is equivalent in status to a High Court judge.

Now, what I am saying is that we need to get some clarification on this matter, because if it is that the judges are not satisfied at the level of the Industrial Court, you would find for instance, that the whole process of justice being administered in relation to handing down judgments, probably being delayed.

Therefore, I would like to get some clarification from the Hon. Attorney General in this matter as we proceed in the debate. It is very important because, as I maintain, the Industrial Court is a very important institution in Trinidad and Tobago. Therefore, if you are talking about justice, we have to focus on how it is administered in that particular arena.

It is quite unfortunate, Mr. President, that the Hon. Attorney General did not provide us with some information on, for instance, the reason for increasing the number of judges from 15 to 16. I am assuming again that it has to do with improving the efficiency of justice in the country. We do not know. We have not heard from the Attorney General, for instance. What are the facts?

In other words, we have thousands and thousands of cases just waiting to be heard. To what extent would increasing the number of judges from 15 to 16 help us out? How is it going to assist? This honourable House is not a rubber stamp. We are not rubber stamping anything for the Government. We need to get facts. We need to get statistics. We need to get information on an important matter like this so that we can seek justification. Why not two? Why not ten? Why one? The

Hon. Attorney General is very weak in that department. He should have given us some information on that question.

We are talking about justice in this country. We were treated recently with what I call a propaganda sheet from the Government. I do not know how it appeared on my desk, but it appeared. *[Interruption]* I have to read it. I read everything. The point about it is that very little is referred to in this document on the Judiciary, on justice. Well, in fact the court is not even mentioned apart from—I would not even refer to that document again, Mr. President.

If we are serious about justice in this country, these are matters that must be given attention and must be given some degree of priority. The whole Government is in crisis. We do not know who is mad, fully mad, half mad. We do not know. There is crisis, indeed, in the whole judicial system in the country, so the whole economy of the country is experiencing difficulty. To add fuel to fire, we hear about people who are psychologically unstable and need psychiatric help and treatment. I do not know which one is on the hit list, if Hon. Rambachan is next, I do not know.

If we are talking about justice and the administration of justice, we would like to recommend a few points for consideration. We would like the Hon. Attorney General to examine, and not just come here and tell us that they want to increase the number of judges from 15 to 16. We believe that you need to improve the existing structures and institutions and you need to bring new legislation to the Parliament, to improve the institutions and structures as well, so you are operating on two fronts at the same time. They say that we criticize, however, we advance recommendations at the same time.

Decentralization, Mr. President: I believe that if we are talking about justice in this country, we need to look at the issue of decentralization. Populated centres in this country should at least have a High Court. Mayaro, Point Fortin where the honourable Minister of Finance is from; Arima. You must give consideration to these matters. Somebody has to leave Cedros to go to San Fernando, and to Port-of-Spain. We need to give consideration to these matters of decentralization so that in populated centres we can have the development of high courts, not on a large-scale basis, but you begin to examine it to see how justice could be administered efficiently.

People have to pay money to travel. So how are you going to administer justice in a country where you have over 100,000 people unemployed, and most of

them are involved in crime in order to live? As you know, when you are hungry you get very angry and you commit all sorts of crimes.

We need to look at the question of dividing, for instance, the magistrate's court as well. Why is it, for instance, that we cannot have a magistrate's court in Diego Martina—populated area again—or in Belmont?

I am trying to provide the Government with some vision and some imagination in terms of justice in Trinidad and Tobago.

3.05 p.m.

Hon. Senator: Put it in your manifesto.

Sen. Mark: Mr. President, I should like to suggest, as well, that if we are to improve the course of justice in Trinidad and Tobago, the hon. Attorney General is well advised to get some information on the situation. Maybe he is not in a position to take action but he can investigate why it is the President of the Industrial Court is underpaid; why he is not enjoying the same kind of privileges as the High Court judges; why it is his salary is taxed and a High Court judge's salary is not taxed, and what impact that is having on the administration of justice for workers in the country.

The Government could develop and do things if it wants to. A court to deal with the July 27 uprising was established at Chaguaramas in a few weeks. The Government must look favourably at establishing the courts I have mentioned in other parts of the country.

We have to also examine—and I want the hon. Attorney General to listen to this point carefully—the issue of retirement of judges in the High Court. Why, for instance, under section 136 (1) of the Constitution, judges are to vacate their offices at the age of 65 years? That is the period of richness, great experience. Why do we have to retire our judges at 65 years of age? We need to examine that. We need to give that some attention because I understand that in England and America there are judges at the age of 70 and 75 years on the Benches. I am not saying that you wait until people get senile, because many of us would become like that at some time. The Government of Trinidad and Tobago at this time is moving from senility to death. That is a dying regime in the country.

Mr. President, we need to restructure the Judiciary in the country. The Attorney General could take this point into account. There ought to be the establishment of new courts, like a small-claims court where citizens can do

matters without lawyers. You can look at that. That is improving the efficiency of justice. You can also establish a people's court. Why not establish, for instance, county courts, focussing on family matters and petty civil issues? Subsequent to this presentation, we have the Domestic Violence Bill coming up on which there will be a lot of discussion.

The Attorney General said that the reason he was late today is that some debates that he believes would take long are very short and some that he feels would be short, turn out to be very long. Well, I am very long today because the matter that we are dealing with is very important to the country as a whole. I believe that it is necessary for some degree of action to be taken to assist in the speeding up of justice in the country. When you have your state attorneys on strike or they have taken some form of industrial protest, you have to take action on that matter. Maybe they can take a part of the \$1 million that they are offering to their Deputy Political Leader and share with the state attorneys.

Sen. Hosein: Mr. President, I really want to know from my good friend where he got that information. Perhaps he can give us some details about it. I am really interested because, in that case, I would be applying for state briefs, as well.

Sen. Mark: That was in the *Trinidad Express*—\$1 million brief. Nobody denied it. Maybe the Attorney General did at another place but—

Mr. Smart: Why are you misleading the Senate?

Sen. Mark: I am not misleading the Senate.

Mr. President, while there is need to improve and introduce new structures and systems to aid the administration of justice, the whole question of the independence of the Judiciary must be looked at. I agree with Sen. Furness-Smith that we have to be very careful. We live in a very small country where to operate at times you have to grease people's hands. We have a lot of corruption here, and nobody could deny it.

What I am saying is that if we have to safeguard the independence of the judiciary in our country we must do everything in our power to ensure that the judges, the magistrates, the Industrial Court judges of our country, are given the kind of condition, remuneration and given the kind of protection and safeguard to ensure that nobody cannot tell them at a cocktail party to do this or otherwise to do that. We have to ensure that because that is the institution that is going to protect us from abuses from the executive arm—and we know how the executive can become very abusive.

Dr. Rambachan: What would your party pay judges?

Sen. Mark: You might be on the psychiatric hit list just now. You watch yourself.

Mr. President, in my conclusion, I should like to state that we, on this side, have no problem in supporting the bill to increase the number of judges from 15 to 16. We simply provided some very important comments and remarks for the hon. Attorney General's information.

Sen. H. Charles: Mr. President, I am very grateful to the hon. Senator for giving way. As a trade unionist, are you prepared to ask the public sector workers to forego the demands on the Government for those moneys which the Government owe to them, arising out of the 10 per cent cut? Also, are you prepared to recommend to the Government that those moneys be used to construct new courts and improve existing courts in the country?

3.15 p.m.

Sen. Mark: Clearly, Mr. President, my good friend, hon. Hochoy Charles, does not understand how industrial relations operate in this country. It does not operate like that. It is not a question of giving up something or asking to give up something; that is out of the question. This Government is responsible for violating collective bargaining in this country. He should be almost ashamed to speak here. They violated the principle of collective bargaining in this country. In fact, there is a matter right now before the ILO to deal with violation. We have no problem with negotiating if you wish to negotiate. We are a very responsible trade union in this country.

I conclude by indicating that the Attorney General—if he could kindly, in winding up—give this honourable House an appreciation of the real situation in our country as it relates to the facts. We would like to know, for instance, what is the backlog at the present time. At the end of December, 1990, what is the backlog of cases like? Could he justify to this House why the increase is only one and not two or three judges? Would one additional judge assist in alleviating the backlog, or would one assist in bringing about more efficiency in the administration of justice in the country?

