

Condolences

Tuesday, March 8, 1994

SENATE

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The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

CONDOLENCES

Mr. President: On behalf of all Senators, I should like to extend our expressions of sympathy to Sen. Rev. Daniel Teelucksingh who was unable to be present last week due to the death of a relative.

EXPRESSIONS OF CONCERN

Mr. President: Hon. Senators, I believe that all of you are quite aware of the fact that one of our parliamentary colleagues, Hon. Morris Marshall, Minister of Public Utilities in the other House, is seriously ill, and I have no doubt that you all would like me to convey your expressions of concern and to wish him a speedy recovery.

I shall ask the Clerk of the Senate to write to Mrs. Marshall and relatives expressing the concern of the Senate and hoping that with the help of God he will be back with us in the not too distant future.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Nariva/Mayaro County Council for the year ended December 31, 1984. [*The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith)*]
2. Report of the Auditor General on the accounts of the Nariva/Mayaro County Council for the year ended December 31, 1985. [*Hon. L. Saith*]
3. Report of the Auditor General on the accounts of the Nariva/Mayaro County Council for the year ended December 31, 1986. [*Hon. L. Saith*]
4. Report of the Auditor General on the accounts of the Nariva/Mayaro County Council for the year ended December 31, 1987. [*Hon. L. Saith*]
5. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Technical Assistance Loan Project for the year ended December 31, 1992 as required by Loan Contract No. 3153-TR between the Government of the Republic of Trinidad and Tobago and the International Bank for Reconstruction and Development. [*Hon. L. Saith*]

COMPANIES BILL
Select Committee Report
Presentation

Sen. Ainsley Mark: Mr. President, I beg to present the report of the Joint Select Committee of Parliament appointed to consider and report on the Companies Bill 1993.

ORAL ANSWERS TO QUESTIONS

Amoco Long-Term Contract 1976
(Revenue and Royalty)

21. Sen. Wade Mark asked the Minister of Energy and Energy Industries:

Could the hon. Minister provide the Senate with an up-to-date account of the total revenue received and actual royalty paid by Amoco under the 1976 long-term contract which was rolled over in 1991?

The Minister of Energy and Energy Industries (Sen. The Hon. Barry Barnes): Mr. President, the required data on Amoco's total supply of natural gas to the National Gas Company of Trinidad and Tobago Limited (NGC) over the period 1976 to 1991 is as follows:

Total revenue received by Amoco on natural gas was TT \$2.6 billion.

Royalty paid to the Government of Trinidad and Tobago by Amoco on natural gas was TT \$20.6 million.

Petroleum profits tax paid to the Government of Trinidad and Tobago by Amoco on natural gas was TT \$414 million.

It should also be noted that, by law, all Amoco's gas is sold to the National Gas Company of Trinidad and Tobago Limited (NGC) for onsale to third party customers.

La Brea LNG Project
(Supply of Gas)

24. Sen. Wade Mark asked the Minister of Energy and Energy Industries:

- (a) Could the hon. Minister state who will be supplying gas to the proposed La Brea LNG project, and at what price?
- (b) Could the Minister provide the Senate with details of those pricing arrangements?

The Minister of Energy and Energy Industries (Sen. The Hon. Barry Barnes): Mr. President, a consortium of four companies comprising Amoco, British Gas, Cabot LNG and the National Gas Company has proposed a project for the establishment of a 300 million cubic foot per day LNG plant in Trinidad. To facilitate this development, Government has agreed that natural gas from the marine gas fields off the east coast of Trinidad can be committed to this project. These marine gas fields lie within the exploration and production licence areas currently under lease to Amoco and British Gas who are both participants in the project. The project is a major with an indicative capital cost of the order of US \$1 billion.

The current project schedule calls for the completion of detailed technological and engineering design and feasibility analysis to permit a final investment decision by the first quarter of 1995, with the LNG Plant to be completed and operational by the end of 1997.

Commercial arrangements covering the supply of natural gas to the LNG Plant and for the sale of LNG from the plant have not been put in place at this time.

Sen. W. Mark: Mr. President, could the hon. Minister indicate to this Senate when the pricing arrangement would be put into effect, having regard to the importance of this project?

Hon. B. Barnes: Mr. President, let me start with a bit of digression. This is a billion dollar project being developed by, largely foreign privately-owned companies; this is not a Government project where with a fistful of dollars you can say that we are going to do this or that.

The consortium will be undertaking a marketing programme as part and parcel of the final project details that must go to their financiers and so forth. Before the project can go forward, they will need, under the law, formal licensing approval from the Government. At the time of the application for a licence, they would also be presenting to the Government the total package for its approval. If we are saying that the final investment decision will be taken in 1995 and that the plant construction will be completed in 1997, then I believe that some time between 1995 and 1996 the consortium will, in fact, require to seek Government's approval and to have the project at least fully displayed.

1.40 p.m.

HIV Virus

25. Sen. Wade Mark asked the Minister of Labour and Co-operatives:

- (a) Is the hon. Minister aware that workers who have contracted the HIV virus are victims of blatant discrimination at the workplace?
- (b) Could the Minister state if it is the intention of his Government to introduce legislation to make it illegal for victims of the HIV virus to be discriminated against, and if so, when?

The Minister of Labour and Co-operatives (Hon. Kenneth Collis): Mr. President, there was no evidence available to the Minister of Labour and Co-operatives to indicate that workers who have contracted the HIV virus are being discriminated against at the workplace. In light of this, the Minister does not propose at the present time to recommend the introduction of legislation on this subject to Parliament. However, it is a matter that will be kept under constant review. The Ministry of Labour and Co-operatives is being guided by the policies of the National AIDS Programme of the Ministry of Health in matters relating to this virus.

I thank you.

Sen. W. Mark: Mr. President, could the hon. Minister indicate what mechanisms are being introduced in his ministry to monitor that situation, or whether there is a relationship between the Ministry of Labour and Co-operatives and the Ministry of Health insofar as that issue of discrimination of HIV AIDS victims is concerned?

Hon. K. Collis: Mr. President, at this time the Ministry of Labour and Co-operatives depends upon the Ministry of Health for any such information.

Thank you.

Succession Act

40. Sen. Diana Mahabir-Wyatt asked the Attorney General and Minister of Legal Affairs:

Could the Attorney General state:

- (a) Why only one section of the Succession Act, passed in 1981, has ever been proclaimed?

- (b) When will the sections dealing with provisions for dependants be proclaimed?

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, save for section 122, the Succession Act, 1981 was to come into operation on a date to be fixed by the President by proclamation. Section 122 abolished estate duty in respect of the estate of any person dying on or after January 1, 1981 and the effect is to relieve the tax burden of estate duty.

The other provisions of the Act relate to the transmission of real and personal property. They form one component of a package of property-related reform legislation enacted in 1981. That package includes the following:

Landlord and Tenant Act,
Land Law and Conveyancing Act,
Trustee Act,
Limitation Act,
Land Registration Act, and the
Condominium Act,

all of 1981. The above Acts all relate to real property and will be affected by a rationalization programme which is being undertaken currently. It is not expedient to proclaim them, in the event that the review programme will necessitate additional or new legislation.

Sen. Mahabir-Wyatt: Would the hon. Minister state when it is expected that this legislation will be completed? Because there are some thousands of women and children who have been affected by this and it has been over 13 years since, presumably, Parliament intended this to go through.

Hon. K. Sobion: Mr. President, the Government is appreciative of the concerns of many who are affected by the Acts which were passed in 1981. The review programme which, I am informed, involves Members of the Law Commission and others, is expected to be completed before the end of the year.

Sen. Mahabir-Wyatt: If this is going to be done before the end of the year, would the Minister give, at least, an educated guess? Because there are so many people in this country who have been waiting for 13 years. When would the Minister expect proclamation following the review?

Hon. K. Sobion: Depending on the results of the review, if additional legislation is required it will have to be prepared and presented to Parliament. If no further legislation is required, then the proclamation of these pieces of legislation could follow immediately after the receipt of the report.

The following questions stood on the Order Paper:

**Ombudsman's Special Report
(Mr. Newlyn John)**

- 41.** Can the Prime Minister state what action if any, has been taken by the Tobago House of Assembly, or what action the Assembly intends to take, to address the predicament of Mr. Newlyn John, mentioned in the Special Report No. 1/94 of the Ombudsman, as a result of the lack of remedial work to buttress the property damaged as a result of land slippage which developed along the Zion Hill Road since 1973, due to road works carried out by the Ministry of Works (Tobago)? [*Sen. E. Dean*]

Lady Young Road

- 43** (a) Could the hon. Minister of Works and Transport inform the Senate whether his Ministry has given its approval for persons to build private roads and/or driveways giving entrance and exit onto Lady Young Road?
- (b) If not, could the Minister tell this House what action is being taken against some ten people who have built driveways and paved private roads exiting onto the Lady Young Road? [*Sen. D. Mahabir-Wyatt*]

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I seek leave of the Senate to have questions 41 and 43 deferred for one week.

Questions, by leave, deferred.

CONSTITUTION (AMDT.) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I beg to move,

That a Bill to amend the Constitution of Trinidad and Tobago be read a second time. Essentially, Mr. President, the Bill seeks to reform or review certain aspects of the Constitution, specifically related to the Police Service Commission, which will be sections 122 and 123 of the Constitution of 1976.

In presenting a Bill which seeks to amend the Constitution, one is always

conscious of the natural reticence on the part of parliamentarians to interfere—and I use that word very loosely—with the existing provisions of the Constitution. The Constitution as it says in section 2 "is the supreme law" of the country; and I believe, that the reticence on the part of persons to re-examine the provisions of the Constitution is rooted in the fact that they perceive the supremacy of the Constitution as giving it a sanctity which takes it out of the pale of reform. But the Constitution is not written in stone, by any means, and as the supreme law of the land, it is subject to the evolution and growth of the society if the Constitution is, indeed, to ensure that the institutions which it establishes are best able to gear to the needs of our society.

So that whilst I agree that one should be cautious in one's deliberation over amendments to the Constitution, I think that one should not develop mental blocks in relation to legislation which proposes to amend the Constitution. If one should examine the range of Commonwealth constitutions, one would see that there are several different approaches involved in dealing with the same subject matter.

