SENATE

Tuesday, February 27, 1996.

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

PAPERS LAID

1. University of the West Indies Students Guarantee Loan Fund - Trustee Agreement. *[Minister of Public Administration and Information. (Sen. The Hon. Wade Mark)]*

2. Thirty-sixth Report of the Salaries Review Commission. *(Sen. The Hon. W. Mark).*

PETITION

Just Friends and Service Organization

Sen. Carol Cuffy-Dowlat: Mr. President, I have the honour to present a petition on behalf of the Just Friends and Service Organization of 20 Scott Street, Les Efforts, San Fernando.

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

Petition read.

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

WASA POLICY

Sen. Martin Daly SC.: Mr. President I beg to move the following Motion:

Whereas WASA has a monopoly on the distribution of water, and its lack of efficiency is a major cause of hardship to citizens; and

Whereas a contract for the management of WASA has reputedly been signed in or about November 1995; and

Whereas the Government has promised to renegotiate the said contract and there is public support for this step;

Be it resolved that the Government make a full statement to this House disclosing its timetable for renegotiation and its policy concerning water distribution.

Mr. president, by this Motion I am seeking to raise five issues or, putting it alternatively, to achieve five objectives. First and foremost is that at the time the Motion was laid, my intention was to ensure that the new Government kept its election promise to review and negotiate the contract.

Secondly, I wish to raise, for debate, the propriety of any government entering into a binding contract during an elections period. That is to say a period between the dissolution of Parliament, the holding of elections and the swearing in of a new government.

Thirdly, I wish to raise, not for the first time in my period in this Senate, the whole question of the disclosure of the terms of a contract entered into by the Government on behalf of the people of Trinidad and Tobago, insisting as I have repeatedly done, that none of the essential terms of such a contract involving public assets should be secret. In my respectful view, Parliament is the place in which the essential terms of those contracts involving public assets should be disclosed to the people of Trinidad and Tobago.

Fourthly, I wish to discuss briefly how governments in this country do business with foreign investors in relation to public assets and public rights.

Fifthly, I wish to obtain a statement from the Government on its water distribution policy.

1.40 p.m.

Now, Mr. President, I will take those areas in the order that I have raised them. May I say at the outset that I am considerably relieved by the manner in which the Government has approached this contract so far, but I emphasize, ‘so far.’

This Government must know by now that there is a great deal of concern in the country about its apparent inactivity on crucial issues. It must also know that it is being characterized as a government with plenty start and no finish, and those who understand the game of soccer will understand how very important finish is.

I am sure, Mr. President, although you belong to an older vintage than myself, you will remember the era of General Franco and cha cha cha; but the cha cha cha came after the ball was put in the net and not before. I see that Sen. Theodore knows well what I am talking about. The General’s team always danced after it put the ball in the net and not before. We have a Government that is dancing on

several issues before it has put the ball in the net, and this may yet turn out to be such an issue.

What is pleasing about the Government's response so far, whether stimulated by my Motion or not, is this: that shortly after its election, on November 8, 1995, the Minister of Public Utilities made a statement concerning private sector participation in WASA. This was commendable for its speed and it also shows that I have been right all along in saying that governments do not need to have a honeymoon period to take action. The youthful Minister certainly pointed the way in this regard by making a statement to the country promptly.

There are several important features of this statement. What it did, first of all, was to confirm that this contract was entered into on November 1, 1995, five days before a general election. That was a totally shameful act. *[Interruption]* Let me say at the outset that the issues which I am seeking to raise on this Motion have nothing to do with PNM, NAR, RAM, MPM or DLP. These are national issues and concern the way in which governments do business, and the way in which this Government will be doing business. I shall be indicating in due course, there is another Minister who sits in this place who has now set a lead which I hope the Government will follow, but we will come to that.

This was an absolutely shameful act and if the party other than the Government, entering into this contract did not know it, that is their business. On behalf of the people of this country, it was an absolutely shameful act to enter into a contract five days before a general election whether or not those entering the contract thought that they had predicted the result accurately or not. That is why I want to discuss later on, the way in which governments do business on behalf of the people.

I have said repeatedly that I have no ideological position on divestment and private sector participation. I come from the private sector; I am a businessman, but like my colleague, Sen. St. Cyr, I review each of these private sector participations on a case-by-case basis. To this day we have not been able to find out what valuation was placed on the assets of T&TEC prior to the PowerGen deal. Well, some of us at any rate can now say that we always understood what Mr. Acker was about and now history has established it. I dare say, in due course, history will establish the true facts about those two generating units at T&TEC known as Sitting Bull and Crazy Horse, which everyone believes should be replaced and which, under the terms of the PowerGen deal, will not be replaced

but repaired over the next 15 years, as far as we understand. All of these are acts contrary to the national interest.

I wish to recommend absolutely strongly that every agreement, every heads of understanding, every memorandum of understanding from here on that are entered into by any government, whatever its political complexion, must contain a clause which says that if the contract is signed during an election period, it is subject to affirmation subsequent to the general election. It simply takes a properly drafted clause providing for affirmation in those events to take us out of the shamefulness of what took place on this occasion. I want to recommend that this Government—particularly in the light of the sentiments of the Minister of Public Utilities and the Minister of Energy to which I shall refer—in this fresh start which it is promising to make, goes to its lawyers and gets advice about the kind of clause I mentioned. If that becomes standard practice in our dealings with other persons when we are dealing with public assets, we will never get caught in a shameful act like this again. Mr. President, that is the short answer that I have on the propriety of this contract being signed five days before the election.

There was a poll in a Sunday newspaper which indicated that there is public support for review of this contract. It is on that basis that I expressed, not only my opinion, but I believe the opinion of a large number of people in this country, that this was a shameful act.

That is all I propose to say about the propriety of what was done and to give my recommendation that such a clause find its way in all contracts. After all, Mr. President, as we shall see, the investor here has the benefit of a confidentiality clause which restrains the Minister from telling us what this deal is. Let us in future have the benefit of a clause of the type I have suggested.