As I indicated as well, we have absolutely no problem in giving support to the bill before us because wherever justice could be speeded-up, wherever we can have more efficiency in the administration of justice, we are in support of that,

because there is too much injustice taking place in this country which many people tend to overlook and dismiss.

I hope that in responding the Hon. Attorney General would deal with some of the issues raised during my presentation. Thank you very much, Mr. President.

Sen. Dr. Ramesh Deosaran: Mr. President, first of all I commend the hon. Attorney General because in a very short space of time he has brought forward certain concrete measures to enhance the work of our Judiciary. I am also aware that on its own behalf the Judiciary is pressing its own claims, perhaps quietly, and I am happy to see some results emanating from the Attorney General. I congratulate him because I know around this time he has quite a number of other things to look after.

Mr. President, I have a few comments to make on the whole question of independence of the Judiciary in relation to this request to increase the number of judges. First, Sen. Furness-Smith raised the issue which will be part of my contribution, but because of the way it was raised, I think I would like clarification. The concern which he expressed about the Executive—in some small, inconspicuous way perhaps—manipulating the selection or election of a judge unto the judicial bench. I do so with great respect to Sen. Furness-Smith. It is not always that I have the opportunity to, especially in matters relating to law. I do so with some caution all the same. Is he saying that the Cabinet will recommend an increase in the number? Or is he, in addition to that, saying that the Cabinet has a direct role to play in appointing a particular person? I do not know if I can give him a chance to clarify.

Sen. Furness-Smith: The Senator's point is very well taken. All I was saying was, that the Cabinet should not have a role in determining the number of judges. The appointment of judges is vested by the Constitution in the Judicial and Legal Service Commission, which I agree has certain in-built protections.

Dr. Deosaran: That has been my view, so I will not accuse the Cabinet of having its powers over-extended in this regard.

This bill is important, however, not only for increasing the number of judges, but in the issue of diminishing the role of Parliament in matters of this kind. I have great reservations—perhaps until I hear the Attorney General make some other explanation, apart from the administrative convenience—as to why this role of Parliament should be so diminished.

In fact, I am a little disturbed because I remember that three years ago there was a question raised about the number of cases outstanding in the Civil Courts, Criminal Courts, High Courts and in the Appeal Court. The figures produced by the then Attorney General, I think it is the same Attorney General, were quite astounding on the face of it. Of course, it is not through his fault, he was merely conveying the data gathered through the registry and so on. Those figures reached international circles, and it did reflect badly, not only on the Judiciary but on the country as a whole, in terms of how we respond to complaints be they civil or criminal. Of course, an indirect implication is business investment—how can they get their complaints heard through this system?

I raise this point, Mr. President, because those figures, I believe, should have given the Government and, in particular, the Attorney General, a vantage point on which to come here and say: "Well, in the last three years or so, the number of outstanding cases has diminished or perhaps has increased by such and such amount." I believe this is the issue that Sen. Mark, perhaps in a more vociferous way than I am raising, has made mention. But for my own sake—and I am personally disappointed because I was the one who asked the question and I was always waiting to see whether, after three years or before the five-year term of this Government ends—I am not saying whether they would not be returned to power or not, I am speaking of their current term of office—I believe another evaluation should be made for us to look at the performance of the Judiciary in this respect.

Of course, I concede a quantitative measure is not the only measure of judicial performance, but there are other qualitative matters that surround. But at least, here you have these figures already stored somewhere. If you are entering into the computer age, certainly, you should have a cumulative manner of getting the figures into the system to be pulled out and made mention of in a debate of this kind.

In this sense I am a bit disappointed that there is no reference to those figures especially when you are asking the taxpayers for an additional amount for an extra judge. Because that is the context in which, I believe, Sen. Mark's enquiry is relevant. Why not two more judges? Why not three more? But, of course, given the nature of the bill, and the possible transference of the power to the President, we will not have a debate of this kind. So, it is for this latter reason that I have reservations about Parliament surrendering that power of discussion on such a matter. This, for all we know, might be our very last debate on a matter of this kind.

3.25 p.m.

The question of the independence of the Judiciary seems to be puzzling many people because sometimes you feel you ought not to say anything about the Judiciary. My own belief and from my own observation non-interference in the Judiciary largely pertains to political interference—interference by the executive. The Judiciary is already dependent on the executive for its budgetary allocations and its own infrastructure. Independence of the Judiciary must be taken in a very practical way. We are speaking mainly against political interference.

I am not as secure as Sen. Furness-Smith in terms of how Government deals with the Judiciary. In the 1970s I believe there was a loud public debate over the appointment of a chief justice and such complaints were raised by the outgoing chief justice himself in a public debate. So the question of how large the space is between the executive and appointments to the bench, I believe one would still want to maintain some vigilance over that. That is why I would like to see Parliament retain its present role over such matters.

If you say the Judiciary should be independent, then the parallel question arises: How is the Judiciary accountable to the people of this country? It is true it has independence. One way in which we try to make them accountable, an indirect device, was to use the figures we have so that we can have at least a minimal measure of accountability. This is an important question. Nobody wants to interfere with a judge in terms of how many years he gives an accused person or how he deliberates on a judgement. But surely when the public is frustrated with the court, they vent this frustration on the executive, not the Judiciary. The people do not have the intuition or the sophistication to differentiate. All they know is those are government institutions. However you want to deal with that—perhaps it is a matter for the Government—but from my point of view, the question of accountability cannot apply to everybody else with the Judiciary as a noble exception. What is this independence all about? Is it a luxury? Or is it an anomaly in our democracy? Or is it an overstated necessity? I think the whole question of the independence of the Judiciary needs to be reviewed because it seems to be stuffed with a lot of old-fashioned notions except, however, the question of political interference. The question of how the Hall of Justice has helped—millions of dollars have gone into that building, has that helped the attainment of justice?

These are the kinds of questions, I believe, any responsible Government, especially if it is politically sensitive, if not politically sensible, ought to examine and take all opportunities to present to the public, through Parliament, the

performance of the Judiciary. This is not interference. It is interference when you make comments on how a case ought or ought not to be decided and matters closely related to that.

I submit that the notion of the independence of the Judiciary, if it means no accountability at all, is an old-fashioned notion; an anomaly in this period of our democracy.

Everybody is accountable to the law or does it mean that the judiciary is a law unto itself? It is an anomaly and it is not disrespectful to ask for some mechanism to have the judiciary account to the public. That is why I am a bit disappointed because there was an opportunity here to compare the extent of the case backlog as part of some quantitative consideration with what those figures three years ago were like because it is the executive that would pay for it. That is the strongest argument that one could make.

What Sen. Mark spoke about really—and I hope I am not disappointing him but that is an old story in itself—night court, small-claims court, county judges, rotation judges, we have gone through these motions with due respect to Sen. Mark. I am glad he is reminding the Senate because these are about the only opportunities we have to make responsible comments on the judiciary. We have said it many times and perhaps if we get the opportunity we will continue to say so because I am sure that adding one judge would make little or no difference, not with the complexities of a modern trial—the adjournments, the whole trial paraphernalia which I really would not get into right now. One more judge would not make much difference. It cannot, because when I reflect on the monumental case backlog that we had, I really do not see how increasing the number of judges from 15 to 16 can make any significant dent in that problem.

We are not peculiar to that. The whole Caribbean is facing serious problems in the administration of justice because trials have grown quite complex. The technicalities abound to such an extent that the substantive issue of complaint before the court sometimes never gets heard for years and years. All you have is a myriad, a conglomeration of technicalities and the poor accused sits there and does not know if he is coming or going, and he wants to know: Is this trial mine? He is lost. A trial has taken on a complexity that is overwhelming and adding one judge will not strongly further the cause of justice. How much can you go into the trial itself to tailor it in such a way, with balance and fairness, to expedite the process?

This is the biggest challenge for Government. One attempt was made in having skeletal arguments. That is the direction, but how far can you go without having your own profession raise an uproar about violating this right and that right—those are historical considerations.