So that it is a process of examining one's own conditions; looking at how the institutions have developed; how the society has developed, in order to find a proper mechanism to serve the best interest of the country. I would refer later on, Mr. President, in specific reference to service commissions, to some of the variations which exist within the Commonwealth.

1.50 p.m.

This Bill, as I say, deals specifically with the Police Service Commission. The Police Service Commission, however, is one of several independent service commissions which have been established under the Constitution. If one were to ask and if one were to read commentaries relating to service commissions, the one sure answer that one is likely to get is that service commissions are independent because they are meant to protect public servants from the interference of the executive. That, I am sure, is at least one sure answer one would get if that question were to be asked.

My own view, is that the concept of shielding public servants from the political directorate, as some of the constitutional experts put it, is a concept which is really born out of the colonial experience to a large extent. In the development of constitutions in the Commonwealth post-1946, for example, in the Constitution of India, one would find that this concept of independent service

commissions to surface and began to be adopted by various countries of the Commonwealth as they became independent.

It also seems to suggest that newly emerging nations have some kind of difficulty, perhaps a lack of self-confidence in their ability to manage their own institutions, and it signals, to some extent, a difficulty in relating to the management of an enterprise, which is what Government is, and its relationships with the persons who are involved in that enterprise.

Some persons may, no doubt, cast doubt on what is an alternative argument, what is an alternative way of looking at service commissions, but clearly if one looks at our Constitution, one can see that quite apart from service commissions, there are other facets of the Constitution which demonstrate that kind of dependence on external agencies in the affairs of an independent country. Perhaps I may be permitted to digress somewhat to illustrate that point.

The existence of a provision in the Constitution relating to appeals to the Judicial Committee of the Privy Council is perhaps one of the more stark reminders of that fact. If it is that we envisage laws is the embodiment of the social mores of the society, then it may be that one needs to rethink a situation where the interpretation of our laws are handled by an agency which is comprised of persons who may have little experience and little knowledge of the social mores of this particular society. But I say that only by way of digression.

I want to say also—and this is in relation to the argument I had advanced about self-confidence—that if one were to examine the situation in countries which are so-called dependent countries, or at the stage at which they were dependent countries, one would find that to a large extent, the executive, external as it may have been an exercise through the power of the Governor, had almost *carte blanche* authority over persons within the public service of those dependent countries.

Having moved to the stage of independence, and having sought by our independent constitutions to resolve some of the conflicts within the society, and having sought to set some kind of standard, we have moved toward this concept of independent service commissions which have, in our view, certain features which are not relevant, 31 years after independence.

I want to look at what we have as independent service commissions. The one positive that I have been able to identify—and it is a positive which will be affected by one of the negatives—is that they are independent. That is, in terms of the manner of their appointment, they are independent in that they are appointed by the President after consultation with the Prime Minister and Leader of the

Opposition. It is a situation where the President exercises his own independent judgment after consultation.

It is independent also in terms of the protection afforded to those who are appointed to those service commissions in that they cannot easily be removed from office, and if one should look at the provisions of the Constitution, one would see that it is really only where they are incapable of performing the functions of their office by reason of disability of mind or body that they can be removed.

It does not allow for their removal for failure to perform their function, unless one can tie it to either a disability of mind or a disability of body. And I am sure, Mr. President, you will agree that sometimes it is difficult to determine whether someone is suffering from a disability of the mind. I am not necessarily looking at Sen. Wade Mark on this particular point, but really it is sometimes very difficult to determine whether one is suffering from some kind of disability of that nature.

So that insofar as one can identify the positive of independence, it is clear that in the existing provisions there is sufficient to guarantee the independence of commissioners appointed to the Police Service Commission, the Public Service Commission and the other commissions. But as I said, perhaps even that positive has one negative that can also be identified.

Quite simply, these independent service commissions are not responsible to any person. One may argue that: "Of course, they are responsible. The President can remove them." But if one views the limited provision relating to their removal, one can detect quite clearly that there is little control over the actual performance of independent service commissions in the discharge of their constitutional functions.

The other identifying factor that one can pull from the Constitution is that they have been really given no focus. If one looks at any of the provisions relating to these independent commissions, the first thing that strikes one is that they have been given no focus in terms of their actual purpose and the direction which they ought to take. Section 122 of the Constitution which deals with the Police Service Commission, says:

"There shall be a Police Service Commission for Trinidad and Tobago which shall consist of a Chairman and four other members."

Later, we are told that they have some rights of discipline over police officers, and so forth but in establishing the Commission itself, there is no focus as to what

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they are required to do in that kind of broad sense which will give them a sense of purpose. It merely says:

"There shall be a Police Service Commission...which shall consist of a Chairman and four other members."

If one looks at the relevant sections of the Constitution in relation to any of the other independent service commissions, one finds that the approach has largely been the same. They merely identify the composition of the members of those commissions.

2.00 p.m.

That, in essence, describes the existing arrangements for service commissions. They are independent, without accountability to any other agency and they have little focus or little direction. Save for the specifics as with respect to discipline and transfer, there is no focus or direction as to their role in relation to the institutions which they are supposed to manage.

The question may be asked whether there is any other responsibility which is given, impliedly, by the Constitution to service commissions, or which ought to be given in terms of that question of direction or focus. I have discovered that in a court judgment in the courts of Tuvalu, which is a Commonwealth country somewhere in the Pacific, they had occasion to consider that very question, as to what service commissions were supposed to do. In the case of *Toafa and the Attorney General*, the Chief Justice of Tuvalu had this to say. This is a quotation from the 1988 Law Reports of the Commonwealth, the constitutional section, at page 905. The Chief Justice said:

"Although in legislation creating it and defining its functions it is not expressed specifically that the main function of the Public Service Commission is the control and the management of the public service; clearly that is its implied purpose, giving it the competency to advise the Governor-General on the appointment and removal of, as well as on his powers of disciplinary control in relation to, public servants."

The court there was seeking to determine what really was the role and function of the Public Service Commission. The Public Service Commission, I may add, of Tuvalu, had only an advisory function, but it was an advisory function defined by the court as dealing with the management and control of the public service. In fact, the Chief Justice goes on to recognize:

"Its powers of management and control, however, are limited by the Constitution."

So while it was advisory in the case of Tuvalu, it was in relation to the management and control of the public service.

So that we are looking here in this Bill to achieve a few things which are not included in the present constitutional arrangements. They are quite simply this: The retention, to a large extent, of the independence of the service commissions—in this case, the Police Service Commission; to create some sense of focus and direction in relation to that commission; thirdly, to provide for some degree of accountability; fourthly, to define some clear line of authority, particularly in relation to disciplinary matters, and fifthly, to create a separate administration and a separate appeals tribunal. That, essentially, is what the Constitution (Amdt.) Bill of 1994 seeks to do.

Clause 122A establishes a Police Service Commission and it is said that that Commission shall consist of two *ex officio* persons, the Permanent Secretary in the Ministry of National Security and the Commissioner of Police. It seeks to establish seven other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition, and we have the added feature because of the focus which we have created in the Bill, of putting specific requirements on the persons who can be appointed to the Police Service Commission.

Of the seven members who are appointed by the President after consultation, there are specific disciplines required; experience in law; experience in human resource management; experience in psychology; experience in finance or business; experience in management and persons representing the interest of the community. We have sought to build into the Commission the disciplines which we think are necessary in order to perform the kind of management function which a commission like this is going to be required to perform.

We have recognized, within all of that, the need for the community interest to be served on such a commission and two of the representatives of the Commission are persons who are specially designated as being persons representative of the community interest.

We have sought, therefore, to keep the concept of independence, by and large, in that seven of the nine members are members who are appointed by the President in his own discretion after consultation; the two *ex officio* members, one is the person responsible for the day-to-day management and administration of the

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police service, the Commissioner of Police, and the other, the Permanent Secretary in the Ministry of National Security, the ministry which has responsibility for the police service. These are the two accountable officers insofar as the day-to-day administration of the police service is concerned.

So effectively, the independence of the Police Service Commission is maintained, having regard to the balance and manner of composition of the Commission as contained in clause 122A of the Bill.

Sen. Daly: Mr. President, before the Attorney General moves on, can I ask what will become of the existing members of the Police Service Commission if clause 122A is enacted?

Hon. K. Sobion: I sense that the hon. Senator knows the answer to this question. If the provisions of this Bill are enacted, quite clearly, the existing commissioners will go, and the President, in accordance with the provisions of the amended Constitution, will be required in his own discretion, to make appointments to the reconstituted Police Service Commission. But clearly, there can be no hangover. Once the Constitution is amended, the existing commissioners will, of necessity, go, and the President, in his own discretion, will have to make new appointments based on the criteria set out in this Bill.

2.10 p.m.

I will deal with that. In fact, I sense that somehow, there may be a bit of anticipation in all of this because, I wanted to address some of the misconceptions which have become current for the Government's proposal in relation to the reform of the independent commissions, but I will get to that shortly. That clearly, is one of the misconceptions which have been current.

Clause 122B seeks to establish the focus of direction which I spoke of earlier. It seeks to clearly indicate the role and functions which persons appointed to this Commission are required to perform. I think it is important, perhaps, for the record, to read the provisions of clause 122B which says that:

"The functions of the Police Service Commission are-

- (a) to ensure that the Police Service is supplied with the human resources necessary for the efficient operation thereof; and
- (b) to ensure that officers demonstrate competence and effectiveness in the performance of their duties."

I must confess that this is a section which has caused much difficulty because it

seeks to clearly set out the management function of the Commission.

It also seeks, in the minds of some, to put a heavier burden on the Commission than it may be able to discharge, because, the Commission is not self-financing, it has no funding of its own, and if it is asked to ensure that the police service is supplied with the human resources necessary, it may at first blush give the impression that the Commission, when established, will have to do these things out of its own resources. But, I again refer to the Tuvalu case. In the Tuvalu case it was found that the commission there had an implied function of management and control subject to the limitations contained by the constitution and by any other law in relation to its operation.

So that one must read these words in the context of the constitution as a whole and in the laws which relate to the operations of government generally. The executive is responsible for the allocation and management of the resources of the country subject to the approval of Parliament, and it does that on an annual basis, on the marathons we have at the end of each year. It is responsible and accountable to the Parliament and it is required to provide resources to the agencies which, of necessity, it has to fund.