With regard to the question of the Government keeping its election promise to review and renegotiate this contract, they have kept it partially and I say so because on December 8, the Minister of Public Utilities indicated that he was appointing an inter-ministerial team and he told us as best he could what the contract was about. It is in the course of that statement that he referred to the fact that he was circumscribed by the confidentiality clause in the agreement. It think it is an absolute act of arrogance for anyone to think that he can enter into a deal with public assets and the relevant Minister is circumscribed by a confidentiality clause. It is that practice which I also seek to stop by raising the issues I do in this Motion. I think it is quite wrong.

The fact is that although the Minister has done his best to tell us what the contract is about, we simply do not know anything about the money issues. We do not know if we are getting a six for a nine. If this investor has the good of this country at heart, it will release this new Government from this confidentiality clause so that we can know whether we are getting a six for a nine or another bad deal in which the paper promises will not be realized.

So, in that first statement, Mr. President, the Minister confirmed the shamefulness of the contract executed on November 1, 1995. He indicated that there was a confidentiality clause limiting what he could tell us. Quite significantly, the key elements of the agreement was the assumption of responsibility of all liabilities and responsibilities of WASA existing, accrued, due and payable at the effective date of the interim operating agreement. We simply do not know what that figure is. It could be in the billions. Then we see that there is a management fee of US $9 million. Mr. President, do you know what this country can do with US $9 million? We have to pay US $9 million to someone to manage WASA and we do not know what we are getting for it; there is vague reference only to specific performance targets. I am quite sure that the Senator who has kindly agreed to second this Motion will be asking some very searching questions about whether or not those specific performance targets include giving us water that is clean, and not by reference to the fact that this company had some bad publicity in relation to its home town, but in reference to the fact that we know from time to time that WASA does not have the money to buy chlorine to put in the water and that other contaminants are in the water. Is that a specific performance target in this contract? The country needs to be told.

On December 8, the Government began keeping its promise. Subsequently, on January 26 the Minister made a full statement about what they had decided to do, which is basically to honour the contract.

1.50 p.m.

One of the things he did, Mr. President, which in my respectful view was creditable, was he indicated that in the course of the review he had interviewed certain companies, including Lyonnaise Des Eaux which was the second highest ranked preferred proposer. I think that was a very creditable step. Indeed, any student of politics in this country would recognize that if Maritime had been interviewed in relation to the infamous Pride Project, as Lyonnaise Des Eaux was, by this Minister, perhaps we would have had a different Minister of Finance, and indeed, a whole different government.

If there was anything wrong with this contract one would have a protagonist; someone who could tell the Minister and his ministerial team if there was any monkey business. Again, I credit the Minister very highly for doing such a thing. No doubt he had the Maritime precedent firmly in mind, because the Maritime precedent is partially responsible for him sitting where he is today.

The Minister also made the statement in relation to whether this contract should be repudiated; that there could be serious financial implications touching on investment flows from multilateral and other financial institutions. I am absolutely confident that if any country tells the international community that this country has a track record for one government succeeding another and honouring the obligations of the previous government, the international community would be happy with that.

I am equally confident that if we tell the international community that in our country we have a post-election affirmation clause, they will be equally happy with that. What they are likely to say is, "well, you know those Third World 'chappies' woke up at last." I am absolutely certain that we will not suffer any reverses in the international community if we made it clear that in our country we have a practice of affirming contracts signed during an election period.

The Minister has told us that he has secured significant improvement to the existing agreement and that is where my qualification of "so far" comes in. He has acted promptly and with a methodology of which I personally approve, but it is the end result of which I am concerned. That is why I say, we have the dance, but the ball is not in the net as yet.

First of all, these improvements which the Minister said he has secured have yet to be concretized. I quote from his statement of January 26, 1996:

> "Mr. Speaker, Cabinet has taken a decision to appoint a team comprising officials of the Ministry of Public Utilities, Ministry of Finance, Ministry of Legal Affairs and Counterpart Consultants to the Ministry of Public Utilities to concretize these new terms with Severn Trent/Wimpey."

Mr. President, so far we only have objectives, we have not as yet—and the country needs to be clear about this—won any concrete concessions from these people who hustled us into a contract five days before a general election. We have won objectives and the country needs to be told that. I hope that by the time we come to the end of the debate the Minister would be able to tell us in concrete terms what these concessions amount to. When I look at what the so-called

concessions are in relation to new proposals—and the Minister described those new proposals:

> "The Ministerial Committee in discussions with Severn Trent/Wimpey, introduced new proposals not previously included or considered under the existing IOA. These new proposals were:
>
> (i) Provision of a Hardship Relief Programme;"

I am sure others will deal with that:

> "(ii) Emphasis on Customer Service Approach;"

That is new, Mr. President. Were these people planning to come in here and not serve the customers? That is new! I doubt that, Mr. President. I continue:

> "(iii) A new system to reduce Customer Payment Problems;"

We all know about those, Mr. President. We all get phantom bills:

> "(iv) Dry Season Management Programme;"

Mr. President, have we entered into a contract for US $9 million that had no provisions for a dry season management programme? Is that what the country is being told; that these US $9 million geniuses are going to give us water when it rains; that they are not going to give us water for the US $9 million in the dry season? Is that a new proposal? Is that a new concession? That is why I say that it is really in their interest to waive the confidentiality clause, so we can know whether these people are just getting a sweetheart deal or not.

As a new proposal they tell us:

> "(v) Adequate Supplies to the South West Region;"

Mr. President, I would come to this whole question of water distribution policy. But perhaps we should not only show these US $9 million managers what goes on in the country today, but we should give them a history lesson. We should tell them that in this day and age, close to the end of this century, women and children in this country are still carrying water by box cart. Everyone in this Senate will know that at the beginning of this century water was carried by box cart to the barracks, and we are still carrying water by box cart. We are still doing something that we were doing in the beginning of the century without relief and now we are talking about adequate supplies to the South West Region as a new proposal. What are we getting for this US $9 million? Are we getting a collections agency for this money? Those are the things that we need to be told.

I am very sceptical that these are really new things. If they are, then it means that the people who entered into the contract, entered into a thoroughly bad contract. If it is that the Minister is going to get these things which I regard as absolutely essential, well then I look forward and encourage him to obtain them in concrete terms which he can tell this Senate in due course. The Government has kept its promise halfway. The full promise is not kept until these new concessions are concretized and we can be told, “this is what we have as against what was in the contract before.” Of course, I do not know how they are going to report to us if they are circumscribed by what they can tell us was in the contract before. But that is a difficulty which, when one seeks and gains political office, one has to face.