One suggestion I have made—and this will be in addition to the concrete additions of one judge—is to have a joint working group between the judiciary and the executive. Not an interfering group but a group that can hear and expedite discussions and resolutions of problems affecting the judiciary. So we will not have to wait for long years for the judiciary to make its opening of the law term address with all these traditional litany of problems in public. There should be some pre-emptive measures, what you call proactive measures during the year where consideration can be given to such problems by an active, established or institutionalized joint working group between the judiciary and the executive.

I agree that if we want quality service from the judiciary, the police, even from state attorneys, we ought to pay because really those are servants of our democracy and democracy is not a cheap system to operate. But if we pay for those services, we expect accountability and I believe the time is quite near, if not here already, for us to have a greater measure of accountability from the judiciary. Thank you very much.

3.35 p.m.

Sen. Robert Amar: Mr. President, I would like to say quite clearly that I feel that the matters that have been brought to the Attorney General's attention in relation to Sen. Wade Mark, need not be put aside as just idle talk because I feel coming out of him, has been a lot of substantially good information. I feel also, there has been a compatibility of information or of suggestion in regards to appeals by Dr. Deosaran and also Sen. Wade Mark. I must say that there were suggestions but maybe the Government was not listening and we cannot be held responsible if you switch your ears off.

We look at the situation quite clearly with regards to this bill and I agree that increasing the judges from 15 to 16, cannot have any measure of definite success, if the Attorney General does not, in fact, provide us with his plan of action, relative to how he intends to address this whole preamble of the problem in the judiciary. I have been advised quite recently here, that originally the judges were six and then I think it went to 12, then to 15 some time in 1981—maybe the dates are wrong—and it is nine years now and we are carrying it from 15 to 16. If the numbers are

more or less right or the time frame is right, I would tend to agree with Sen. Furness-Smith that in view of the fact of the infrequency of this particular need to increase the judges, we should not give the President the total power to increase the number at his will, and that these things should return to the Parliament for debate. It should return with clear-cut information from the Attorney General as to what is existing in the particular judicial position. For instance, how many cases are outstanding? Sen. Dr. Deosaran stated, once we could get this kind of information, one can understand the need to increase the judges from 15 to 16, or from 16 to 20, because we would be seeing something practical that we will be relating to and we can address this particular problem.

When Sen. Mark spoke, he touched on matters such as the introduction of county courts. I am wondering really and truly whether the Attorney General has proper analysis of these cases because I hope he can understand only too well, that if he had an analysis of the cases—and I always continue to go into this analytic approach because I feel it is important and it can simplify and solve the problems—we could help to restructure or address in our police force, because it would clearly give indications where these crimes are committed. If the Attorney General had an analysis, for instance, and he saw that 50 per cent of the crimes this month happened in Arima; that there were no crimes happening in St. James, maybe the St. James Police Station could have a reduced number, because that is an internal national security arrangement. Instead of having 100 police in St. James, maybe there could only have 30 and increase the level at Arima, so that this crime problem in Arima could be rectified. I think that an analysis is important and it will help us to solve some of our problems. I am hoping that by increasing the judges from 15 to 16, and at the same time, keeping this analysis, we will be able to identify these problems and try to rectify them.

I wonder if the Attorney General really has his fingers on the pulse, relative to postponements and the types of cases which are postponed. Has anybody analytically looked at this? Which cases get the highest level of postponement? Is it the speeding cases? Is it the police who cause it? What is his plan of action in order to make sure that those simple matters when they go to court, can be rectified quite easily? I am sure there is a way in which it can be done.

With regard to the length of time it takes for cases to be handled and the types of cases which are called, I was hoping that there would be some way in which they can be analyzed, so that some kind of graph could be designed and we can have an idea of what happens in this whole judicial system. I feel there is a close

relation of the level of crime to the length of time in which the cases are to be handle and the postponements. I am hoping that by including the 16 judges, you would really be able to have a proper game plan or a proper diagnostic system. I quite honestly feel that one of the big problems is that although you know that the judicial sytem is inefficient, you do not have the facts at your fingertips in order to formulate a preventative programme to help improve that system. I am appealing to you to please adopt an analytic approach to these things, because although you may think that it does not make sense, I feel if you look at them, they would paint you a picture and you would be able to address these problems in a very practical way and increase the efficiency of the judicial system. At the same time it can provide a very serious level of national security because you would be able to identify where the problems are occurring and you would be able to know how to disseminate your police force or at which time you should put which people where. I feel that those things need to be addressed and I, like the other speakers before me, have no problem of increasing the number of judges from 15 to 16.

However, I have a problem with clause 2 (b) as Sen. Furness-Smith stated. I would not agree with (b) and I hope, in view of the fact that this subject is not something that crops up every year, and once the information comes forward well documented, we will be able to make the decision and the debate would just be automatic. There will be no need for a long debate. We would be able to vote in the affirmative to increase it from 16 to 20 or whatever number. I tend to believe this subclause is something which should be taken out of the bill and work out an arrangement so that these matters would be brought before Parliament until we get the judicial system working efficiently. Who knows, we may not need to increase it any further. I feel the problem is analysis and the Attorney General getting down to some serious work, relative to understanding where this department now stands and what course of action has to be taken.

Finally, I will say to you that in the business environment—and I am sure it applies to the legal environment—20 per cent of these cases would give you 80 per cent of your headaches. I feel if you go through an analytic process you will find out specifically, which of these cases are really giving you the mind-boggling situation. Structure and set up a system whereby the majority of these cases can be handled and taken off the record very quickly, thus providing efficiency in the judiciary. I can agree to the bill but I cannot agree with (b). I do not know, Mr. President, when the time comes for taking a vote on this how I would address that because I am in favour of subclause (a) and not in favour of (b). I would not like the press to misrepresent me. I do not know if you could guide me on that

particular aspect. Basically, I am in favour of the bill. I think the information that I have put forward, if it is correct, there will be no problem on the Government's part to exclude (b) from the bill. I am saying, analysis is important in this crime situation and if we do the analysis, we would be able to address these problems.

I mentioned some time ago of the TQC process which I am prepared to make available to the Minister so that he can see how it works because there is a data line that can be measured. You can see one thing against the other. I hope you can understand the point I made relative to Arima, Sangre Grande and so forth with respect to crime. If you can identify that the crimes that are committed for the month came from the area of, say, Woodbrook, and your highest crime rate was in Woodbrook, I believe that you can then address your forces to handle Woodbrook in a more pronounced way, because I do not think that the levels of crime are the same in every single area. I feel that an analytic approach is the way to deal with the matter. I am prepared to sit and give the Minister my views on it in an open, private discussion. Thank you.

3.45 p.m.

Sen. Fyard Hosein: I had not really intended to say very much or anything at all, in respect of this debate. I thought as a reasonable person and Senator, that this bill, being the kind of bill it is, would attract serious discussion and exchange of views by all the parties concerned; we would resolve ourselves into committee and there would be an argument as to whether subclause (b), which Sen. Furness-Smith, Sen. Deosaran and the Opposition take objection to, would have been resolved at that stage.

After listening to my good friend who belongs to the socialist sector of the economy of Trinidad and Tobago, and who always inspires me when I come to Parliament, not by way of persuading me into his school of thought but rather, persuaded me to get up, in many instances, and refute the very wrong ideological direction in which he and his party have embarked, I have decided to get up and make a contribution to this debate.

Allow me, first of all, to cure an omission which I think all of us are committed to in this House, and that is to congratulate the young and affable Sen. Trevor Belmosa who has joined us today. I congratulate him on behalf of all of us in this House. I have heard him in Diego Martin. He is a young person and I am sure he is very honourable but I want to tell him that he is not the only one in this House and he should not feel in anyway embarrassed as well because Sen. Mark joins him

as being two of the most distinguished people who have lost their deposits in elections in the last five years, who have joined this Parliament and he has company in the person of Sen. Mark.

I hope that when he gets up to make his contributions, perhaps he does not follow Sen. Mark in that respect, in the sense that he does not follow his ideological direction. Perhaps I will advise him to draw his inspiration from Sen. Amar who, I think, is more middle of the road and perhaps more acceptable and nationalistic in his approach. I congratulate him most sincerely on behalf of all of us.