So, in signalling that the Police Service Commission has a management function and purpose, one is not saying that it must be self-sufficient of necessity. One is saying that it must provide the managerial input which the executive requires in order to determine to what extent funding, as one instance of the many inputs the executive will have to provide, is adequate to meet the needs of the Police Service Commission.

What it does is give focus and direction to the Police Service Commission in two ways: Firstly, by the required skill and experience which are necessary for someone to sit as a commissioner; and, secondly, by the purpose for which it is established, it gives the role and function the commission is required to perform.

So, as I said, we have retained the independence which is contained in the existing Constitution, by and large. We have established the focus which is necessary, and we have moved on to provide for accountability.

I think I said earlier, that independence does not mean the absence of responsibility or accountability. Independence merely signals that a person, a body or an authority has the right to exercise an independent view, and put into its decision-making process, its own independent thought. It does not mean that it must not be subject to any other agency, in terms of reporting as to how it has

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performed its function.

So, we do not see that by inserting a provision that the Police Service Commission should submit a report to Parliament on an annual basis, its independence is in any way compromised. We do not see that in establishing a Joint Parliamentary Committee to look at the operations of the Commission as it proceeds with its business, in any way compromises the independence of the authority.

Some time in 1992, on the occasion of the graduation ceremony of the Hugh Wooding Law School, I raised the question of the concept of separation of powers and suggested at that forum that it was fast becoming evident that we needed to rethink some of these concepts which have persisted for a long time. When one considers the shifting role of the executive in relation to Parliament and of the Judiciary as three separate arms of Government, when one considers the existing checks and balances which exist, I think that the time has come to re-examine these roles on a further analysis of the concept of the separation of powers.

Essentially, the role performed by the Commission is a role of the executive. It has been artificially put into an independent commission because of this notion of a need to have some buffer between the political directorate and the public servant.

I say artificial, because, those who are involved in business—and Sen. Hosein is one—will know that the authority to run a business in terms of the relationship between the employer and the employee in the private sector is not disturbed in any real way by any such agency of an independent commission. It is not a strange notion, because, even now, there are those who are sitting in this Senate who are well aware of the Crown's right to dismiss at pleasure.

It is a concept which has become watered down in relation to independent Commonwealth countries, and its only real fetter in the United Kingdom where it originated was that that discretion of the Crown—the state, the executive—to deal with its employees very much in the same manner in which the private sector operates—and perhaps, even to a more drastic extent—developed in the United Kingdom and continues subject to any statute law which is passed which diminishes that right.

2.20 p.m.

The concept, therefore, of accountability to Parliament—and I may say, it is not something that we just dreamed up. If one looks at the range of constitutions

in the Commonwealth one would see that these concepts are not novel. They are not new. I refer to a book written by G. N. Joshi, Advocate of the Supreme Court of India, formerly Professor of Constitutional Law at the College of Bombay. He points out for instance, at page 329, that the Public Service Commission has a certain relationship with the Parliament.

He says:

"The Public Service Commission is required to submit a report. It is the duty of the Union Commission to present annually to the President a report as to the work done by the Commission. On receipt of such report the President shall cause a copy of it together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament. Similarly it is the duty of a State Commission to present annually to the Governor of the State a report as to the work done by the Commission, and it is the duty of a Joint Commission to present annually to the Governor of each of the States the needs of which are served by it a report as to the work done by it in relation to that State....the Governor, ...shall on receipt of such report cause a copy of it together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

So that the concept of accountability of these types of commissions to the legislature or to the Parliament is not a new or novel one, but it is one which is governed by good sense. There is a body performing the role of the executive and that so-called independent body has no obligation to report to the Parliament, to report to any person whether annually, biannually, weekly, monthly as to its conduct of its constitutional functions. The executive, on the other hand, comes to the Parliament and responds to questions from Members as to the conduct of their ministries; it responds to motions raised by Members as to the conduct of the affairs of Government, but we have managed successfully to lock off a portion of the executive function and put it in a cubby-hole that cannot be scrutinized by anyone.

I want to make it very clear, I am not criticizing the operations of any particular commission. I am dealing theoretically with our constitutional arrangements and matters that are necessary to improve its operations if we are to build institutions which are going to function in the best interest of the citizens of Trinidad and Tobago. So that the independence is retained; the focus is given and the accountability is established by the provisions of this Bill.

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We are concerned about clear lines of authority particularly in relation to disciplinary matters. The existing arrangements under the Constitution of 1976 provide that discipline is vested in the Police Service Commission and that the Police Service Commission may delegate this power to such other person as it may see fit. There have been instances where that power has been delegated and there have been situations whereby the power that has been delegated has not been exercised because of uncertainty which exists as to who should exercise what power, at what particular time and in what given circumstance.

What we have therefore sought to do—and we must remember as well that one of our primary objectives in relation to this Bill is to improve the institution itself, the police service—is to establish clear lines of authority insofar as discipline is concerned and to place into the hands of the Commissioner of Police, the person responsible for the actual hands-on, day-to-day management of the police service, a clear power of discipline. This we have done.

Sen. Prof. Spence: Mr. President, in making the comparison, would the Attorney General say something directly about the existing regulations and not just the Constitution, in some detail.

Hon. K. Sobion: I will say something about them shortly. At clause 122D the power to exercise disciplinary control is firmly and fully vested in the Commissioner of Police. It says:

- "(1) Subject to subsections (2) and (3), power to remove and exercise disciplinary control over officers shall vest in the Commissioner of Police.
- (2) Power to remove and exercise disciplinary control over—
 - (a) the Commissioner of Police; and
 - (b) an officer in the First Division of the Police Service... "

In those two instances where you are dealing with discipline of the Police Commissioner or discipline of First Division officers for dismissable offences, the power of discipline shall lie in the Commission. So there is a clear authority line as to who is responsible for what.

Under the existing arrangements there has always been concern as to whether a person who has the right to delegate, having delegated it, whether he can exercise or continue to exercise that power. Whilst there have been judicial determinations to the effect that a person, having delegated, does not necessarily

lose the right to exercise the power that he has delegated, we have thought it necessary, because of the confusion which has existed, to provide, quite clearly, that the Commissioner of Police may continue to exercise his power of discipline even where he has delegated that power.

A further subclause which deals with the Commission's overall management power is contained in clause 122D(3) which says that:

"The Police Service Commission may at any time take over and determine any disciplinary proceedings before the Commissioner of Police."

In the course of this debate, I propose to lay an amendment which will clarify the way this proposed subsection (3) is to operate.

2.30 p.m.

Whilst on the face of the Bill before us there appears to be some degree of confusion, we have sought to cure that confusion by specifying exactly when the Police Service Commission can override the Commissioner's powers. It is only where the Commissioner has called upon the Commissioner to act and he has failed to so act. We thought by these provisions and the amendment which I propose to make that for the first time we have established clear lines of disciplinary authority over an organization which is supposed to be steeped in discipline.

In partial response to Sen. Prof. Spence, the major criticism of the existing regulations is that they are found to be somewhat unmanageable, unwieldy and subject to abuse in terms of delays in expediting the hearings of disciplinary matters. We have retained the existing right of the Commission to make regulations with respect to discipline. It is our view that if a body is charged with a specific responsibility, it should establish the procedural regulations whereby that jurisdiction would be exercised.

However, in response to the concerns of some of the hon. Senators, we have prepared draft regulations which hopefully have cured some of the cumbersome approaches to discipline as now exist. We have sought to streamline the existing provisions; to create minor offences and create a summary procedure for dealing with them; to create major offences—

Sen. Mahabir-Wyatt: The hon. Attorney General has just referred to draft regulations. If we are to debate this extremely important Bill, can we have copies of those draft regulations so that we can study them before we get into the debate?

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Hon. K. Sobion: I want to assure hon. Senators on both sides that copies of the draft regulations will be made available to them. I understand the anxiety of some of my friends, but the debate will continue into another week. The draft regulations have just been revised. Strictly speaking, they are not part of this Bill. They have been devised to indicate to hon. Senators the kind of thinking we propose in relation to disciplinary offences. These are regulations which are to be made by the Commission. They are not regulations to be made by Parliament, but by the Commission in keeping with the existing provisions of the 1976 Constitution.

Sen. Prof. Spence: How can the hon. Minister be assured that the regulations would in fact be made? Could they not be made by the existing Commission?

Hon. K. Sobion: Mr. President, I apologize. I was distracted.

Sen. Prof. Spence: May I repeat it?

The question I was asking is, how can the Attorney General be assured that these regulations would be made since only the Commissioner has that power?

Secondly, why could those same regulations not be made by the existing Commission?

Hon. K. Sobion: I would take the last question first. The existing Commission have power to make regulations. They have not made these draft regulations. The Constitution provides that the Commission shall make regulations to regulate its own procedure and they would be adopted with the approval of the Prime Minister. We have retained the exact procedure for the making of the regulations.

In the question raised by Sen. Prof. Spence, I sensed that the suggestion may be that the provision of disciplinary regulations which would cut out some of the delays which are experienced and some of the difficulties of administration which exist would be the answer to all this. I want to assure the Senator, that quite clearly, in terms of the other factors which I have indicated, the question of accountability which is not a present feature of the Constitution; the question of focus and direction and the question of clear lines of disciplinary authority are new matters which are not in the existing Constitution. It is not simply a matter of saying introduce new disciplinary regulations and all our problems would be solved. It is much more fundamental than that.

The other additional feature—

Sen. Daly: Mr. President, would the Attorney General not accept that the draft regulations must go hand in hand with anything that the Government is proposing? Would he not help the Government's case and us by telling us when he would circulate the draft regulations?

Hon. K. Sobion: Mr. President, I had hoped that the draft regulations would have been circulated to all Senators by today, unfortunately, only a few have received copies. I had indicated to certain Senators with whom I had discussions on this matter, that because of the time factor involved, the draft regulations were not ready for circulation to all Members by today, but that they would be available as soon as possible thereafter.

There are Senators on this side, as well as on that side, who have not seen the draft regulations. I may go as far to say that there is perhaps an equal number on this side who have seen them, as there is on that side. It is all a question of timing in getting the matter prepared for the information of Members of this House.