I can assure the Minister and the Government that I have been preaching about this for a very long time. Why do we have to enter into "suck-eye" contracts? Why can we not, having established ourselves as a favourable place to invest, become a little tougher and get better terms? I do not see any indication that better days are coming where that is concerned. I can tell you that if you move among the foreign investors who come in this country, I do not care what their ambassadors or trade representatives tell us, and I am going to be colloquial; “them ent want to go and live in Venezuela; them ent want to go and live in Russia." In Venezuela they "‘fraid" coup. In Russia they "‘fraid" cold. They do not want to go and live in the Far East because when they eat the equivalent of roti they are not sure what they are getting in it. I say so as a patriotic Trinidadian.

If one examines every mas band that crosses the stage at carnival one will see how sweet Trinidad really is and what a great place in which to invest. So we could drive a better bargain. Life here "sweet too bad for those fellas” and we should be able to drive better deals. Do not let them frighten you and say they are going to Venezuela. Do not talk about Mexico because the natives there are real restless. And it is important that we reduce this to colloquial terms so that people can understand the snow job that is being done on us psychologically about the value of this country. I accept that there are other people competing for investment, but I must say that we need to re-orient our thinking about the attractiveness of this country.

As far as I am concerned the Government has kept its promise but it has done so only half-way. I do not, in any way, detract from the commendation which I made with respect to the swiftness with which the Minister has moved and the

methodology that he has used. I hope that by the end of the debate we will have, in much more concrete terms, these concessions which he says he has won.

2.00 p.m.

That brings me to the third issue which is the disclosure of the contract terms. I hope that in future this Government will not agree to any confidentiality clause and would make it plain to every foreign investor and every private sector participator that we have a national community to whom we must report through the Parliament of Trinidad and Tobago. These are not private deals; they involve public assets and the essential terms of the contract are to be disclosed to the people of Trinidad and Tobago through the Parliament. I link that with the fourth issue which is the question of how we conduct business generally, and I will come back to that.

Mr. President, as far as disclosure is concerned I see some hope. Of course, we do not know at any one time when one Minister speaks if the other Ministers are as yet in line, but I am encouraged by the pronouncement of this particular Minister because he has indicated in an interview how well he understands the principle of collective responsibility.

Mr. President, I would like to refer to an article in the *Trinidad Guardian*—actually it is somewhat ironic that I should be referring to the *Trinidad Guardian* in support of the Government, but I guess that is the way the cookie crumbles. The *Trinidad Guardian* of Saturday, February 24, 1996—the headline is: "Ganga to go public with LNG deal." I quote:

> "Energy Minister Finbar Gangar says he intends to make public an executive summary of the agreement outlining the fiscal incentives to be enjoyed by US $1 billion LNG plant.
>
> 'The population should be made aware of any salient elements of any agreement which impinge on the national interest. I'm serious about that; gas prices, what tax concessions we gave. If you are talking transparency, that is what you should do.' "

Well, Mr. Minister, I assume that you have been reading, at least, my *Hansard* prior to coming into this Parliament because I could not agree with you more. That is precisely why we need to know what we are getting for this US $9 million, and if this is going to be the approach of this new Government in relation to these types of contracts, then I believe at last, we are going to get somewhere. I do not like the word transparency; it is a dragon word. We are going to get

somewhere, giving the public the information it deserves about deals that are made with public assets. Indeed, I was quite pleased to see that the Minister went on to say, and I quote:

> "The Minister described as 'naive,' a statement made by former Prime Minister Patrick Manning in justifying the then Government's failure to make public the Severn Trent management contract for WASA."

The Minister went on:

> "In the true commercial world these things cannot be kept secret."

Of course not, do you think water boys all over the world do not know what deal Severn Trent got here; they meet in clubs in leather armchairs all over the world, in the water capitals of the world—and there must be water capitals as there are energy capitals. When they sit deep in these leather armchairs in clubs where the carpets are so thick that one cannot hear the waiters coming, do you think they do not know what deals there are in Trinidad? Most of the time they are laughing at us because we were so soft.

The Minister then went on to deal with—

> "...the PowerGen agreement for the sale of 49 per cent of TTEC's generation assets, should have been made public. 'If you have nothing to hide, you should put it down. That's my own personal feeling.'"

And I congratulate my colleague for making that statement. I say to the foreign investor, if you have nothing to hide remove the confidentiality clause and do not hide behind it and permit the Minister to tell the country what they are getting for the US $9 million. If this is how we are going to conduct business in the future then I applaud the Government, but we would wait and see whether the view of this Minister permeates the seams of this Government. This makes, out of the mouth of a spokesman for this Government, the case that I am trying to make for the need to disclose essential terms of contracts dealing with public assets.

Mr. President, I come now to the issue of generally how we conduct business in relation to public assets, public rights and utilities. Traditionally, that is what was done in this case, we put out a request for proposals which says what the Government is looking for and then we get a response, out of those responses we choose something called a preferred partner. I have many difficulties with this question of the preferred partner, and that is what was done in this case. What that means is, that only a provisional determination was made that this is the best offer. It is not like a one and finish tender where there is a tender and then

somebody wins the tender outright by means of certain criteria and one proceeds to enter into a contract by means of the contract criteria. This means something different. This means that a provisional determination was made that this is the best bid and thereafter your negotiators deal with the preferred partner, and that is where the trouble starts.

Do you know in the PowerGen deal we heard how many months and nights were spent in the Anthurium Suite. Do you remember that, Sen. Wade Mark? Do you remember when the T&TEC deals were in jeopardy they took my colleagues on the Independent Benches to the Anthurium Suite? Do you remember how cosy it was in the Anthurium Suite? What happens when one has a preferred partner, and one negotiates with him in Houston or in the Anthurium Suite? There is a kind of commercial Patty Hearst syndrome where one starts to like one's preferred partner and forget that one is supposed to be dealing with him at arm's length; one goes out to dinner and drinks wine together and dances with each other's wives, and it all becomes very cosy resulting in a commercial Patty Hearst syndrome. So I want to suggest that we do away with this business of the preferred partner. These bids should be won outright from the start and there should be very little room for the negotiators to be able to cosy-up with the people who are bringing the deal. We cannot use the Anthurium Suite or any of these intangibles which influence people.