The other point I want to make is that I really do not think that my Attorney General, who has a very heavy schedule this year, should be allowed or waste his time to respond to the many bits of innocuous and irrelevancies that Sen. Mark embarked on. I am really going to deal with that issue, and ask my Attorney General when he gets up, to deal purely with the relevant side of this argument and the points raised by Senators Furness-Smith, Deosaran and, to some extent, Sen. Amar. I am going to address most of my comments to Sen. Mark, in respect of what he has said.

You will forgive me but Sen. Mark really inspires me. Listening to him I got the distinct impression that he sounded like some kind of minor functionary in the Ministry of Propaganda in Bhagdad because he kept shouting all kinds of ideological phrases and directions and I think he described the system in which I practice every day as being in crisis, chaos and in shambles. I really wonder if that is the same system in which Senators Furness-Smith, Alexander, Tiwary, the honourable Attorney General and myself, least of all, practise our profession everyday.

I wonder whether Sen. Mark has a brief from the Opposition and his political groupings and I think they extend beyond the Opposition movement, SOPO I understand and these other groups; whether he has a brief at large from these groups to inject a certain amount of fear and disorganization, to propagate all the hate, violence and vitriolic talk and negative feelings to the population because everytime he gets up and talk he engages in this kind of rhetoric and I get the impression that irrelevancies and that kind of discussion are really the serious cancer in the belly of the Opposition party. He goes on for months and months in this kind of mode.

I want to really ask Sen. Mark whether what he has said today is part of his hidden agenda in terms of what I understand is an attempt by his party and by the

forces of communism and Marxism, to bring this country to a halt after the Christmas and Carnival holidays. I get the impression that what is happening in TUTTA now—if you will allow me to deviate temporarily—is really an orchestrated plan by he and some of his colleagues to really utilize teachers; to bring the education system to a standstill and thereafter send their shock troops into the country. I know people like Senators Amar and Moonan must be very concerned about the state of industrial relations in Trinidad and Tobago in the year 1991. Is this part of his hidden agenda in terms of that?

I see the hon. Senator wants to make an intervention. I would allow him, Mr. President. I am very generous with him, especially since we go back a long way.

Sen. Persad: Mr. President, through you, I question the relevance of the Senator's contribution in terms of the Teaching Service and about sending in shock troops. I am at a loss to understand what he is talking about.

Sen. Hosein: I would like to answer that question, Mr. President. I ask the good professor, Doctor, Pundit, Dr. Prakash Persad, with his Bengali accent, to really listen to the contents of Sen. Wade Mark's contribution first before he asks me to deal with irrelevancies because we have had a very open discussion so far on this bill and this discussion is not as a consequence of this side; it is a consequence of the attitude and the approach adopted by Sen. Mark in his contribution, which I enjoyed tremendously. So, when you speak about irrelevancies and about matters which are not pertinent, you must consider the *raison d'etre*, the reason for that, which lies squarely in the speech delivered by Sen. Mark.

Mr. President, allow me to go to another point. It is a point again, which was raised by Sen. Mark, adverted to and in some cases embellished as well. He spoke about the issue concerning the state attorneys. I was under the distinct impression that this matter was debated at length in this Parliament some weeks ago and my good friend, the Hon. Attorney General had gone out of his way to give a long and detailed account of what is, in fact, the position in this matter. It is unfortunate that Sen. Mark chose to raise it again. I see now that the President of the Association of which I am a member, advises the Attorney General who does not have the responsibility at all, to increase the salaries of lawyers by 60 per cent.

Let me state once and for all, that this is a matter for the Salaries Review Commission, a body constituted under the Constitution of Trinidad and Tobago.

This Government is pledged to obey the Constitution; we are pledged to constitutionality. If some PNM Government in the past chose not to follow the

advice of the Salaries Review Commission and flout the Constitution, that is not our way. We are a lawful party that believes in the Constitution and, in fact, follow the advice of the Salaries Review Commission. My Attorney General made that point very clear a couple of weeks ago.

I wonder, is Sen. Mark saying, give increases to the lawyers and all the professional groups and forget about the 22 per cent of this country—20 per cent now—who are unemployed? Is he saying that we should utilize the scarce resources we have in making those persons who already have, get more and to neglect those persons who do not have a job in Trinidad and Tobago today? I am very surprised because that is a very irresponsible position to be adopted by a trade unionist in this country. He must look at the entire picture. He must look at those who are underemployed, unemployed and also persons who may go hungry from time to time and who are not in the trade union movement in this country. He must look at everybody and not confine his attention to persons in the trade union movement, and seek to obtain higher salaries for them.

We recognize our obligations to lawyers as we recognize our obligations to doctors, engineers, sanitation workers, persons who operate at the level of the PTSC and other enterprises, but all of these things have certain procedures which are in place in order to determine the terms and conditions of employment. Those things are in place, having regard to the resources available. One other point comes to mind Mr. President. Sen. Mark particularly talked about paying higher salaries but in not one single instance in this House has the Opposition come up with any kind of concrete plan as to how you have a commensurate increase in terms of the revenues available in order to increase expenditure.

3.55 p.m.

Sen. Mark is the one, I believe, who advocated some time ago, that you must now put your oil prices at \$25 and, therefore, be in a position theoretically to pay higher salaries. You cannot build pies in the sky. The Middle East is a very volatile situation. In fact since the war broke out oil prices have plummeted to \$19/\$20 a barrel, below the targeted level. You cannot build pies in the sky. You cannot go and expect to make a contract to enter into an agreement to pay salaries, in respect of income which just is not there. I urge the Opposition that in every instance they ask for increased expenditure, they must also ask the question: how are we going to get the revenues? Consumption is a consequence of production. In other words, you cannot consume what you do not have. Therefore that is a point which they should bear in mind at all times.

Let me get back to some of the points which my good friend raised. He spoke about the fact that the legal system in this country is in crisis, chaos and in shambles. I want to—*[Interruption]*. I see the Bengalese found the mouse has roared. For the benefit of this Senate, I want to briefly share some of my views, as a practising attorney in the courts, as to how the system has improved in the last seven years. I am not going to pretend to anyone that we have the best system of law and order and the best administrative system, in terms of the administration of law and order in this country, in the entire world.

This country, like many countries in the world, has an overcrowding problem. Why did it arise? It is because the legal system in this country overheated in the 1970s and 1980s, in the same way that the economic system overheated. Because of the proliferation of economic activity during the 1970s and 1980s, the instances of dispute between parties increased. Therefore, the amount of litigation before the courts also increased, as a consequence of which, the legal system at that time, during the 1970s and 1980s, for which we did not accept responsibility, became overheated and could not handle the system. This is not a matter to be partisan about, but I think in the last seven years—and I want you to note there has been a reduction in what has been called, the backlog in the courts of Trinidad and Tobago. That has arisen as a consequence of a number of factors.

First of all, the incidence of litigation in the country as a whole, has decreased. If one were to go to the registry and examine the number of writs filed in the 1970s and 1980s, as against the number of writs filed in the last seven years, one would see a marked reduction. Therefore, the amount of litigation in the courts has also reduced.

The second thing is that there has been a number of measures put in place in the last seven years, not necessarily by this Government alone—although I must add that we have assisted to a large extent—but also by the judiciary itself in terms of ameliorating the conditions there. What are those conditions? There is the provision of skeletal arguments in the courts. That has reduced the time that lawyers and judges spend in the court arguing about particular matters and making submissions.

What is another thing that has been done? The Court of Appeal has two divisions. Those two divisions came about only recently in the last couple of years. They are fast at work. They have reduced, enormously, the amount of criminal appeals before them and matters are heard at a much faster rate at the Court of Appeal than hitherto, because of the fact that there are two divisions.

Another thing that has been done, is I have observed—I do not know whether consciously—that there has been an element of specialization by judges. Although there is no formal civil, criminal and family divisions, judges, because of their peculiar expertise, now handle either criminal, civil or matrimonial law as the case may be. Therefore, they get a certain amount of competence and experience. As a consequence of this specialization, they are able to allow the wheels of justice to turn faster than hitherto. In fact, in some instances I have observed that some judges spend as many as four months in a particular court increasing their knowledge about matters.

Also, from my observation, I have found that more people from the private bar have entered the judiciary in the last couple of years. I am not about to be adversely critical of persons who came to the judiciary either from the private industrial sector or alternatively, from the Attorney General's Department. Persons who are in private practice at the private bar would have acquired a certain amount of expertise in terms of their approach towards the adjudication of matters in terms of their competence, knowledge and in the articulation and ability to determine matters as fast as possible.