I repeat: The regulations do not form part of this Bill, but are meant—based on discussions that I had with certain Senators—to demonstrate the kind of further direction which we propose for the Commission to take in the discharge of its constitutional function. I understand that my time is very limited. I just want to—

Sen. Dean: Mr. President, could the Attorney General make available to us the current regulations as well because some of us do not have them and we cannot compare them.

Hon. K. Sobion: Mr. President, the current regulations are incorporated in the Laws of Trinidad and Tobago. There are the Police Service Commission Regulations and the Public Service Commission Regulations which are available to all Members of this Senate. As I understand the procedure, all Members of this Senate are provided with copies of the Laws of Trinidad and Tobago. Hopefully, the draft regulations would be circulated by tomorrow.

I had hoped to be able to deal with what I thought were the five major objectives, the fifth being the separate administration. This Commission now has the authority to engage its own staff. It is now being severed from the monolithic administration which is contained in the Director of Personnel Administration's Department and it is going to be a separate commission operating with its own administration and appeals tribunal. That is another factor which is not contained in the present constitutional arrangements. Those are the five principal objectives which we have sought to achieve by this constitutional amendment.

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I believe I have time to deal with some of the myths or misconceptions which have surrounded the introduction of this legislation into Parliament. There is a suggestion that somehow this legislation is directed against members of a specific commission. The question was raised earlier in my contribution as to what is to happen with members of the existing Commission. Let me make it quite clear that the introduction of this legislation has nothing to do with any attempt to remove members of any commission. It has to do with the Government's analysis of the operations of independent commissions and how they can be better designed to deal with the authorities which fall within their purview.

2.40 p.m.

We have sought to introduce specific disciplines; we have sought to streamline the organization and the operations of the Police Service Commission; we have sought to set them apart from the existing commission so that they can concentrate on their specific function and be not bogged down by the administrative burdens of other commissions.

There has been commentary and comment, as a second misconception that this is Government's answer to the crime situation. Again, whilst we are satisfied that by strengthening the institution which has to deal with the enforcement of law and order, it will have an impact on crime, the legislation is not intended to be Government's solution to the crime problem. I have read reports and commentaries which have suggested that.

We have indicated quite clearly here in this Senate that there are several approaches to dealing with the problems of crime. This constitutional amendment deals with one aspect of it. It deals with the institution which has to do with the enforcement of law and order. We are of the view that once that organization has a tighter disciplinary control; that once that organization has an objective as to what it is about to achieve, we will get some productivity in relation to that aspect of crime.

I have indicated here and in other places that there are a number of other legislative measures which will be introduced over the next few weeks—including the Drugs Court legislation and the bail legislation. The Preliminary Enquiries legislation is already before Parliament and before a Joint Select Committee. Rules in relation to identification parades to permit the use of a one-way mirror are in their final stages of drafting and will go to the Chief Justice for his approval and sanction. The Bill relating to corporal punishment is also to come before Parliament.

So, there are a number of measures, quite apart from the administrative sides which have to be done—the training of police officers, the provision of equipment and vehicles and a number of other areas are being tackled almost simultaneously. Sen. Daly is amused by the pronouncement that we are putting together several measures at one time.

Sen. Daly: My amusement was generated by the thought that the Chief Justice might refuse to see the rules.

Hon. K. Sobion: I fear, Mr. President, that the judges' rules are made by the judges, and it is my obligation to provide the judges with draft rules for their approval. I am afraid I cannot, therefore, answer his question.

The third misconception that is current is the question of the executive somehow, wanting to have control over independent commissions. I thought that I had dealt with that earlier on. It is quite clear to me that an executive is put there by the people of the country, in elections which are called on too frequent a basis, to see about the operations of governance. What we have done is that we have hived off part of the executive control and put it into the hands of an independent commission, and it is a situation which clearly has given the population some cause for concern.

We have been slowly slipping from 1962 to a stage where we have several institutions which cause concern in the minds of the population. It is our duty, as parliamentarians, to look at our constitutional arrangements; to look at how our institutions are governed and to try to devise ways to ensure that the machinery is there to make them productive and fully operational.

Having dealt with what I consider to be the misconceptions which surround this Bill, I can only say that the concerns which have been expressed by the population in relation to the operations of the police service are concerns which we must take to heart in a very serious way. If it means, as it does, creating amendments to our Constitution, then it is our obligation to do so.

We have sought in this Bill, having consulted with Members of the Opposition and Senators on the Independent Benches, to put before this Parliament, a Bill, which in our view, will serve the interest of Trinidad and Tobago.

I therefore move that this Bill be now read a second time.

Question proposed.

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Sen. Wade Mark: Mr. President, let me, first of all take this opportunity to welcome back our Acting Prime Minister who went on a long sojourn to India—I hope it was a very successful one—and also to express our own thoughts for a speedy recovery of our good friend and colleague, the ailing hon. Member for Laventille, Mr. Morris Marshall. We join with you in wishing him a speedy recovery.

We also take this opportunity at the beginning of this exercise to salute our women on this glorious International Women's Day in Trinidad and Tobago. The Opposition joins in wishing all our women, including our good Friend, the hon. Camille Robinson-Regis, and the hon. Joan Yuille-Williams.

Sen. Robinson-Regis: On a point of clarification. I was wondering why, "including our good Friend". Am I out of the class of women? No? I would think not.

Sen. W. Mark: I have you deep in my heart. You are very close to my heart. *[Interruption]* All our women, not only Camille Robinson-Regis.

Today, we have commenced a very important debate on a Bill entitled the Constitution (Amdt.) Bill, 1994. In the last several months, there has been a systematic, well-calculated and deliberate effort by both the Government and leading spokesmen of the Trinidad and Tobago Chamber of Industry and Commerce to discredit, undermine, subvert and overthrow key and critical institutions in our democratic nation-state of Trinidad and Tobago in order to satisfy or to suit their own selfish and voracious appetite for absolute and dictatorial power.

2.50 p.m.

Mr. President, not even the nation's President has escaped the choleric hostility and assault by these desperate men who seek to destroy the rights and freedoms of the vast citizenry under the pretext of fighting crime. But as you well know, this is a Government of "red herrings," and its leader as you know, is now the king of "red herrings".

Ironically, the so-called promoters and angels of the people's rights and the defenders of the national interest could well turn out to be the real culprits behind the escalating crime wave in our country. We have concluded on this side that it is either gross incompetence on the part of the ruling party in Government to stem the rising tide of crime and the drug trade, owing to its failure to understand the doctrine of the Cabinet system and what is called, ministerial responsibility. Or,

that this Government is fully in league with the drug lords and drug barons, and therefore has no interest whatsoever in attacking the drug trade and the escalating crime-wave in our country. It is therefore not surprising that the Trinidad and Tobago Chamber of Industry and Commerce blame everyone for the crime situation, including the Opposition, but have not blamed the Government or even themselves.

The Bill before this Senate, as far as we are concerned, is fundamentally flawed, technically deficient and tantamount to a massive fraud and hoax on this nation. One does not have to alter one's constitution to address the mundane issue of management, which is what this Bill is all about. Management of the police service has been properly addressed elsewhere, in the Police Service Act and in the regulations governing the police service; and the Minister of National Security is responsible and answerable to this Parliament for the work of his Ministry. And as you are well aware, Mr. President, section 85 of our Constitution states clearly the role and responsibility of the Minister of National Security or any other Government Minister, and his or her relationship with the permanent secretary, who is basically his administrator on a day-to-day basis.

According to the Explanatory Note, the Bill seeks to amend the Constitution for the purposes of reformation of the Police Service Commission, the conferral of disciplinary powers on the Commissioner of Police; and the establishment of the police service appeal tribunal. It is hoped that this Bill would assist the nation in solving or combating the present crime wave gripping the country; it is part of the Government's solution. But of course this is a myth, as you yourself would admit, Mr. President. If anything this Bill represents a feeble, weak and unconvincing attempt at public gallerying and public hoodwinking.

Tinkering with the nation's Constitution is an extremely serious matter and must never be treated lightly. The proposed amendments to sections 122 and 123 of our Constitution will ultimately affect the entire nation, and as such, we of the United National Congress maintain the principle that what affects all, must be discussed by all.

This Government has introduced this Bill without any national consultation or any nationwide debate on this matter. Large sections of our population remain ignorant of the implications and provisions of this particular piece of legislation. But thank God for the UNC—the new vanguard of our democracy—sections of the population were given an opportunity to deliberate and dialogue on this sweeping and most far-reaching piece of legislation.

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The Opposition consulted with various organizations both on the Prime Minister's proposals for the reformation of the police service and the Government's subsequent introduction of the Constitution (Amdt.) Bill, 1994. At this very moment, the Opposition is meeting with several political organizations on the proposed amendment, so the consultation continues, even while the debate rages on in this Chamber.

The UNC met with some 14 organizations and individuals in respect of this proposal that is before us. Mr. President, you have to appreciate that this Bill before this Parliament took many forms before it actually arrived in this particular state. And I think that we owe this country an explanation because we need to deal with the genesis of this matter to have this Bill properly placed in its true perspective.

Between January 27, 1994 and February 4, 1994 we met with a number of organizations on this matter. We met with the First Division Officers' Association; the Second Division Officers' Association; the Trinidad and Tobago Chamber of Industry and Commerce; the Trinidad and Tobago Manufacturers' Association; the Employers' Consultative Association; the National Development Party; the Republican Party; the National Alliance for Reconstruction; the Public Services Association; the Police Service Commission; two former Commissioners of Police, Mr. Tony May and Mr. Eustace Bernard; we met with the present Commissioner of Police as well as the South Chamber of Commerce.

We have had wide and large-scale discussions on this very important piece of legislation, and it was on the basis of the widespread consultation involving key players in the police service that the Opposition formulated its response to the Government, and this response was submitted to the Government on February 7, 1994.

This Bill is before Parliament without the Government providing the Opposition with a comprehensive response to its proposals. All we had was an acknowledgement from the Attorney General, and, we have here today a Bill that has been hastily and irrationally drafted and circulated by this Government for speedy debate.

3.00 p.m.