Mr. President, we saw this in the famous court martial in 1970. By the time they had wined and dined the participants in that court martial at Hilton for three months, they could not get the elementary doctrine of combination right—my Friend and the Attorney General would know very well what I am talking about, because life was sweet too bad they could not read the military manual after three months at Hilton. I am saying after one "cosy-up" with the preferred partner for two and three months and his lawyers get to know your lawyers; they went to the same school—I know about this because it happens to me all the time—and one finds out that they went to this school and had this professor in common—then everything goes soft and one ends up with deals that are bad.

I want to suggest that this new Government find some new way that when it sends out a request for proposals that the parameters are sufficiently tight that there is no room for extensive negotiation with the preferred partner. After all, they know what it is they are looking for. I do not want to hear that months and months were spent in the Anthurium Suite. It is very good for our business, Mr. President, because if one gets a piece of the action in the Anthurium Suite and

one is a financial adviser like some of my colleagues here, or an environmental adviser, or a humble attorney, it is very good for everybody but I question whether it is very good for the country.

Mr. President, we must conduct business differently, and by that I mean there must be no "cosying-up" for months with preferred investors—we would be playing a little mas' with them in between—same band and sometimes the band has a very unfortunate name in relation to commercial activities, one could get a very poisonous contract, I know, because I was there.

So, Mr. President, that brings me to the fifth issue which I wish to raise and that is the question of the water distribution policy. I have already referred to the question of water being taken by box cart in this country. We really have to take a very close look at this particular issue. In this country water has a political history; there were water riots, we periodically see the most incredible, aggresive outbursts on the media by people who cannot get water.

2.10 p.m

Water has a long and terrible political history in this country. The lack of water marks out the dispossessed in this country. If not going to school is a mark of being among the dispossessed in this country, so is not having any water, and therefore, it is essential, notwithstanding the fact that we have a management contract for WASA that the Government tells us what is its water distribution policy. I do not believe that the country accepts that the distribution of water to the areas about which I am talking is going to be solved by simply managing WASA more efficiently. Even if we are getting something good for the US $9 million, the problem is not going to be solved.

Mr. President, this Motion has attracted some interest and as a result, apart from the areas that I have seen where people are taking water by box cart when they get it, or when they are not closing the bridge on the Ortoire River because they cannot get water, and they are dumping things on the bridge in frustration, a kind colleague told me that I should remind the Minister of Public Utilities of an area in his constituency called Ravine Sable. I am told that should bring the requisite amount of tears to the Minister’s eyes. I do not know Ravine Sable, but what has been described to me about there, is similar to areas that I have seen myself.

So this whole question about private sector participation in WASA involves a great deal more than the Government simply coming here and dancing and saying

you see what a good Government we are, we kept our promises, we negotiated a bad contract, we got provision to be made for the dry season. It involves a lot more than that. It involves this Government telling us, particularly having regard to the roots of this Government, what its water distribution policy is because although there are areas in Port of Spain and the East/West Corridor that suffer terribly for water, the real heart-rending position with water in this country is in many of the stronghold constituencies of this Government—and they are uniquely placed to form a water distribution policy and they should tell the country what that water distribution policy is. They cannot shelter behind the skirts of the US $9 million guys for three years and say the other Government made a contract they cannot do anything to improve the water supply because they are bound hand and foot by this contract.

Finally, I think it is very important that when the Minister responds—and I dare say there will be some time before we will get to that event—I think it is important that he tells us something about all these other disturbing items about which we read concerning his utility—the $1.4 million a month in rental cars, and the $240 million worth of water well contracts being awarded within one week. Does that sound familiar? I do not know if it was awarded in the same election week. Maybe all these contracts have the same date. Maybe someone was in the Anthurium Suite turning out water contracts like peas, as we say—some for water wells, some for rented cars, some for Severn Trent and so forth, some for the Merchant Bank and whatever. So I hope that we are going to hear something from the Minister about these things as well, because I really think it is hard to countenance, if it is so, that one has contracts for the rental of cars for $1.4 million a month and people cannot get water.

We also need to know, and this is very important and I should have averted to this before, in relation to the water distribution policy, whether the monopoly—it is in my Motion and I would say a few words on the monopoly—we need to know whether the monopoly is going to be continued. That is very important, and we need to know if people are going to have to pay for wells that they drill themselves, we need to know things of that kind. I would like to know whether it is a fact because I was not able to discern it from the Minister's statement. I would like to have some accurate idea of how much money was paid to Severn Trent prior to this Government taking office and for what was that money paid. In other words, I do not need to know invoice by invoice, but I need to know under heads, how much money was paid to Severn Trent before the election and in relation to what. Whether it was for hotel suites, rental cars, advice on how to get

water in the rainy season, or whether it was advice to put a bucket under the spouting. I want to know how much they were paid before the election and for what they got this money.

When I look at the Minister's statement, it is not clear to me what money—well I do not want to say passed, that has unfortunate connotations—was spent prior to the election and what we got for it. I think that is very important because it will tell us a great deal about the circumstances in which this contract was signed five days before the election.

Mr. President, when I filed this Motion, I filed it with a very heavy heart because I did not think we would get the kind of explanations we have got so far. I also did not think that some attempt would be made to introduce new terms into the contract. Most of all, I did not think that this Government would be showing some signs of advancing past being Third World chappies and that is to say, showing some commercial sense such as has been shown in some of the pronouncements in Parliament by the Minister of Public Utilities, and some of the recent pronouncements of the Minister of Energy and Energy Industries with regard to public disclosure. And so I wait and so does the national community, to be informed on these issues. I think there are some things which, in my humble view, are worth repeating before I close.