In the last year, perhaps, there has been at least five or six people from the private bar who have gone into the High Court to augment the High Court and they are doing a wonderful job. The problem is by no means over but they have improved the quality of the persons who sit on the bench, and those persons who are there, as well, have benefited from them and there has been interaction. If Sen. Alexander, who is also a practising lawyer were here, he would have confirmed that. I know Sen. Tiwary, certainly, and Hon. Smart, would bear that fact out.

The other thing which we did in the face of all this criticism in this country, two years ago we brought to this Parliament a bill which allowed a judge who had reached the mandatory retirement age of 65 to be employed on contract and return to the High Court, not the Court of Appeal where he might have been before, and practise his law. As a consequence of that, we have had—I do not want to call names—a certain Court of Appeal judge who did yeoman service for the last year in the High Court. In fact, there is one matter in which I appeared that lasted 35 days. He listened to it with a tremendous amount of experience and competence and he is about to determine the decision as the case may be. That not only increases the pool of persons who are available to you to sit on the judiciary but it also brings a certain amount of experience in terms of interaction as well.

Yet another thing we have done is create the institution of the Master. My good friend, Sen. Amar, who I think has tremendous promise, should put as much distance as possible between himself and Sen. Mark because they really do not walk along the same road. I suggest to him—he spoke about the issue of matters being complex. I think Sen. Deosaran alluded to it as well.

There is an institution in the court called the Masters. The masters deal with preliminary issues on what we in law say the interlocutory proceedings in any matter. This Attorney General has increased the number of masters available to the courts who deal with these matters. These masters have gone about their work in a very competent kind of way, very quietly and slowly. This Attorney General is not one given to talking very much or boasting or singing his praises.

I think there is an obligation upon me in this Senate, to indicate what the Attorney General has done for the judiciary. In respect of the concept of masters, he has increased the jurisdiction of masters. The masters are quietly going about their work reducing the backlog. Now there are three masters, two in Port-of-Spain and one in San Fernando, in addition to which, only last week a master was promoted to High Court.

The point I want to make is that the masters' pool serve as a kind of nursery from which you can draw judges subsequently down the line. It has worked very, very well in this country. It has reduced the amount of work the judges have to do in respect of innocuous interlocutory applications and it has served as a kind of budding ground for future judges.

What about the magistrate's courts? Chaguanas magistrate's court has been repaired. A magistrate's court is being constructed, I believe, in Arima. I understand the San Fernando High Court is going to commence construction very soon. The reason this did not go on at the pace we would have liked, is not because we dislike anybody or we have an aversion to justice or national security, or the rule of law or the administration of justice. It is as a consequence of the policies adopted by the last Government, where they wasted over \$60 billion—wasted it; they borrowed moneys in excess of \$7 billion and did not spend the moneys in a correct kind of way. So we are saddled with that problem. However, we are improving it. There is the infrastructure in place.

4.05 p.m.

I want to go back to the judiciary, Mr. President, to the magistracy, in particular, and I want to describe a number of features that this Attorney General,

to some extent, has contributed to in order to improve the efficiency of the magistracy. What has he done? He has increased the jurisdiction of the magistrates. In other words, I think before there was a jurisdiction in respect of \$5,000 or something of the sort. I think legislation was brought and the jurisdiction was increased. That is number one.

The second thing is that because of the naturally eroding problems in the judiciary—people resign or retire, and that kind of thing. We now have in this country a very young judiciary. In fact, persons who—and I am not that old, Mr. President—have been to law school many years after me sit as magistrates. They are competent. They discharge their responsibilities in a serious manner. They love the country. They have a feel for law and order. They are creative in terms of their jurisprudence. I admire the way they have been discharging their responsibilities hitherto.

We felt in order to qualify to be a magistrate one must be somewhere in the region of—I was going to say somewhere in more than 50 or 60 as the case may be. But what we have now are people in their twenties and thirties who are manning the magistrate's courts and who are doing an excellent job in terms of the administration of justice. The buildings are being constantly improved.

Nation building is not a function of being instant. It is a function of working bit by bit, putting measures in place, analyzing the problem, as Sen. Amar described, zeroing into the problem, finding people. It is not like Nescafe, you pour some water and you improve it. That kind of thing is not going to work anymore. You cannot buy your way out of everything as the PNM did. What you have to do is, in a very incremental kind of way—I like that word, Mr. President, "incremental"—is to improve the quality of the administration of justice by doing that.

Now, Mr. President, I really do not intend to take up too much time in this honourable House, but it is a pity Sen. Mark—if I may just make two other points—and further, in addition to which this Government recognizes the fact that this country requires more senior counsel because the number of senior counsel available to do work in the law had been decreased. We appointed a number of persons to the senior bar—I think Sen. Furness-Smith himself. A number of other people were appointed as seniors, and they have increased the pool of persons of legal competence and given them what is rightly due to them.

It is very unfortunate, Sen. Mark spoke about greasing people's hands, and that kind of thing, and things are done in Trinidad in terms of greasing things. It

reminds me of Mr. Cartey's statement, "all ah we tief". I think that "greasing people's hands" with some kind of more than just subtle innuendo about judges taking bribes in some instance and "all ah we tief" are two sides of the same coin. They are conterminous and they are similar in every respect. It is unfortunate that Sen. Mark embarked on that kind of thing.

Sen. Mark: Mr. President, this Hon. Senator has been misquoted in the House before, but I think for the record I would like to indicate that I never indicated in this Senate that judges are victims of greased hands. I was making a general statement in relation to our situation in Trinidad and Tobago. I would not like the Hon. Senator to quote me on record as saying something that I did not say.

Sen. Hosein: I am grateful to him. I did not say he said that. I am grateful to him. I used the word "innuendo". In case he did not know, the word "innuendo" is a term which is known in the law of libel in terms of not necessarily saying something in a direct kind of way, but having some kind of implied relationship to what you actually mean through some kind of indirect circuitry.

Sen. Mark did in fact use the words "greased hands" and "judges" almost in the same breath. I am very happy that he cleared it up.

Anyway, Mr. President, it is unfortunate that they use this Parliament as an arena for industrial relations negotiations. This Parliament is about policy. This Parliament is about legislation. The NAR is about all those serious things. We are not here to haggle about the question of whether Industrial Court judges' salaries are taxed and High Court judges' salaries are not taxed.

We being sensitive to the position, and notwithstanding the fact that the country has an unemployment rate of 22 per cent, notwithstanding the fact that there are thousands of things you would like to do, took it upon ourselves, Mr. President, to say, "Look here, judges' salaries must be tax free for the time being until the Salaries Review Commission determines the issue."

Therefore, we took that giant step, understanding at the same time that the resources had to be shared. Because the Industrial Court judges do not have the same kinds of perks and conditions, it is unfortunate that a Senator who practices before the Industrial Court would come to this Parliament and make a case on behalf of the Industrial Court judges, especially by veiled reference to greased hands, and otherwise.

I think that this Parliament must have a lot more class than that. This Parliament must not be an arena, a gayelle for industrial relations negotiations in

respect of judges. This Parliament must be a place where we are open and free and where policies are discussed at a certain kind of level. So I want to take strong objection to that.

There you are, Sir. I would ask that those persons with hidden agendas, those persons who are not in the business of production but are in the business of consumption, those persons who are professional protagonists and antagonists and persons who bear placards day after day look and see what is going on in the country and do not be left behind.

Trinidad and Tobago has gone far ahead, and we are leaders in many, many respects. We intend to keep it like that. We intend to have the proper respect for the rule of law, the administration of justice. We understand that the function of the Judicial and Legal Service Commission is to appoint judges; that is not the function of the Government of Trinidad and Tobago. We also understand that the Salaries Review Commission is charged with the constitutional responsibility of determining the terms and conditions of judges and other judicial personnel and legal personnel. I am qualified to speak because I did work in the Attorney General's department many years ago for 13 months, I may assure Sen. Mark, if I may through you, Mr. President.