The intervention of the Opposition, and I dare say some Independent Senators, prevented a virtual circus from playing out in this august Chamber two weeks ago. What is even more amazing is what the Attorney General is reported to have stated in the *Trinidad Guardian* dated Monday, February 28, 1994. It states:

"Sobion: Accord on police reform likely."

It is stated in this report in the *Guardian*:

"He disclosed that Government accepted the proposals of the Opposition."

We will have more to say on this as we proceed.

Mr. President, nothing could be further from the truth. We have a Bill before us which, in essence, rejects every fundamental principle that we have advanced to this Government in our correspondence, yet it publicly "galleries" saying that there is an accord between the Opposition and the Government. There is absolutely no accord between the Government and Opposition on this matter! I want to make that abundantly clear.

It is necessary to note the background of this Constitution (Amdt.) Bill before analyzing in detail its many flaws and deficiencies. On April 1, 1993, the Leader of the Opposition received a letter from the Minister of National Security, pursuant to discussions held with the Prime Minister. The correspondence focussed on the establishment of a police management board. What was interesting to note in that letter was the appointment by the Cabinet of a ministerial committee to look into the whole question of appointment and operations of service commissions. However, in the committee's deliberations it was felt that there existed the need to deal more urgently with the Police Service Commission and its relationship with the police service, since this was the area which appeared to require urgent attention. The proposed board that was advanced at that time was supposed to be appointed by the Cabinet—pure political appointees at that time.

After extensive consultation with the public throughout the country at public meetings, as well as private discussions with many key players, the Opposition rejected out-of-hand the Government's proposals for the establishment of a police management board. It was clear to the Opposition that the Government's proposals attempted to remove the constitutional safeguards of an independent service commission, entrenched under the Constitution of Trinidad and Tobago, which safeguard was insisted upon by the population to insulate the police service from political influence and political manipulation in the performance of its functions.

Our response was sent to the Prime Minister on June 30, 1993. The Opposition never heard from the Prime Minister until January 13, 1994, seven months later, when we received another call from the Prime Minister. I guess that

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meeting was called in response to an editorial about the escalating crime rate in this country.

The Opposition received another letter from the Government on January 21, 1994, dealing with the establishment, not of a police management board, but a police service board of management—so they are playing games now; they move from a police management board to a police service board of management, embracing essentially the same features that had been submitted previously. We responded to that particular letter.

As the alternative government of Trinidad and Tobago, we cannot, under any circumstances, buy cat in bag. I want to repeat this—as the alternative government of Trinidad and Tobago, we cannot, under any circumstances, buy cat in bag or engage in a process of shooting in the dark.

If it is the intention of the Government to review or reform the various service commissions, then it has the responsibility to present to this nation an entire package of measures. We, therefore, ought not to approach constitutional changes either on a piecemeal basis, or worse, on the basis of personality differences. One wonders whether this Bill ought not to be properly called "The Jules Bernard and Kenneth Lalla Bill". As you would know, Mr. President, it was these personalities who ignited and engendered the wrath of the Government in general and the Minister of National Security in particular, and this is why this piece of legislation is before Parliament. They want to fire Jules Bernard and they want to get rid of Kenneth Lalla, and that is why they have brought this nonsense here to Parliament.

It is now public knowledge that the PNM Government is on a witch hunt—this Government is on a witch hunt to get rid of these two personalities. *[Interruption]* You, in particular—well I will deal with you at the appropriate time.

Mr. President: Address the Chair, please.

Sen. W. Mark: Yes, Sir.

Mr. President, it would appear to the alternative government that the bottom line of this proposed Constitution (Amdt.) Bill is to gain direct political control over the police service by an arrogant Minister of National Security who should have resigned long ago, and by extension a PNM administration that is desperate and groping. We see flashes of empire and emperor in this Bill.

Sen. Capildeo: Who is the emperor now, boy?

Sen. W. Mark: Mr. President, the concept of the service commissions cannot escape us here today. The importance of the independent service commissions was emphasized by the Judicial Committee of the Privy Council in the *Thomas Endell vs Attorney General*, 1981 case, and I quote from this judgment:

"The whole purpose of chapter VIII of the Constitution which bears the rubric "Public Service", is to insulate members of the Civil Service, the Teaching Service and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day. The means adopted for doing so, vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over the members of the service. In respect of each of these autonomous commissions the Constitution contains provisions to secure its independence from both the executive and the legislature. No member of the legislature may serve on the Commission; all members must be appointed for a fixed term of years which must not be less than three nor more than five, during which a member may only be removed for inability to discharge his function or for misbehaviour."

This was a very important judgment in 1981. The critical importance of maintaining the service commissions' independence, integrity, autonomy was emphasized by the Wooding Constitution Commission Report, 1974 and the Hyatali Constitution Commission Report, 1987.

3.10 p.m.

The rationale for the establishment of the various service commissions and the insulation of their members from undue influence and political pressure continues to be valid and relevant today as it was yesterday. The Commission functions, according to Mr. Kenneth Lalla, independently as the judiciary and, for this reason, public officers feel assured that they would stand as a bastion against discrimination and favouritism.

Mr. President, as the alternative Government we indicate that with regard to section 122, the Opposition, UNC, does not see any need for a nine-man commission. I want to make that very clear. We do not support, under any circumstances, the inclusion of the political appointees, that is, the Permanent Secretary and the Commissioner of Police who are agents of the employer. The political culture that has developed in our country makes public officers susceptible to political influence by the political directorate and, therefore, the

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Permanent Secretary in the Ministry of National Security ought not to be on that commission at all.

As it relates to the Commissioner of Police, all we shall say on this matter is that one cannot lay charges against an officer and then be allowed to sit in judgment of that same officer. In a word, one cannot be accuser and judge at the same time. The invasion of the commission by these two personalities will not only undermine the Commission, that is, its independence but is in direct violation of section 126 of the Constitution of Trinidad and Tobago, which says:

"General Provisions on Service Commissions

A person who—

(a) is a member of the House of Representatives or the Senate;..."

That includes me.

"(b) or holds or is acting in any public office or has held any public office within the period of three years preceding his proposed appointment, is not ..."

I repeat:

"...is not qualified to hold the office of member of a Service Commission."

This recommendation that is included here is in violation of section 126 of the Constitution where they are seeking to impose public officers, who are employees of the state or the Government on the service commission. We therefore do not see any real basis for the enhancement in the numbers in respect of the Police Service Commission. As far as the Opposition is concerned, the existing five-member commission is quite adequate, acceptable and in order. We do not see room for any improvement. The framers of the Constitution had a basis for having a small commission instead of a large one. They had a reason for that—to take decisions quickly and efficiently.

Hon. Senator: As is happening now!

Sen. W. Mark: It has been happening. I shall talk about that later. You all have an axe to grind. The Government is requested to take serious note of this position. This is not any laughing matter.

The Opposition does not see the need for commission members to possess the sort of skills and training as identified in clause 4, 122A of the Constitution (Amdt.) Bill. It is our firm view that the Commission should be empowered to

appoint to its staff, persons with the skills referred to in clause 4, 122A (1)(a) to (e) and such other persons as the commission considers necessary for the proper performance of its functions.

Mr. President, clause 4, 122A (1)(a) to (e) is aimed at circumscribing the power of the President of the Republic of Trinidad and Tobago and consequently compromising his authority and office. In clause 4, the Opposition is not in support of 122 B(5) which deals with the establishment of a committee. We want to deal with this matter more elaborately.

When we wrote the Government, we requested the establishment of a joint parliamentary committee comprising of Members of the Government, Members of the Opposition and Members of the Independent Benches. We told the Government in our note that that particular parliamentary committee will monitor the Ministry of National Security. We are not interested in any PSC now, you know! We want to monitor the work of the Ministry of National Security—that is what we said—and all the agencies that fall under its umbrella. In this particular Bill, the Government talks about the PSC, but we are concerned about national security. That is what we are concerned about. We would like the Government to take note of this. We are committed to accountability. We have always advocated a system of accountability, but this committee is bare—there are no terms of reference. We want the Attorney General to tell us what the powers and terms of reference of this committee are. We want the power to summon witnesses, to compel the production of documents as examples. The Government must tell us about these things; do not give us any vague and nebulous thing here.

Mr. President, in clause 4 of the Constitution (Amdt.) Bill, 122 B gives new functions to this body. They have now transformed the Police Service Commission into a management board. What the Minister of National Security is in office for, I do not know. This man should leave.

Sen. Barrack: A long time ago!

Sen. W. Mark: Under the Constitution, this is the man responsible for the management and administration of the police service. This is the man, under the Constitution, that has a Permanent Secretary to deal with administrative matters, to provide the police with vehicles, police stations and to make sure that their tools and resources are supplied. He wants to give up that responsibility and put it into the lap of the Police Service Commission so that when things do not happen he would be clean.

Hon. Senator: He cannot be blamed!

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Sen. W. Mark: I do not know what this Minister of National Security is doing in office—he should be removed.

Mr. President, in clause 4, 122 B (1) (a) says:

"The functions of the Police Service Commission are:-

(a) to ensure the Police Service is supplied with the human resources necessary for the efficient operation thereof;."

What is this? What does this mean?

Hon. Senator: Human resources!

Sen. W. Mark: This is extremely vague.

Hon. Senator: Read it again!

Sen. W. Mark: It is extremely vague. It is not only human resources. To deal with human resources the Government must have money.

Hon. Senator: Where is it coming from?

Sen. W. Mark: This is vague and nebulous. How is the Police Service Commission to ensure that these things are accomplished? Where are the funds to come from—the Ministry of National Security? If the funds are not available, then who would be blamed? Certainly not the Minister, but the PSC. This situation can lead to greater police inefficiency, instability and the disintegration of the police service after a while. This section seeks to provide the commission with power without the necessary resources. You are giving them power but not the resources. If the Government is serious about the management of the police service, it should have a special fund of \$200 million set up in a bank or put it in the Consolidated Fund and let the Police Service Commission manage that.

3.20 p.m.

They are saying they want the people to manage but they are not giving them any resources. It is the same nonsense they want to do to the Opposition. They want us to give them support and to share responsibility, but they do not want us to share power. We told them plainly "no responsibility without power". We made that very clear.