We must not be bound by contracts signed during an election period, and I suggested the type of affirmation clause. We must not be bound by confidentiality clauses that prevent the Ministers from disclosing to Parliament what the deal is. We must try to avoid this preferred partner status that involves everyone cosying up around dinner tables in hotel suites and in carnival bands. We must recognize that regardless of this management contract, the Government has an obligation to deal with the question of the provision of water to people who are desperate for it such as the area of Ravine Sable. And above all, the Government must be absolutely unwavering if its intention has been captured by the statements of the Minister of Public Utilities. Actually, I suppose he still reads the *Guardian* and, therefore, would have seen an editorial singing his praises a few days ago.

If I may urge this Government in relation to the way we do business to follow the three Gangar commandments, that is the Minister of Energy and Energy Industries, not the Minister of Public Utilities—which are: Make the population aware of any salient elements, that is to say, slash prices, tax concessions. Make the country aware, or rather, if you have nothing to hide, put it down. That is the second Gangar commandment, and the third Gangar commandment is, lay the

executive summary in the Parliament as soon as possible. And that makes me a little hopeful that I am going to get somewhere with this Motion, and I only wish that I could finish with—it would not be parliamentary language but I would like to finish with a rousing encouragement to this Government. Let us start showing the fellas that we have some commercial sense and people cannot just come here and make all kinds of crazy deals, and more importantly, all kinds of secret deals. I am concerned about that. I do not think an investor could go into any of the developed countries in the world and tell a government, you cannot say what the deal is, you cannot come and tell your Parliament because you are circumscribed by the confidentiality clause. I would like the Minister of Energy and Energy Industries to develop a fourth commandment about confidentiality clauses and a fifth commandment about affirmation of contracts that are signed during an election period.

There are many other aspects to this Motion, but I believe that we will hear some more about them including this poverty hardship relief programme and what is to be done about receivables.

Mr. President, I beg to move.

Sen. Prof. Julian Kenny: Mr. President, I beg to second this Motion and I reserve my right to speak later on in the debate.

Question proposed.

ORDER OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark) Mr. President, after consultation with the leaders of both sides, it was agreed that at this stage of the proceedings, we move to Bills Second Reading under Government Business. I therefore move that the Senate now deal with the second reading of the Bill entitled an Act to amend the Supreme Court of Judicature Act, Chap. 4:01.

Assent indicated

2.20 p.m.

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Order for second reading read

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

That a bill to amend the Supreme Court of Judicature Act, Chap. 4:01, be now read a second time.

Before I proceed, I think I would not be out of order, since it is the first speech I am making in the life of this Parliament in this august Chamber, if I congratulate you on your election as President of the Senate.

The provisions of the Bill before us are simple but the impact that this law would have, if passed, on the reduction in the delays in the administration of justice —the courts, being an important tool in the fight against crime—cannot be doubted.

The Bill attempts to increase the number of judges both in the Court of Appeal and in the High Court. Under the Supreme Court of Judicature Act the number of judges who can sit in the High Court is limited and clause 3 of this Bill attempts to increase from 16 to 20 the number of judges who can preside in the High Court.

Clause 6 attempts to increase from six to nine the Justices of Appeal who sit in the Court of Appeal. At present, there is the Chief Justice who can preside as a judge of appeal and six Justices of Appeal and this clause attempts in other words, to create another division of the Court of Appeal.

By clause 4 (b) sanction is being sought to permit three divisions of the Court of Appeal instead of two.

Mr. President, in effect, the provisions of this Bill are really to implement certain matters contained in what is now known as the Gurley Report. This report came as a result of a Cabinet-appointed team by the last administration to implement some of the reports concerning delays in the administration of justice.

What can be seen, however, from the history of this matter is that the last administration was really not serious about creating additional posts in the High Court and in the Court of Appeal and reducing the backlog of cases. As I would demonstrate, it was recognized by the last administration that this was necessary, essential and in spite of that, it did not take the necessary steps.

As a matter of fact, Mr. President, you would see when I go into the matter that even the then Prime Minister, after those Westmoorings murders in 1994, met with the Chief Justice at the time and he indicated that additional judges were needed and a new division of the Court of Appeal was necessary, all in the context of fighting crime but maybe the then Prime Minister did not have the

influence to get his Cabinet to agree with him. Whatever the reason, the fact of the matter is that his administration did nothing to correct the matter.

What this Bill represents is a commitment, which one would see is genuine, to deal with the question of delays in the administration of justice and to give the necessary resources in order to effectively manage the judiciary. Over the years governments have really neglected the judiciary; providing resources for the judiciary was never really considered important political matters to get votes, therefore, we have seen an accumulation of these problems which have resulted from the inaction of governments to provide the necessary resources to the judiciary.

Mr. President, if I may be permitted to go into some very short history on this matter, I would like to show how the Gurley Committee was appointed, what were the views expressed by the Attorney General of the last administration and exactly what the last administration did not do in relation to this problem. I would like to show how the last administration was aware that this problem had to be solved if the crime problem in the country had to be seriously attacked.

When the Gurley Committee was appointed, we took the view, in Opposition, that the *Gurley Report* in itself was not the only answer or the recommendations in themselves could not have solved the problems in the administration of justice. In this debate I am not interested as to whether that was a correct statement or not, what I am concerned about is that the last administration recognized that there was need for additional judges and an additional division in the Court of Appeal but it did nothing about it.

Mr. President, delays in the administration of justice in Trinidad and Tobago have caused grave injustices to people involved in civil litigation and to the state in that in several matters, since the criminal matters could not have been heard and determined within a reasonable time, it gave the option and right of an accused person to contend that his trial would have been an abuse of the process of the court and, therefore, in several cases the courts determined that even before the court should investigate the merits of a criminal prosecution, the prosecution should be terminated on the basis that it was an abuse of the process of the court.

2.30 p.m.

One can readily see that in that kind of situation how aggrieved victims and the public can feel when such action is taken. But the fact of the matter is that the law of the land was and is, that excessive delays can constitute an abuse of the

process of the court to terminate a prosecution. Excessive delays in the administration of justice also undermine the criminal justice system in a way in which there was and is the perception that persons convicted of murder and sentenced to death would not have their sentences carried out having regard to the excessive delays. One knows of the Privy Council ruling in *Pratt and Morgan* which placed restrictions, as far as delay was concerned, in the carrying out of the death sentence or in the determination of matters before the death sentence could have been carried out. Delays, therefore, have had the effect of really undermining the criminal justice system and frustrating the criminal law and, in effect, frustrating the sentences of a court.