I want to assure everyone, Mr. President, that we do not pretend that we have made the system perfect, but we have made the system much, much, much better than what it was when we found it. We did so in a situation where the resources were scarce. We did so because of our strength and our conviction, because of our love for Trinidad and Tobago, and most of all, Mr. President, because we in the National Alliance for Reconstruction, contrary to what they say, we care and we are led by a leader with vision, with hope and who has the destiny and the love for Trinidad and Tobago uppermost in his mind. Thank you very much.

Sen. Dr. Krishna Bahadoorsingh: Mr. President, when I looked at this bill I was firmly of the view that it would not illicit much debate in the Senate this afternoon. As a matter of fact, I thought it was going to be a rather procedural matter, maybe some comments made, and within about 20 or 30 minutes or so we would have gotten through with it. This has not been the case. I believe to a large extent it is because we have new Senators here who have not been here for the last few years, since other opportunities were available in the past to make similar points that were made this afternoon.

Unless I am missing the point or unless many other people this afternoon are missing an essential point, I view this piece of legislation as one step in a series of events which the hon. Attorney General is taking to improve the administration of justice, to improve the judicial system in the country. I believe I am correct on this particular score. This, nevertheless, is the way I view the bill.

Mr. President, as a layman, I can recall several things which the Attorney General has initiated in more recent times to improve the general condition of service of justice in the country. Very recently, we had the situation of the conditions of the judges being enhanced, not the least of which is the fact that they are now enjoying a tax-free remuneration. I feel certain that the Attorney General had a lot to do with this. If not, I would appreciate being corrected.

Mr. President, I would like to indicate that this aspect of the judges receiving a tax-free benefit—and I am not arrogating anything to myself. It was an idea which I mentioned to the Senate in around 1978, not only as a tax-free benefit being accrued to judges only, but on that occasion, around, I was told specifically—and this is in *Hansard*—by the then Senator Mervyn De Souza, that it was not possible at all, and he gave whatever reasons at the time to indicate why my idea was not possible.

Apparently, he was not correct because this Government has seen it fit and made it possible that the judges would enjoy a tax-free benefit.

In addition, Mr. President, we have had a series of new judges added to the Bench. There has been a lot of talk recently as to where we are going to get new people to replenish the Bench. So far as I am aware—and I am not a lawyer—it would appear to me that the new entrances to the Bench are people of great merit and of great worth, and I am speaking as a layman.

To paraphrase an expression, I see no water in that set of brandy. They appear to be substantial, good people. I do not know to what extent one can compliment the Attorney General for having played a role in attracting people of this calibre. I hope I am not out of place in so doing. Nevertheless, I think that he would have played a substantial role in this process. As Sen. Hosein said, he is not a person to speak very much and blow his own trumpet. Nevertheless, one needs to recognize when a good person in the country is doing a good job.

It must be terribly disconcerting, Mr. President, for such a person to sit here and receive a barrage of criticisms when maybe, if the frustration I see in his face may relate to the fact that he may be thinking that he could be in his own private

practice enjoying that status. Nevertheless, I may be just reading something in his face. I am trying to empathize with what sort of feelings would go through a good person's mind when he is trying to do a good job under very trying circumstances.

I am aware that in his own department there are problems. This has been publicized in the newspapers over a long period of time, but I think we must all be aware that many of the problems he is being faced with in his own department are not of his making, and they are not particularly of the making of this administration, but they are problems which have accumulated and have been built up over a long period of time.

I am of the opinion that he is trying to solve these problems in his own department, and I wish him a great deal of luck in so doing. Given the measure of success which he has had over the last few years, I feel quite certain that in a reasonable period, he will get even that problem solved, the problem which has been exacerbated by the lack of funds in the country. One must allocate scarce resources. This is what economics is all about.

I rather like the question that Sen. Hochoy Charles asked as to whether one would reduce further or deny the civil servants their legitimate dues and spend these moneys to improve the judiciary. One has to establish priorities and allocate scarce resources.

Mr. President, only recently the Attorney General brought a bill, again to increase and enhance the efficiency of the judiciary, by making proposals for the mechanical recording of evidence. That is another very important milestone in our legal history, and I spoke on that for a few minutes because I was the victim of an elongated procedure years ago which cost many, many thousands of dollars because we were antiquated; we were back in the eighteenth and nineteenth centuries in terms of a judge having to write every word down. I felt very badly, as a young ex-student after having attended institutions in developed countries, to be confronted with this archaic system. I compliment the Attorney General for having taken whatever it did, whatever it involved to have reached thus far into the twentieth century.

A lot of comment has been made with respect to the fact that this bill relates to the increase by one puisne judge, and people have asked, "Well, what is the significance of having an increase of one?" Well, I do not really know the answer to that, and this is up to the Attorney General to answer. The way I read the bill, it was not just to increase by one judge, but it was to establish a principle; the principle being yes, you will increase by one judge, but then you will have a system

whereby you would not have to come back to Parliament each time you want to have another puisne judge.

4.20 p.m.

I respect Sen. Furness-Smith's point—he is an eminent attorney—but as a layman if there are safeguards in our Constitution with respect to the sort of people who become judges, then I would have no problem in going along with this bill and not have to spend half of a day, which is a full day's work for us, discussing what may appear to be a relatively trivial issue as to whether you increase the number of puisne judges by one, two or three.

Mr. President, I should like to think that any Government in this country ought to have that privilege, provided we have the necessary safeguards with respect to the calibre and quality of people.

The way I view this is that this bill establishes a principle whereby the system that we are referring to could become more efficient. Therefore, if it could be done, by order, it becomes a question of administration which ought to be a procedural matter. So as long as I feel safe that the safeguards exist, contrary to eminent counsel who is on my left, I would go along with the bill.

The longer I live in Trinidad and Tobago—and I plan to live no place else—the more I see that the wheels of change are very slow. It is something which I recognize but it is not something which I accept. I appreciate the word, "incremental" which Sen. Hosein mentioned, in an incremental sort of way, bit by bit, and I have observed what has been happening with respect to the efficiency in the judiciary. I agree with Sen. Hosein. I can see the Attorney General bringing in bills, one by one, as and when he can, as slowly as it may be, characteristic of a developing country, that would gradually improve our system.

Mr. President, I am of the opinion, however, that the job is not complete. It is quite likely that other things may come up in the near future. I should like to congratulate the Attorney General on the hard work that he is putting into these efforts to improve the judiciary and make the system more efficient, and I should like more of us here to encourage him so to do.

Thank you, Mr. President.

Sen. Diana Mahabir-Wyatt: Mr. President, I have no objection to this bill that is before us but, like other Senators, I am wondering why the choice of one

judge rather than two or three, and what are the priorities. How does one decide where one puts this judge that one is agreeing to add to the list?

Sen. Deosaran asked for a breakdown of cases that were outstanding and the case load which will justify the addition of an additional judge. I feel that if one looks at this case load and analyzes it, it would be found that a great number of the cases that are outstanding are of a domestic nature and matters which involve not just domestic violence but other sorts of domestic issues.

Sen. Bahadoorsingh just made a comment that perhaps the debate has gone on so long today because there are so many new Senators and they are bringing up points that have been brought up before. With all the greatest respect to Sen. Bahadoorsingh, I do not think that the fact that a point has been brought up before makes it any less relevant today. If nothing has been done about it, it is perhaps just as useful that it be repeated. Therefore, I am going to repeat a point dealing with the general conditions of justice in the community—which I know has been raised before and if nothing has been done about it and I think this is an appropriate occasion to raise it again—and that has to do with the establishment of a family court to deal strictly with domestic matters.

I think that if justice is going to be properly administered in the country, the backlog of cases and the need for more judges arise out of the fact that we do need to deal with domestic issues in a more efficient and perhaps more humane manner than they are being dealt with at the present time. I think that the long request for the establishment of a family court would go a long way towards satisfying this need.

When I say, the establishment of a family court, I mean this in a very physical sense, physically separate from criminal and civil courts, so that particularly young people, with many cases of incest—but can come under domestic violence—but other family matters. It makes it extremely difficult for mothers and children to attend with any degree of confidence, without psychological damage when they may have to be in the proximity of cases which deal with other matters like criminal matters and so on. This kind of backlog causes a great deal of suffering to mothers and children in this kind of situation. Also, the lack of a family court and separate facilities causes a considerable amount of psychological suffering to people who are involved in these kinds of cases.