This section seeks to provide the Commission with power without the necessary resources. How is the Police Service Commission "to ensure competence? Look at 122B (1)(b) again. The Commission is to ensure that

officers demonstrate competence and effectiveness in the performance of their duties". We ask the question: How? How is the Police Service Commission to ensure competence and effectiveness? Where are the resources and the personnel to ensure this? Where are the necessary regulations to ensure competence and effectiveness? What criteria will be used, Mr. President? In the absence of a total package of proposals, what this Bill amounts to is a paper transaction.

We asked the Attorney General, who seems to be caught up with some—what is the name of the case?

Sen. Capildeo: Tuvalu.

Sen. W. Mark: Tru Value? He is a Tuvalu man—that is all. He cannot give us another example. He cannot provide this country and this Parliament with another example where governments have sought to overthrow and subvert independent service commissions. But he has gone to Tuvalu. Tru Value I call it.

Mr. President, we are saying that in the absence of a total package of proposals, this Bill is a total waste of time. We ask the Attorney General: has the Government of the country conducted a proper evaluation of the needs and requirements necessary for the Bill to work? Has the Government conducted a proper costing involving the structure of the staff? I indicated the nature of this Committee earlier.

We on this side do not object strongly to the establishment of a Police Service Appeal Tribunal to hear appeals from the Police Service Commission. The question here is: Is the existing Public Service Appeal Board functioning? Not a single word from the Attorney General. Our information is that it is functioning efficiently. We understand that between 1990 and 1993, 34, out of a total of 52 appeals which the Public Service Appeal Board heard, came from the police service and only two remain outstanding as we speak today. Is there really a need for this tribunal that the Government is seeking to advance?

We on this side accept the need for proper management of the police service and we have recognized that there are two streams of management—administrative and operational. The administrative management of the police service involves the provision of goods and services for the police. This is the responsibility and function of the Minister of National Security and his technical staff. The operational management of the police service is the function and responsibility of the Commissioner of Police. But, if the Commissioner of Police is not getting the necessary resources from the administrative stream, how can the

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operational stream function? How can they want to remove the Police Commissioner when he does not have the tools to do the job?

We pointed out that this elaborate schematic for the exercise of management functions in the police service, was not the result of whim and fancy, but the careful consideration and thought of the framers of our Constitution. They designed a system of checks and balances to prevent abuse of power and the emergence of dictatorship in our country.

History is replete with examples of countries that have gone the route of dictatorship when the political directorate gets control of the coercive arm of the state. We can talk about Eric Gairy, the former "Mongoose Gang" king of Grenada; Burnham in Guyana; "Papa Doc" Duvalier in Haiti; Marcos. It is either they want a system called the "spoils system,"—Leader of Government Business, or they are going to pursue a line that is consistent with the Westminster model that we have adopted. If they want constitutional reform, if they want a presidential system, they must have another constitution commission.

The truth is that the Government of this country has failed to provide the resources and the tools to the police of this country and it has denied resources required, also, to the Commission to function efficiently. This Government is sabotaging both the police service and the Police Service Commission and is trying to get this Opposition to support dictatorship because of its incompetence.

Our position is that if the Minister of National Security cannot run his Ministry, he must go; and if the Government cannot run the country, it must go. Call an election and let the UNC take power—we can run the country. According to the Attorney General, there appears to be agreement. The Government has accepted the Opposition's proposal in respect of the police service reform arrangement. But we ask the hon. Attorney General: Where is the agreement? Certainly not in this Bill that appears before us.

This Bill manifests gigantic differences between what we submitted to the Government and the proposals that appear in this Bill. So where is the acceptance? Where are the "crocodile tears" coming from the eyes of the Attorney General, when he told the population that "there was agreement between the Opposition and the Government—they have accepted our proposal." Where is the acceptance? Another red herring.

In our letter to the Prime Minister on page 6, paragraph 4, the Opposition stated:

"We do not agree that the Police Service Commission should be 'reconstituted'".

I want to repeat this. In our letter to the honourable Prime Minister of the country, the Opposition said—

"We do not agree that the Police Service Commission should be 'reconstituted'."

And this is precisely what this Bill does. It re-organizes and it reconstitutes the entire Police Service Commission and fundamentally alters the rationale for its very existence, that is, the insulation from political interference. The question must be asked: What is this Government really up to? Is this Government interested in a police authority? Well, then, if it is interested in a police authority along the lines of the English model, it must say so. It must bring the necessary legislation to that effect. But do not come here and "mamaguy" the population and say it is retaining the independence of the Commission when its agents are there. There are nine people on the board, but a quorum is four. Do you understand, Mr. President? The existing Commission has five persons; the quorum is three, or I think it is four, if I am not mistaken.

3.30 p.m.

Sen. Merritt: Four.

Sen. W. Mark: Four—a quorum. So when the political appointees are placed on that board, there can be a quorum of the Commissioner of Police, the Permanent Secretary, who is the agent of the Minister of National Security and two representatives of the community. Who these people are, we do not know.

Sen. Daly: Mr. President, I wonder if the Leader of the Opposition Senators would be more gracious. Is it right for him to describe the permanent secretary and the Commissioner of Police as political appointees, and, more importantly, is it fair?

Sen. W. Mark: I made a point about the political culture of our country—theoretically, there is supposed to be an arm's length arrangement; practically and in reality, the culture of our country is not so. That is why, for instance, the former permanent secretary in the Ministry of National Security could have written a letter to the Commissioner of Police asking him to retire early, even though her conscience guided her otherwise.

Mr. President, the point we are making—

Sen. Dr. Saith: As a follow-up to the point raised by Sen. Daly, would the hon. Senator not agree that these appointments are made by the same independent bodies that he is defending?

Sen. W. Mark: Oh! In respect of what?

Sen. Dr. Saith: By the Public Service Commission and the Police Service Commission, which are under the present Constitution and which he has clearly identified have been set up as a buffer between the politician and the public service. The argument does not seem to make sense.

Sen. W. Mark: We have made it abundantly clear that your proposal violates section 126(1) of the Constitution. The Constitution is very clear on public officers or holders of public office being members of any service commission. That is my argument. It ends there. I am in support of the Constitution of Trinidad and Tobago and that Constitution says that.

Sen. Dr. Saith: Please! Please!

Sen. W. Mark: You are "tiefing" my time, you know. I want to know whether you are on a point of order or interrupting.

Mr. President: I have two people on their feet.

Sen. W. Mark: Yes. You see, the Minister must tell me if he wants clarification—

Mr. President: Sen. Mark, an important point was raised by Sen. Daly—

Sen. W. Mark: Yes.

Mr. President: —and the Minister of Planning—

Sen. W. Mark: Yes.

Mr. President: —sought clarification.

Sen. W. Mark: And I responded.

Mr. President: They have asked who appoints the Commissioner of Police and the Permanent Secretary. That is what they asked you.

Sen. W. Mark: He knows. What is he asking me? Sen. Daly knows too. What are they asking me?

Mr. President: Well, they want you to place it on record.

Sen. W. Mark: No. Let them go to the Constitution and the Constitution will direct them on this matter, Sir.

Sen. Dr. Saith: On a point of order. The hon. Senator has described the Permanent Secretary in the Ministry of National Security and the Commissioner

of Police as political appointees. All we are seeking to do is to find out from the hon. Senator the basis on which he has made that statement.

Mr. President: Would you like to withdraw the statement?

Sen. W. Mark: No. I am not withdrawing the statement. That is a fact of life.

Mr. President, if I may explain briefly. We have made it very clear that the Constitution of the country says that no holder of public office should serve on a commission.

Hon. K. Sobion: What is the point?

Sen. W. Mark: No! I am trying to develop my point if you would give me an opportunity.

Mr. President: While you are at it, your 45 minutes has expired.

Sen. Capildeo: Mr. President, could we extend it by 20 minutes because these calculated interruptions—they are calculated interruptions because the Gentlemen know—

Mr. President: It expired about two minutes ago.

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. [Sen. S. Capildeo]

Question put and agreed to.

Sen. W. Mark: Mr. President, I wish I had another hour and a half. I could have really dealt with some of these matters extensively, but I am pressed for time so I shall have to deal with Sen. Saith and Sen. Daly during the tea break.

The PNM Government is playing with fire when it comes to the various service commissions. It is our information that the PNM Government is promoting reform of the public service. This reform is designed to dismantle service commissions and they are going to be replaced, from our information, by management boards and appeal tribunals. The management board will be chaired by a permanent secretary and have the power to make appointments, effect transfers, promotions, dismissals and generally exercise other reforms over public officers. Such reforms will permit a very dangerous development in which executive control would become real over the public service, and what that will in fact generate is abuse.

Sen. Draper: Mr. President, may I inquire where the hon. Senator got that information?

Sen. W. Mark: Mr. President, the very board— Anyway, I do not want to anticipate, Mr. President, because you will accuse me of anticipating. So I do not want to get into that right now. But he is well aware of what I am talking about.

Sen. Draper: Mr. President, the hon. Senator is clearly misleading this honourable Senate and unless he can substantiate that, I think he should withdraw it.

Sen. W. Mark: Mr. President, if I could anticipate and so forth, with your permission, I will do so.

Mr. President: Anticipate what?

Sen. W. Mark: The Regional Health Authorities Bill.

Mr. President: But you made a statement.

Sen. W. Mark: Yes.

Mr. President: If you would like to withdraw the statement—

Sen. W. Mark: No. I am saying that, for instance—

Mr. President: So you have made a statement.

Sen. W. Mark: Yes.

Mr. President: And you want to be guilty of anticipation?

Sen. W. Mark: No, no, no.

Mr. President, the hon. Minister of Public Administration knows. He is the man behind this whole package. They have issued documentation on this matter that the whole focus behind public service reform is to downsize and whittle the public service to get rid of thousands of workers, and to remove—

Sen. Draper: Mr. President, clearly the hon. Senator is not in a position to substantiate that and he should not be allowed to continue misleading the House.

Mr. President: I do not think this has any bearing on the matter before the Senate. Could you leave it out!

Sen. W. Mark: All right.

Mr. President, while some clauses of the Constitution (Amdt.) Bill 1994 may be useful, as I said, we wish to make it abundantly clear that there are many provisions in this Bill that will do nothing to reduce the spiralling incidence of crime in our country, in spite of what the Attorney General may have said earlier.