Notwithstanding all these matters and the fact that the last administration recognized that these problems existed and that there was the undermining of the criminal justice system and notwithstanding the fact that there were several brutal murders and crimes which the last administration gave the impression to the population that it was dealing with—it even contended that the then Opposition was obstructing the Government's fight in order to deal with the crime problem in the country—one would see that administration, recognizing this problem, treated it with contempt and treated the population with contempt.

In a statement in the House of Representatives on May 15, 1992, the then Attorney General said, among other things, on the question of delays in the administration of justice, and I quote:

> "The fact is we can no longer continue to pay mere lip service to the problem. We must act and we must act swiftly."

He said the matter deserved "the highest priority on the national agenda."

He said that:

> "Cabinet agreed as an immediate and urgent action plan to activate a team charged with the responsibility to provide solutions for immediate implementation to deal with the problem of delays."

He recognized that and he expected solutions "which would, in the course of the next few years redress a situation which, left any longer, would be totally out of hand and perhaps be then irreversible."

Those were the words of the Attorney General of the last administration. The Cabinet-appointed team deliberated and reported in July 1992. That report became known as the *Gurley Report.* Among the main recommendations were:

1. The creation of a further division of the Court of Appeal.
2. The creation of one more puisne or High Court judge.
3. The creation of more magistrates posts.

The then Attorney General stated to the House of Representatives in July 1992 that the Government was concerned with the implementation of the recommendations as quickly as possibly. I think the election was called in October of 1995. So from 1992 to 1995—world class delay—the last administration did not, in effect, implement those recommendations.

The Attorney General, in a statement of July 1992 said:

> "What we are concerned with is implementing as quickly as possible the measures which are non-controversial and which can be implemented as quickly as possible so that some immediate relief can be brought to the system."

This is a one-page Bill. It would have taken 10 minutes to draft. From July 1992—1995, when they demitted office, there was no bill, no legislative measures to implement those aspects of the *Gurley Report.*

Mr. President, I am showing how important it is for governments to, in effect, mean what they say. They must not say one thing and do something else. It is the duty of the population to know that when a government or an opposition hoodwinks the population, that the people must be informed, and this honourable House must be informed of the matter.

On October 23, 1993, in the House of Representatives, the Attorney General in the last administration said, and I quote:

> "It is one thing to establish a team to make recommendations but it is a completely difficult thing to take steps, in a responsible way, to implement those recommendations. That is what the Government was doing."

The Attorney General of the PNM administration said that the government of the day was implementing the recommendations of the *Gurley Report.*

It does not end there. On July 18, 1994, just a few days after the terrible Westmoorings murders, the Attorney General stated:

> "Within the Attorney General's office, there is an implementation team working towards the implementation schedule of the recommendations which came out of *the Gurley Report.* It is not that the Report was introduced,

> received and thrown around; the Report is actively being implemented by a team specially put together focussing on the matter of the management of the justice system in our society."

Well this deals with the management of the justice system in our country, creating an additional division of the court of appeal to hear and determine murder appeals, criminal appeals and civil appeals. But where was it done? What happened? After those murders, the then Prime Minister got on the scene; not only the Attorney General of the day. The Prime Minister decided that he had to do something about those matters that were happening in the country, all those horrible killings and violent robberies. What did he do? He appointed himself Minister of National Security and he was quoted on July 24, 1994 in the *Guardian* as saying:

> "There are certain actions required of the Ministry of National Security at this time that are best handled by the Prime Minister."

What did he do? He galleried, as the PNM normally does. He had a meeting with the then Chief Justice and the then Prime Minister and Minister of National Security, on the front page of the *Guardian*, announced that a third division of the Court of Appeal was to be established and to be manned by additional judges and support staff, and that a high court was to be built in Arima. These are some of the words he said after he met with the then Chief Justice:

> "If we are to speed up these cases, that calls for more judges and more support staff."

2.40 p.m.

Did he do anything about it? If he did anything he probably wrote a note or a letter. I expect that the world class PNM would say that he did something.

Hon. Senator: He did something.

Hon. R. L. Maharaj: Yes; he did nothing as the PNM does nothing; empty vessels.

Mr. President, he said that in 1994 but he knew since July, 1992, when the *Gurley Report* was presented to his government—which he agreed to implement—that he needed another division of the Court of Appeal and more High Court judges; unless he was getting bad legal advice.

Mr. President, I remember—and I hope I am not wrong—there were certain persons in the society—if I am wrong I hope I would be corrected—including the

distinguished Sen. Martin Daly, who called for the implementation of the *Gurley Report*. He begged the PNM to appoint more judges and create another division in the Court of Appeal. The PNM did nothing. I do not want to talk about how much money they spent on a pitch lake to put down an LNG plant.

Mr. President, unless the defence is that the Prime Minister wanted to do something about it but his Cabinet did not agree with it, I would like the PNM to tell us if that is so. If the then Prime Minister really wanted to do something about it he would have convinced his Cabinet, but he could not have convinced his Cabinet. Well, if he could not convince his Cabinet, how could he convince the electorate?

However when this Government of national unity took office it immediately took a decision within a short space of time, and I would like to compliment my predecessor in office, the hon. Member for Siparia, Mrs. Kamla Persad-Bissessar—

Sen. Jagmohan: You threw her out.

Hon. R. L. Maharaj: Do not worry, that Senator will be thrown out just now. He only has a licence; he is squatting. This Government immediately took a decision in Cabinet to make provisions for these additional High Court and Court of Appeal judges and a new division in the Court of Appeal.

This administration created 12 new posts of magistrates within a period of weeks. The PNM knew about it since 1992 and for four years they could not have done it.

Mr. President, as you know the appointment and elevation of magistrates and judges are done by the Judicial and Legal Service Commission. This Government is not like the last administration; it is not going to interfere with the independence of this Commission. This Government is committed to ensuring that the safeguards that exist in the Constitution of Trinidad and Tobago are not manipulated by any prime minister or government.