Therefore, since the debate has proceeded to the general question of the administration of justice, I should like to make a special plea to the Attorney General to reconsider—because I know that it has been considered before—the

establishment of a separate family court. I think it is far more necessary than a small claims court or a night court or any of the other suggestions that have been made for additional district courts because it is a matter which involves, not only something that we are going to be debating later—probably next week—but involves such a great number of people in the country, not only in terms of their current situation but in terms of their future.

Thank you, Mr. President.

The Attorney General (Hon. Anthony Smart): Mr. President, I have not had an opportunity to consult further with the Leader of Government Business but I did not anticipate that the debate would have continued up to this point. I do, in fact, have a very important commitment at 5.00 o'clock this afternoon, which the Leader of Government Business knows about. It would severely embarrass me if I were unable to meet that commitment.

I am wondering whether it is possible for us to attempt to complete the bill in the next 10 or 15 minutes. I do not know how long Sen. Persad is going to be and I do not know how many other persons are going to be speaking, but I do find myself in some difficulty.

Sen. Alloy Lequay: Mr. President, perhaps with your guidance we could suspend the debate on this particular bill at this point in time and with the concurrence of hon. Senators, put the continuation of the debate on the next Order Paper, so that we proceed with the Domestic Violence Bill when we resume.

Mr. President: Members of the Senate, as I understand it, the Leader of the Senate has asked that the debate on the bill now before the Senate be adjourned to next week and that we will commence debate on the Domestic Violence Bill when we resume. Is that the wish of the Senate?

Sen. Prakash Persad: Mr. President, I do not mean to throw a "spoke" in the Government's wheel, but I find it distressing that a precedent seems to be emerging that somehow the hon. Senators want to get away from the parliamentary process.

If the Attorney General knows that he has debate on today—he has two bills on today—I think that he is treating this Parliament with scant courtesy to do this. I am deeply upset at the way this honourable Chamber is being treated. Thank you.

Question put agreed to.

Mr. President: The sitting is suspended for approximately 40 minutes. We will resume at 5.00 p.m.

4.31 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. President: When we took the adjournment there was some confusion as to how we should proceed at that particular point in time. The Leader of the Opposition did comment that the Attorney General was not, should I say, treating the Parliament with the respect that he should. I spoke to him during the interval. He said it was nothing personal, but you would agree that the particular individual, the Attorney General, is not one who has built up such a reputation. Probably he did not realise that the Leader of the Opposition also wanted to speak, and other people may have wanted to speak. It is not that we do not have business, we have other business to continue. I told him if he wanted to railroad it he would have stayed on and pushed it through, but in the spirit of democracy, I think he moved that the debate be adjourned until next week.

I say this just to show that matters may arise at any time during a debate that will call for a little co-operation from both sides. The important thing is to keep the business flowing as best as possible.

DOMESTIC VIOLENCE BILL

Order for second reading read.

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Mr. President, I beg to move:

That a bill to afford protection in the instance of domestic violence by the granting of a protection order, to provide the police with powers of arrest where a domestic violence offence occurs, and for other purposes be now read a second time.

Mr. President, it has been sometime since I have addressed the Senate. If my memory serves me correctly, it is the first time I have addressed the Senate under your chairmanship and leadership. It is a pleasure having known you in another capacity when I served in the Lower House many years ago to see you elevated to President of the Senate. I wish to take this opportunity, again, as it is the first time that I am addressing the Senate since there has been a change of Senators, to say that I am pleased to see them here and wish them the very best, at least, during

their tenure in the Senate, if not on other occasions. I wish to particularly welcome acting Senators Belmosa and Mahabir-Wyatt.

Mr. President, before I proceed, I seek your leave and that of the Senate, during my presentation, to present both the Domestic Violence Bill and the Evidence (Amdt.) Bill, which is a minor consequential amendment to the Domestic Violence Bill. While I know that those will be taken separately at the official stage, I would like to present arguments on both as the other one is rather minor and is purely consequential.

Mr. President, violence in the home has emerged as a serious issue and the subject of worldwide debates. The problem has been recognized internationally and is seen as a serious obstacle to development and peace, and its implication for equality is obvious. Today, the violent mistreatment of women and violence perpetrated by one member of a household against another, have brought about strong public reactions and criticisms. Many victims have been forced to use the media, the print and the press, in order to make the public aware that domestic violence and wife abuse are, indeed, very serious problems in Trinidad and Tobago.

The British journal on Law and Society No. 7 of states:

"The correct interpretation of violence between husbands and wives conceptualizes such violence as the extension of the domination and control of husbands over their wives. This control is historically and socially construed.

The beginning of an adequate analysis of violence between husbands and wives is a consideration of the history of the family, of the status of women therein and of violence directed against them. This analysis will substantiate our claim that violence in the family should be understood primarily as corrective control."

Mr. President, the causes of violence in Trinidad and Tobago, as stated in a report on analysis of the local situation, tend to support the above theory, with alcohol, adultery, financial problems and economic frustrations surfacing as the more recognized contributions to violence. Again, in the local scene, there is also the somewhat, generally accepted view that a man has the right to punish or to hit his wife when she disagrees with him or opposes him.

Statistics compiled by the Probation Division of my Ministry reveal that from January, 1984 to April, 1988, there were 252 reported cases of wife-beating in two counties and 273 in a third county during the same period. These statistics are

unduly high when viewed in the context of the norm, that the general tendency among women is not to report domestic violence.

Statistics from the Half-Way House in South Trinidad during the period May, 1986 to December, 1987 reveal that 250 persons were housed of which 55 per cent consists of seriously battered women, while 60 per cent of these women left home with their children and the remaining 40 per cent were unable to escape with their children but made arrangements at a later date.

Information from the Rape Crisis Centre in Port-of-Spain shows that in 1990, 131 new cases were counselled and that the geographic distribution was as follows:

Port-of-Spain and environs	60
East Trinidad	53
Central	10
South	2
Anonymous	6

Generally, the statistics above reveal that the abuse took various forms such as: punishing, choking, hitting, slapping and the use of weapons.

In the region, Trinidad and Tobago is not alone in its concern about the violence which has, overtime, and especially in recent times, been publicly manifested in our society. Regional ministers responsible for women in development issues have mandated the Caricom Secretariat to prepare model legislation on domestic violence, sexual offences, sexual harassment, citizenship, inheritance and equal pay for equal work. This model legislation is on the agenda of the Fifth Ministerial meeting of Ministers scheduled for Belize in February of this year. The Commonwealth ministers responsible for women in development issues and the Inter-American Commission of Women (an organ of the OAS) have also been pushing for legal action at the international level.

Mr. President, the bills placed before you, namely the Domestic Violence Bill and the Evidence (Amdt.) Bill deal with a social problem, and by virtue of their nature, must result in an examination of our value system. I stress to hon. Members that these bills do not propose any radical change of the existing law, but provide for people in certain specific situations to remove themselves from what is generally called, domestic violence.

The object of the legislation conforms with Government's policy to preserve family life. I quote from page 27 of the NAR manifesto which has been adopted as Government policy:

“Under an NAR Government, the State will spare no effort to fulfill its obligations to our citizens in all areas of the social systems.

No State can lay claim to greatness which is rooted in the sufferings of the individual and the misery of the majority. The weak must be afforded the necessary state support systems to make them strong or to protect them from the strong.”

5.10 p.m.

This policy is also set in a wider framework of Government's commitment to the principle of social justice for all peoples and the elimination of any lingering discriminatory provisions against women in our legislation and it is clearly stated in our policy statement on women. Government has constantly reiterated in its policies the concept of human dignity as an essential attribute of every single human being at any level of society; the provision of social justice for all peoples and the recognition of the equal and complementary roles of women and men.

In 1988, the Ministry of Social Development and Family Services was established through which Government proposed to integrate all the separate departments which dealt specifically with social and welfare matters and the concern of women, children and the family. Prior to the establishment of the Ministry of Social Development and Family Services, Government, on April 22, 1987, appointed a committee to examine the entire family services delivery system in Trinidad and Tobago. The committee's mandate was the provision of a system of delivery of family services which will effectively address all the conditions of families in need of such services or any particular aspect thereof, with particular reference to abused children, battered wives and mothers and for the utilization of the services of persons and voluntary organizations in an integrated and co-ordinated manner at community level.