What is urgently needed in this country is an immediate action plan to deal with crime and criminals in the immediate present, and there is need to formulate a policy and programme to deal with the problem of crime detection and crime prevention in the short, medium and long term.

This Bill is an attempt by the PNM administration to mislead the population into believing that the rampant crime wave which is enveloping our society could be partially addressed by this piece of legislation. The Government has failed to formulate an immediate action plan to contain crime by apprehending criminals in the first place, and preventing crime by providing proper security for the innocent citizens. The blame has to be squarely placed on the shoulders of the present administration which is in control of the resources of the state. It is clear that the PNM has failed to deal with the major problems facing our country, including the problem of crime.

In the United National Congress 1991 elections manifesto, proposals to address the issue of crime were clearly spelt out. The many recommendations contained in the report of the several committees set up to enquire into the efficiency of the police service are still relevant and should be urgently implemented.

Mr. President, we made reference to the report of the Lee Committee in 1958; the Darby Commission of Enquiry in 1964; the Carr Committee in 1970; the Bruce Committee in 1978; the Police Executive Research Forum Study in 1990; and the O'Dowd Report of 1991. There has been no shortage of ideas on what is to be done about the police service. What is lacking is the political will on the part of the present Government.

Our country leads the Caribbean in respect of reports into the police service. The Scotland Yard final report is on the desk of the Minister of National Security today. One hundred alleged corrupt officers remain on the job. Some, we understand, have been promoted. No wonder, even the US Government in a recent statement, expressed grave doubts about the sincerity and commitment of this regime to fight the drug scourge.

We have stressed repeatedly that any attempt to address the problem of crime must include a serious assault on the drug trade, since many of the crimes are drug related. Yet the Coast Guard is not equipped with the tools to do the job. Equally, the police service is hamstrung in performing its operational duties owing to the absence of equipment and tools.

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3.40 p.m.

We cannot detach crime from the present Bill that we are dealing with here. We cannot detach the police service from the present Bill that we are dealing with here. As the alternative government, the UNC would provide the police with the necessary resources, training, skills and technology to enable them to detect, as well as to prevent crime. The Judiciary has to be provided with the proper personnel and equipment to ensure speedy trials. There is need for prison reform. Education, training and the creation of jobs, as well as the re-establishment of a family structure, should form part of any medium-term and long-term solutions to the crime situation in our country.

As an immediate measure, a UNC government would mobilize the population in the fight against crime. Such a plan would involve a partnership between the Government, the police, local residents, the regional corporations, the trade union movement, as well as the business community. Neighbourhood watch groups and community organizations, functioning in close collaboration with the police, would form an integral part of this programme.

The Bill before this Senate will not address the issue of crime. It is our view that the real basis of this Bill is to exercise greater and, if possible, total political control over the police service. It is not to improve efficiency in the police service. This is merely a ruse. If the Government was about improving efficiency, it would have implemented in full, years ago, the various reports on the police service, including the special *Scotland Yard Report*, as well as the *O'Dowd Report*.

The Opposition has not been privy to the regulations which are to govern the proposed legislation. There have to be new regulations to address the suggested changes. The Minister promised to bring them shortly, but we hope, like the Maxi-Taxi Act and the Anti-Dumping Act, they would not join the list of regulations to be tabled "shortly".

Hon. Senator: They have been distributed now.

Sen. W. Mark: They have been distributed, I understand. As I said, we are not prepared, on this side, to buy "cat in bag". We can only conjecture that the Government does not approve of the present membership of the Police Service Commission and wishes to reconstitute the Commission without having to remove its members in accordance with the law.

The usefulness of these commissions, as I said, was identified by the Hyatali Commission. The UNC, as the alternative government, would not like to inherit a

police service that is so politically influenced when we get into power—which is shortly—that the officers would find great difficulty in co-operating willingly and professionally with our new administration. We wish to avoid this scenario occurring, even to our worst enemy, hence our commitment not to tamper with the nation's Constitution at this time.

On the issue of whether politicians should be vested with the power to hire and fire, the report of the Commission of Enquiry into the Organization and Cost of the Public Service of Trinidad and Tobago of June, 1959 which was headed by Sir Geoffrey King, stated:

"That breed of men who seek to obtain preferment by political patronage will bring about the destruction of an institution that most civilized and democratic governments have long cherished and valued as being indispensable for good government."

I want to close by quoting the former Prime Minister of Jamaica, Michael Manley, while he was addressing the Jamaica Civil Service Association Conference on April, 19, 1972. He is quoted as saying:

"When a politician starts to meddle in detailed administration and the execution of policy very often it is going to lead to incompetent performance unless he is an extraordinary good politician.

Sometimes the interference by the politicians in the administrative process or the executive process is to further an improper motive...for instance a politician wants to see that a programme is implemented himself because he really wants to see some friend of his get a contract."

Sen. Huggins: Mr. President, before the Senator takes his seat, during the course of his contribution he alluded to the fact that if it is that this country pursues the Westminster model, then we should do things in accordance with the Westminster model. Would my friend please indicate how the Police Authorities in the United Kingdom are appointed?

Sen. W. Mark: I do not have time to deal with that now. Mr. President, may I just take a minute to wind up?

We on this side have made it very clear that we do not see the need for the re-constitution of the Police Service Commission. We have made it very clear that there is a vast ocean of difference between what the Government has proposed and what we have submitted. We have made very clear suggestions in our presentation. It is now up to the Government if they are interested in its passage,

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to ensure that this Bill undergoes the kind of changes necessary so that the independence, integrity and autonomy of the Police Service Commission would be intact, and that our children who are going to inherit tomorrow, will be able to live in peace and harmony and in an atmosphere of freedom.

Laws are not passed for today; laws are not passed for incumbents; laws are passed for the future, and we have to ensure that whatever laws are passed here, our children and the future generation can live with those laws.

Thank you very much, Mr. President.

Sen. Michael Mansoor: Mr. President, let me, as I am on my feet, take this opportunity to welcome you back, even though a week late, to this Chamber. I could report that your Vice-President did a very able job, nevertheless, we are all delighted to have you back.

Mr. President, this Bill is a very difficult one to deal with. I find it extremely difficult to understand what are the philosophical underpinnings of the Bill. I find it very difficult to find cohesion in the various provisions for changes in the Constitution. And as I listened to the Attorney General, I came to the conclusion that the apparent conflict of objectives in the proposed amendments, arises from the fact that, on the one hand, the Attorney General is seeking to retain an ample amount of independence in the Police Service Commission, while on the other, establish accountability; establish managerial accountability, to be more specific.

So that if one looks at the objectives of the Bill, or the main thrust of the Bill as enunciated by the Attorney General, one cannot help but conclude that it would be extremely difficult for anyone to so change this Constitution to, on the one hand, change what service commissions are all about, to expand that, and at the same time, retain the independence of the commissions. So that there is a lot of conflict here in what the Attorney General is trying to accomplish, and I rather sense that this is why it is so relatively easy to use many of the arguments that he proposed to support either position.

My purpose today is not to deal with the regulations because I have not had a chance to look at them, but merely to take the approach of the common man and apply common sense to what is being proposed here today. While I accept the representation of the Attorney General that this Bill is not the only instrument being used to look after the crime problem, I must tell him that to my way of thinking, if this Bill does not promote better management in the police service, it really is not worth pursuing.

3.50 p.m.

While I am extremely sympathetic to the overall goal of the Attorney General to do something about the crime situation, I must tell him that the only criterion I have for evaluating this Bill is whether or not it makes managerial sense. I find it more than a little confusing that an executive would seek to put more power in the hands of a commission when it is not in control of that commission; quite a contrary argument to what Sen. W. Mark raised.

The Commission is being expanded, appointed by the President, and in addition to its old powers to discipline, it is being given new powers. So that while I would have expected that the executive would have sought to grasp the nettle and take charge of the management of the police service in a manner that is constitutionally fair, what I see here is the creation of a new service commission that is really quite removed from the Executive, with all sorts of powers, some of which it can hardly, in my view, pursue rationally.

So, I ask the question: What is really being attempted? Why is this Bill being brought to this Senate? Are we trying to make the police service more independent of the administration? Let me pursue that. The Commission is being made up of nine people: permanent secretary, the commissioner of police and seven other persons with an assortment of skills; what worries me about this is that these appointments are to be made by the President, after consultation. What also worries me is that no change is being made to 126(4) of the Constitution.

So that, this expanded commission, with wider powers, appointed by the President, who can only remove a commissioner if he, in his discretion, deems that commissioner to be unable to perform his duties, or for misbehaving. We are creating an expanded commission with managerial powers which the executive really has no control over.

That concerns me because the responsibility for the maintenance of law and order, in my view, rests with the executive. The people in this country expect the Minister of National Security to be responsible for the police service. When we have a new commission, appointed by the President for five years, and those commissioners could only be removed if they misbehave or if they are proved unable to do their functions because of ill health—I think that is the major reason—one really wonders what we are creating here.

Is the Minister of National Security going to be better able to deal with the managerial problems with his commissioner in the police service? I rather expect that the answer to that is in the negative. Because, what we have really done is to

remove managerial control through his Commissioner of Police, from the Minister. It has become much more complicated. I cannot understand what is being done here.

I ask the question: In its anxiety to accomplish two rather distinct goals; on the one hand, independence, and on the other hand, accountability and managerial control, has the Government really accomplished anything? Because, it is going to be as difficult as it is today to do anything about competence and all other kinds of managerial concerns that are somewhere in the background to this Bill.

Mr. President, let us go back to these seven persons: the permanent secretary; commissioner of police; a lawyer; a human resource person—I guess we can see the hands of Sen. Draper there—a psychologist, a businessman; someone with special knowledge of management—God alone knows what that is—and two representatives of the interest of the community—I should have thought that everyone was a representative of the interest of the community.

This is quite a smorgasbord of skills, and an independent commission made up of these people who are trying to run what is called a paramilitary organization; a psychologist, a couple of businessmen and management experts. I ask a very fundamental question: Will the management of the police service improve because of this? And, I rather suspect the answer is "no".