This Government is committed to ensuring that as far as the judiciary is concerned the Chief Justice would get all the necessary resources to ensure that he is able to manage the judiciary efficiently.

May I announce that since I took up office as Attorney General, I have had two meetings with the honourable Chief Justice and have given him the commitment of the Government of Trinidad and Tobago that we would find the

money to provide whatever resources he needs in order to deal with the problems confronting the administration of justice.

The 1996 budget provided for the creation of a new division of the Court of Appeal and three new posts in the Court of Appeal with the necessary support staff at a total of cost of just over $1.1 million. The budget also provided for four new High Court judges with the appropriate support staff at a total cost of $2.4 million. Also, 12 new magistrates posts are to be created with appropriate staff at a total cost of $5.5 million, and a judicial complex would be built in Arima to house the High Court and the Magistrate's Court. The judicial complex would cost—

Sen. Jagmohan: PNM's plan.

Hon. R. L. Maharaj: The PNM talked about it but there was no execution. They talked about that and so many other things.

Sen. Jagmohan: One day.

Hon. R. L. Maharaj: One day? Twenty-five, 30 or 50 years? The PNM would not get the chance again.

Mr. President, the complex would cost $66 million and would be constructed in two phases. The first phase would be the construction of a five-floor building to cater for six new magistrate's courts and would have adequate facilities to house the courts' staff, the police and the public. This will start in 1996.

The second phase would be the construction of the High Court. This would be a three-floor building housing the High Court with facilities to house several high courts in Arima.

Mr. President, if the PNM administration wanted a reminder; if for some reason the Prime Minister of the day had suffered a lapse of memory and if for some reason his Cabinet colleagues did not have the courage to remind him or talk to him; or if for some reason those who advise him and connect with him, even though they may be unhappy being where they are; even though he decided to call an election to lose; he had the opportunity to do it. The hon. Chief Justice on the occasion of the opening of the 1995/1996 law term on October 3, 1995 called for an increase in the number of courts and judges. That speech was widely publicized.

2.50 p.m.

One sees that by this measure we are trying to deal with the question of delays. This administration is not only depending on the creation of new posts for judges, new divisions in the Court of Appeal and new posts for Court of Appeal judges because it recognizes that it is impossible for the judiciary alone to deal with the problem. Therefore the Executive must play its part, apart from providing resources.

Although the last administration had in the pipeline some sort of provision to have the computer aided system of recording in the courts, this administration has taken steps to ensure that the contract is fulfilled and that system known as CAT will be available not only in the Assizes, but also in the civil courts and magistrates' courts. This Government has taken the necessary steps and has started discussions with the relevant authorities to ensure that is done.

For three years the last administration had spoken about introducing legislation to have plea bargaining as part of the criminal justice system in Trinidad and Tobago but it was not done. Plea bargaining is the process of negotiation by which a defendant or an accused person in a criminal matter agrees to plead guilty to the offence or offences for which he is charged and gives up the right to go for trial in return for a reduction of the charge or the sentence. Plea bargaining had its origins in the United States of America. It is not part of the Caribbean legal system. The Law Commission of Trinidad and Tobago has been given certain deadlines to prepare a bill to be brought to Parliament to make plea bargaining a part of the criminal justice system in Trinidad and Tobago. Plea bargaining would avoid extended pre-trial incarceration or free an accused person from the anxieties or uncertainties of awaiting trial. It would mean that he would get a speedy disposition of his case, but would save important judicial and prosecution time and it would obviously reduce the backlog of cases.

This administration has also decided that it will take steps, with the necessary consultation, to introduce alternative dispute resolution as a mechanism for dealing with litigation. As you know our system is very adversarial and confrontational. We believe that if we introduce such a mechanism which would involve structures for negotiation, mediation and arbitration, it would assist tremendously in the saving of judicial time and the reduction in the cost of litigation. As a matter of fact, in his speech at the opening of the lower courts, the

Chief Justice spoke about that and the need for a radical reform of the civil procedure system which would involve some form of arbitration of this nature.

I think I should also mention that this administration has already taken steps to introduce some form of dispute resolution. It has taken steps to set up mediation centres. Three mediation centres will be set up as a pilot to this scheme which would mean providing a community based alternative to litigation for young offenders. It has been decided that the first centres would be located in San Juan, Cunupia and Scarborough. They are meant to provide an alternative to early and fruitless entry to the criminal justice system as many young people end up in trouble with the law. The Ministry of the Attorney General has overall responsibility for the appointment of directors and support staff of the three centres and a community mediation board for each centre. In addition, about 20 persons would receive training from the University of the West Indies in mediation techniques. Equally important, the Ministry of the Attorney General would work with the Ministry of Social Development and the Ministry of National Security through a review tribunal that would examine existing legislation to establish how many minor crimes could be removed from the jurisdiction of the magistrates' courts to the mediation centres.

We have only been in office for just over 90 days.

Sen. Mohammed: For just over 100 days.

Hon. R. L. Maharaj: Anyone would know that 100 is not far from 90. One does not need Einstein to determine that.

The last administration also spoke about attacking narcotic delays by creating drug courts. From the time the Attorney General of the last administration got into office he talked about setting up drug courts. Nothing has been done. Legislation is being drafted in order to set up drug courts in Trinidad and Tobago.

A night court was established in Arima as a pilot project. The Chief Magistrate advised that this was a successful project. The Cabinet of this Government has agreed that night court in Arima would be continued and the following additional new courts would be established, two in Port of Spain, one in San Fernando and one in Sangre Grande.

Cabinet has agreed to the establishment of remand courts in or adjacent to the prisons to enable the remand of prisoners in custody, and the grant of bail thereby avoiding the need to transport many prisoners across the country. The work would be done by the Justices of the Peace thus saving judicial and magisterial time.

3.00 p.m.

One of the issues which has affected the criminal justice system is the need for a witness protection programme. I would like to put on record, insofar as it affects the justice system in Trinidad and Tobago, that the then Prime Minister, on June 11, 1993, after there was the killing of state witnesses, stated in the House that he had asked the hon. Attorney General to request of the Law Commission a package of legislative measures which would put in place the necessary machinery and procedures for a witness protection programme. The then Attorney General said that he was taking steps to set up the programme, but that he was going to have safe houses as a temporary and immediate measure. Well, that temporary and immediate measure remained such from 1993 until we assumed office.