In tandem, the national machinery for women has also been upgraded and as reflected in the *Macro-Planning Framework 1989—1995*, Government is pursuing a policy on gender development and will, and I quote from the document:

"...create a national environment in which both sectors will be supported and challenged to develop their full potential based on ability and interest and not on gender-based role."

The strategies pursued by Government in this respect are consistent with the Constitution of the Republic of Trinidad and Tobago in which is embodied in section 4, the principle of the equality of men and women in Trinidad and Tobago. To date, consistent with its commitment to social justice, has been the passage of the following legislation: In 1989—Matrimonial and Property (Amdt.) Act. This provides for the reduction of the period for filing for a divorce from three years to one year. In 1989 as well, The Attachment of Earnings (Amdt.) Act—or what is referred to as the Maintenance Act, which has not yet been proclaimed—is to provide for the machinery whereby a court can authorize an employer to remit money directly from a person's wages to the recipient.

The legislation before us today continues that trend which we hope will become a tradition. As you will note, the principal piece of legislation before us is entitled the Domestic Violence Bill. In this regard, it is gender neutral. As stated earlier, the bill does not purport to radically change the existing law, but in Part I proposes to classify certain types of behaviour which already have the sanction of criminal law as domestic violence. These acts, just to mention a few, include murder, manslaughter, assault or attempts at same; buggery, sexual assault of young persons, ill-treatment or abandonment of children which already are offences under the criminal law. What this bill does is classify certain criminal acts, if perpetuated by a person in a special relationship to the victim as domestic violence.

Part II of the bill enables the victim to seek a protection order not exceeding 12 months—and I wish to emphasize that at this stage—so that the perpetrator of the offence is restrained from continuing the behaviour complained of. It thus provides a form of relief specifically designed to be speedy, and I wish to emphasize that point. The victim, whether it be child, spouse, including a *de facto* spouse or other dependant normally resident with the perpetrator, may, of his or her own accord go to the magistrate's court and under the bill apply for a protection order. The magistrate may, depending on the circumstances, issue an interim order not exceeding 14 days—again I emphasize this—on the victim's evidence. That is, he may, depending on the circumstances, issue an interim order on the victim's evidence until such time as both parties can come before the court. The involvement of the police at this stage is not crucial nor are there criminal sanctions. Should the protection order be ignored by the respondent or

perpetrator of the domestic violence offence, the police may then charge and the person is subject to the full weight of the criminal law.

The bill has certain unique features. It reflects an appreciation that violence in the home encompasses more than husband or wife beating up on each other. The parties who are entitled to seek the benefits of a protection order include a spouse, child, parent, or dependant of its perpetrator of the violent act. A dependant in this context also means a person over the age of 18 years who has a physical or mental disability and normally resides with the perpetrator.

The magistrate, in giving a protection order, may among other things, prohibit the perpetrator from being on the premises where the victim resides or works from contacting that person and even prohibit the perpetrator from engaging in conduct of an offensive or harassing nature. The court may also prohibit the perpetrator from taking possession of personal property or may give a direction relating to the use of communal property.

The bill specifies that the court, in deciding what sort of prohibition to impose in the order, shall have regard *inter alia* to the welfare and accommodation needs of the victim and of any hardships that may be caused by the order. The bill thus provides for arrest where the protection order is breached or a domestic violence offence is committed, notwithstanding the order. In the latter regard, it merely states the existing criminal law.

Generally in law, where an offence is committed, the person is entitled to bail. The bill, in Part III, deals with the right to bail and the procedure to be followed. Part IV of the bill deals with the administration of the bill, such as service of document and the forms to be used. This bill thus purports to be a complete statement both of substance and procedure, for dealing with the issue of domestic violence. It reflects an understanding that the full weight of the criminal law has, in practice, not proved to be adequate to deal with problems in the home, as generally the police and others are reluctant to intervene in domestic matters. I think that we accept this as a reality of life in Trinidad and Tobago. Nevertheless, it provides a remedy or a tool for those who want protection from harm. In other words, a mechanism is provided for prevention of violent acts within the home.

5.20 p.m.

I stress that this legislation should not be seen as a method by the state to interfere in matters domestic. Rather, the state is providing a mechanism whereby, in the first instance, parties can avail themselves of protection from violence and

abuse. In my view the bill successfully strikes a harmonious balance between the need to preserve domestic relationships on the one hand and the need to protect persons in the domestic relationship from exposure to violence on the other. It is both innovative and educational and in the words of one main participant—I must let Sen. Charles know that this statement was made in Tobago at a public workshop held last year during the course of a public discussion on the draft of this bill; it is a very simple statement—"...this means that we will have to look at our values all over again."

Hon. Members will note that the bill requires a three-fifths majority in both the Senate and the lower House. Mr. President, one of the fundamental rights enshrined in the Constitution of the Republic of Trinidad and Tobago is, amongst others, the right of the individual to have respect for his private and family life. This right has, side by side with the right of every person, the protection of the law. Nevertheless, Government recognizes that the bill interferes with certain fundamental rights especially as the protection order may have the effect in some cases of ensuring little or no contact between family members, albeit for a limited period. I stress however, that this period could be used for counselling or rehabilitation of the relationship rather than ignoring the issue or applying the remedies available at law for what does amount to, after all, criminal behaviour.

Rather than jeopardize the intent of the bill to afford a tool for the protection of family members against violence in the home without incurring—

Sen. Furness-Smith: Criminal behaviour? Is he saying that offensive and harassing behaviour is defined as criminal?

Dr. Hosein: Mr. President, I will not attempt to be a lawyer especially with the hon. Senator. While this bill defines offensive and harassing behaviour as falling under the rubric of domestic violence, I was not by any means suggesting that it was criminal. I do not want to appear to be knowledgeable in the law on that particular point. Indeed, I am sure Sen. Furness-Smith knows the answer.

Sen. Furness-Smith: It is not the law now, but the hon. Minister who says he is not changing the law, will make it the law.

Dr. Hosein: For the benefit of hon. Members and in particular, Sen. Furness-Smith, I specifically stated that when I make the point about criminal behaviour, I am excluding those acts which are domestic violence and which are not of themselves criminal under the present legal system.

As I was saying, rather than jeopardize the intent of the bill to afford a tool for the protection of family members against violence in the home without incurring sanctions of criminal law which indicates the sensitivity of Government to the serious and ultimately private nature of the problem which the bill addresses, Government in accordance with the provisions of our Constitution, seeks the approval of a three-fifths majority of the Senate and will do so in the lower House.

Mr. President, I wish therefore to commend this bill to the hon. Senate and to express the view that I anticipate some debate, but in the end do indeed, anticipate not less than the unanimous support.

With regard to the Evidence (Amdt.) Bill this is a consequential amendment to the Evidence Act which would enable the calling of a wife or husband of a person charged with an offence under the Domestic Violence Bill as a witness for the prosecution or defence, without that person's consent. I think hon. Members would agree that this would be a necessary consequential amendment if the Domestic Violence Bill is to have full effect. I also commend this bill to the hon. Senate and I beg to move.

Question proposed.

BUSINESS OF THE SENATE

Mr. President: As the Minister indicated, Members who join the debate are free to refer to the Evidence (Amdt.) Bill which will follow. That will be taken formally afterwards. Sen. Amar, during the suspension, had indicated that he had to leave and although he is not a female, he also intends to participate in this debate but he would not be here next Tuesday. He expects the debate to take much longer.

Sen. Alloy Lequay: Mr. President, I have been advised that all five women Senators will want to participate in this debate and perhaps very vocally. I have also been advised that they will want to hold their fire until the next sitting, perhaps to produce reinforcement. In these circumstances Mr. President, it seems as if the actual debate will get on the way at the next sitting. After having discussed it with the Senate Minority Leader and the Leader of the Independent Bench, I wish to move that the Senate do now adjourn to February, Tuesday 5, 1991 at 1.30 p.m.

Motion made and Question proposed, That the Senate do now adjourn to Tuesday, February 5, 1991 at 1.30 p.m. [Sen. A. Lequay]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.28 p.m.