What worries me is that four of these nine people can constitute a quorum, and the way I look at it is that it is possible for us to have two commissions sitting at the same time; four up at Camp Ogden and four here or somewhere else for that matter. We have to think about this. Should it not be five? Or, which four? As I read this Bill, the chairman does not have to be part of the quorum; any four, the psychologist, his businessman friend and a couple of other persons representing the interest of the community are in charge of the management of the police service according to this.

What are we really doing? Are we making it easier for the Commissioner, the Minister and the permanent secretary to manage the police service by doing this? Appointing these persons with all kinds of skills and background may be very useful, but we are putting them in charge of the management:

"to ensure that the officers demonstrate competence and effectiveness..."

The psychologist is going to determine how policemen demonstrate competence and effectiveness; and I have much difficulty conceiving of this commission, with all these kinds of people really doing that. How are they going to do it?

I do not believe we have really made it any easier for the good Minister or the Commissioner of Police; we have complicated it. Perhaps, rather curiously, we are putting this responsibility for the appointment of this Commission into the hands of the President. So that the President, at the end of the day appears to be responsible for the management and competence of the police service, and I find that rather bizarre if not extraordinary. How could the Government do that?

4.00 p.m.

If it is that the police service, because of bad management on whatever, is not doing what it is supposed to do, the person who appoints the commission is responsible. Is it the President? What about the Minister? What is his role in this matter? I am not a constitutional expert but I find this arrangement extraordinary. How could we ask the President to take this kind of operational and executive responsibility? I cannot understand what is being done here.

The President is not an executive. The President is not responsible for whether the police service has men, vehicles or whatever. If he is the one responsible for the appointment of the commissioners and if the commissioners are responsible for the management of the service, if everything falls down you go to the top; I find that idea totally strange. It may be constitutional. Maybe the lawyers will tell me differently, but I do not understand it.

From a management standpoint, from the standpoint of common sense, it just does not make sense. It cannot work! We are creating a monster here. If it is that people believe, and, it is being represented that the existing commission is a problem, which I do not think it is, I believe we are creating a bigger problem.

Sen. Huggins: Is the hon. Senator advocating that the commission should be appointed by the Cabinet?

Sen. M. Mansoor: Mr. President, my job here is not to advocate anything. Unlike Sen. Wade Mark, I will not make a threat or a promise to go into politics. That is not my job. My job is to deal with what the Government puts before me. Does it make sense or does it not? This, in my respectful view, does not make sense. I am not here to develop a new constitution. I am here to vote on a Bill, an amendment to the Constitution, which in my respectful view does not add up, and it is extremely unfair for the Minister to expect me to do the work of his constitutional experts. I am not in that at all.

Sen. Huggins: Maybe, if I put it another way: would the Senator be prepared to support an amendment to that effect?

Sen. Mansoor: Put it and I will think about it.

This does not make sense to me at all. It puts the President of this country—because we do not know what consultation really is. Is it that after consultation the Prime Minister and the Leader of the Opposition say, well, maybe, we do not believe so. We have had this discussion before. Five years ago we had it. What does consultation mean?

In my respectful view this commission is going to be a runaway train that nobody is going to be able to control simply because the President does not have the power, nor should he be expected to be monitoring efficiency and effectiveness and matters like that. That is not the role of the President as I understand it. It just does not make sense. If anybody can tell me how it makes sense I would be very interested to be so informed during the course of this debate.

I come to 122B which the Attorney General dealt with. He dealt with the question of attempting to give this commission some sort of management focus. If I may summarize him, he said that in the existing arrangements the Commission does not really have a focus as such and that 122B was so designed as to provide it with managerial focus and responsibility. Then he went on to tell us in order to do all these things you need money. The Commission is not about money. So that men in service, men and equipment, overtime, enough men to deal with shifts, holidays—the commission does not have the money to deal with that but it has this kind of pseudo-responsibility which, for a Constitution worries me.

I can understand these loose ambiguous arrangements in small organizations, but when you put this type of ambiguity into the Constitution, I worry because there must be a better way of doing it, and, here I expect your constitutional experts to deal with it. There must be a better way of doing this. You cannot put this kind of ambiguity in the Constitution. A constitution is not about ambiguity; if it is, we do not need it. Why give this commission, appointed by the President after consultation, this kind of responsibility which it cannot satisfy on its own? And then you add to the confusion, if you will, by saying that the commission must report to a parliamentary committee.

I mean no disrespect but I have sat on parliamentary committees before; just the kind of parliamentary committee that is being envisaged here. Without power from the Constitution these parliamentary committees, really, are not about power. They may not be toothless, but they certainly are not about power. What

would the parliamentary committee, for example, do if the commission decided in 1994 or 1995 to submit a report like this:

The commission had 10 meetings during the year and six Members attended four meetings and eight Members attended the other six.

What would the parliamentary committee do then?"

Would it be able to send the commissioners to Mount St. Benedict to write a different report? What if the commissioners say that is a sensitive matter; we cannot tell you what we have planned? What is this commission going to report about? There is nothing here that tells me what is in this report. Not even a sort of commentary by the Attorney General that this is the type of report we would expect; maybe not in the Constitution as such, but some guidelines as to what we expect to have in this report. What is the parliamentary committee going to do about it? I believe I can write that report in March of 1994 for 1995 and 1996. Because, I am very certain of what is going to be in it: inadequacy of human resources, equipment, money. Disciplinary matters, yes.

The commission reporting to this parliamentary committee, is that more efficient, and more effective than what we now have? Is it going to be efficient at all? Is this psychologist and psychiatrist with a few businessmen and management experts going to make a difference? My answer is no. This parliamentary committee really means nothing. I have read with much interest the reports of the Public Accounts Committee and the Public Accounts (Enterprises) Committee over several years. Not only this administration.

I have sat on those committees and I have asked all kinds of people all kinds of questions. If they chose not to answer by telling you they do not have the information, and you defer the meeting and then the individual does not come to the meeting—and it goes on and on.

Read the reports of the Public Accounts Committee and the Public Accounts (Enterprises) Committee over the last few years and see what you find. Most of them said, totally ineffective. That is what these committees say. They are not really controlling or establishing any degree of accountability over Government spending. Not at all. There is nothing here that makes me believe that this new committee made up of some conglomeration of Members of both Houses, would be able to do anything else. It would be just a humbug. It will do very little to assist the Minister and the Commissioner to run the service more effectively.

4.10 p.m.

This is a paramilitary organization. It is not part of the public service. What is this all about? A lot of the support for this amendment to the Constitution comes from the loose thinking, in my view, that we should seek to manage the police service as we do in the private sector. The Police Service Commission is similar to a board of management.

I do not think it is as easy as that because perhaps the most important function of a board of a company in the private sector is to appoint, to hire or to fire the chief executive. I do not see in this new arrangement, this expanded commission, anything that gives this commission any more or less power to do just that, nor should it. If it is that we are going to model it and the service commission is now an arm of management reporting its responsibilities to Parliament; if it is that we are going to give it the responsibility to manage and to do these things, I ask: How is it going to be more or less able to do it?

There is nothing in this Bill that says if an officer is incompetent or not able to do the job that anything can be done about it. It is a matter of discipline and misbehaviour. How does this new service commission with all these skilled people around the table do this? More importantly, I do not believe that service commissions are about management. Service commissions are about ministers and police commissioners working together as a team and doing what they are supposed to do, not independent service commissions. This imports, if you will—they are imports; representatives of interests in the community responsible for the management of a paramilitary organization? Total madness! It is just not going to work.

Clause 122D(2) states that power to remove and exercise disciplinary control over the Commissioner of Police and an officer in the First Division shall vest in the Police Service Commission; I really do not know what that means. I believe that the Attorney General should tell us what it means. Then to say that the commissioner cannot go to court—it is all legal matters. I leave that for those who are more capable of dealing with going to court and not going to court.

I promised that I would deal with this Bill only from the vantage point of management and common sense. I believe I have established that the creation of a larger police service commission appointed by the President, made up of a variety of people with all sorts of skills is going to present a greater managerial problem to the Minister and the Commissioner of Police than they now have.

I do not support that view, but if it is that what caused this Bill to come about is the fact that in certain quarters there was a feeling that persons were not as responsive to the challenge of efficiency in the service as they should be, I think that the position which we are creating is going to be far worse. I do not know how the commissioners are going to be evaluated. Who is going to evaluate them? The parliamentary committee or the President? If the same grounds for removal of commissioners are retained in the Constitution as it now is, what has been accomplished? What have you accomplished?

That leaves us with giving the commissioner the authority to deal with disciplinary matters. It is my own judgment that the commissioner needs perhaps more authority to deal with matters of discipline. I do not share the view that we should make an opera of the smallest misdemeanour in the police service, and it should go from one hearing to another with all kinds of rules of evidence and all sorts of paraphernalia that merely seek to complicate the procedure.

If it is that the new regulations and this new provision give the commissioner the authority to deal more competently with managerial problems, I would support that. I have no difficulty with that. If it is that it enables the commissioner to manage his men and women more effectively, I have no difficulty with that. One has to wonder though, whether that is not a matter for the regulations, and whether one really needs to mess with the Constitution.

I am not satisfied as to what, really, this amendment is going to accomplish. I do not know what it would accomplish. I do not know what hearings before a parliamentary committee would accomplish. I ask the Attorney General to respond to these questions.

I dare say that if it ever happens that the Minister of National Security and a commissioner of police find themselves in the company of six or seven other commissioners who are not responsive to the challenges of the time—I use that term very broadly—that minister and commissioner—the people whom the country looks to for management of security—are going to find themselves in a rather awkward position, because commissioners are there for five years. They can be removed only if they become ill, insane or they misbehave. So, what are we doing? He is creating more problems. The Minister is not giving the commissioner the power to manage; he is taking it away from him. Any four of his commissioners can tell him what to do at any time.

Let me conclude by saying that while I am extremely anxious to do anything that I can to assist the Minister and his commissioner in dealing with the problems

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of the police service and national security, I have seen very little in this Bill to tell me that this amendment is about precisely that. I express the hope that in the regulations there is some indication or promise of better managerial performance. I have very grave misgivings about the efficacy of these amendments in doing what the Government is trying to do.

Thank you very much.

Motion made, That the Senate do now adjourn to Tuesday, March 15, 1994 at 1.30 p.m. [*Hon. L. Saith*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.20 p.m.