Sen. London: Mr. President, subject to Standing Order No. 35(1), I am questioning the relevance of the Attorney General.

Mr. President: It has to do with the criminal justice system and the setting up of additional manpower to deal with that system.

Hon. R. L. Maharaj: Mr. President, in any event, when one kills state witnesses, it increases delays in the administration of justice and I would have thought that was readily seen. I thought the Senator would want to hear about this. I can understand why he does not want to hear about it, though.

The then Attorney General had said that the legislative measures and systems which he had described were critical in the overall development of a witness protection programme. He went on to say that the Minister of National Security, in his continuing deliberations on this matter, had secured, in principle, the agreement of at least one foreign state which was prepared to be of assistance by providing secure locations outside of Trinidad and Tobago in specific cases.

In the *Guardian*, on July 5, 1993, the headline read:

"UNC ready to support witness protection plan."

The Opposition Chief Whip said that the Opposition was prepared to support any measure. I bring this to show that the last administration really was not concerned with the question of delays in the administration of criminal justice.

Mr. Gordon Draper, on March 21, 1994, said that legislation was coming to deal with the witness protection programme. It is still coming. It went further. On September 12, 1994, the then Attorney General said that in early 1995 he would present a criminal justice bill which would, in effect, legislate for the witness

protection programme. Where is it? It is just like Clint Huggins. It has disappeared.

I want to announce that this administration will bring to this Parliament, in a short space of time, legislation to deal with a witness protection programme. When I say short, I do not mean four years. We will bring to this Parliament in a matter of months, legislation to deal with the witness protection programme.

I, therefore, ask this august Chamber to regard these measures as measures to deal with a national emergency; measures which would give to the Judiciary some resources, some ability to deal with the problem—not to solve it—and to give to the people of Trinidad and Tobago the hope that there is some additional machinery to be used as a tool in order to fight delays both in the civil and criminal jurisdiction.

Question proposed.

Sen. Pennelope Beckles: Mr. President, I would, first of all, like to thank the hon. Attorney General for the figures he gave in relation to the costing of this particular Bill insofar as its implementation. Unfortunately, what the hon. Attorney General did not say was that in the draft estimates to be presented for the year 1996, provisions had already been made for what we are actually discussing today. He is giving the impression that nothing at all had been done by the previous administration to ensure that the whole issue of the judges in the Court of Appeal and the High Court materialized. The Attorney General of our administration had indicated in his presentation that it was a question of a comprehensive package to deal with the whole issue of the delays in the administration of justice.

I refer to the contribution of the now Attorney General dated October 29, 1993, in the House of Representatives. I quote:

> "Madam Speaker, no amount of judges, no amount of courts, no amount of staff, will be able to solve the problem that we have unless we improve the machinery for the appointment and elevation of judicial officers."

3.10 p.m.

> "His Government has absolutely no intention of interfering with the independence of the judiciary..."

He went on to say:

> "As a lawyer who has practised in the courts of Trinidad and Tobago for some 20 years, I invite the Attorney General to check the records and see that over the last few years we have had a recycling of cases.
>
> What happens is that there is a criminal trial, the judge sums up; the case lasts for about a month to a month and a half; the matter goes to the Court of Appeal; the case comes back for re-trial. So there is a recycling of the case. And that is not one, but many. The same errors which occur in one year, continue the next; and it is costing the taxpayer money.
>
> I would like to state, very categorically, that the delays in the administration of justice would never be solved by the mere provision of additional courts, more judges, modern technology. There is a much more fundamental problem affecting the administration of justice. I do not know whether this Government has the courage to deal with it. It bears directly on the question of delays; and unless it is redressed, the problem of delays will not be solved. The problem concerns the ability of the judiciary as a whole. Our system has permitted persons who did not achieve distinction at the Bar to have been entrusted with judicial functions. Some of these judges were appointed, despite the fact that they did not have the conventional qualifications."

Mr. President, I am hoping that the Attorney General would, of course, enlighten us a bit about what his administration would be doing as it relates to this. He went on to say:

> "...if it is that the Judicial and Legal Service Commission has some representatives of the population—the political shades in the country—and not only that they should be comprised of parliamentarians, but there should also be a select committee on legal affairs and the administration of justice to which they would have to account,..."

In the Attorney General's contribution at that time, he made heavy weather of the importance of accountability. He continues:

> "If it is that the Judicial and Legal Service Commission is a sacred cow and one cannot touch, talk about, criticize or make any implications against it, and the Chief Justice of Trinidad and Tobago has a very important post and function, it is not correct that we should have a system where we would not have those problems and perceptions?"

I really hoped that in the Attorney General's contribution he would have enlightened us about these concerns which he expressed continuously. He continues:

> "Therefore, I am saying that if one has to look at the question of delays, one has to look at the functioning of the Judicial and Legal Service Commission. The Judicial and Legal Service Commission is the body entrusted under the Constitution for the appointment and promotion of judges. Therefore, if one has to seriously look at it, one has to look at its functioning."

Mr. President, I was hoping that the Attorney General, in his contribution—since he was giving us a wide area of all his Government was looking at; he went all into the witness protection programme and so forth, not directly dealing with this Bill—would have talked a bit of what he has always been concerned about, and what he indicated he would have done if he were the Attorney General: And he is today. The quote continues:

> "If we have a chancellor of the judiciary who would be completely divorced from law work and presiding in court, and whose job would merely be head of the administrative aspect of the judiciary, that chancellor of the judiciary, being able to head the Judicial and Legal Service Commission would then enable us to have accountability in the sphere in the administrative aspects of the judiciary, and the courts would be totally divorced from any aspects of administration. If we had that, we would not have the situation of the person who holds the office of Chief Justice getting involved in brawls and allegations in respect of matters concerning administration."

I have not heard the Attorney General mention and elaborate on this chancellor of the judiciary; this person who he said would assist in the proper functioning and management of the judiciary. It is not simply a question of talking to the Chief Justice and indicating to him that he would be given all the resources that he desires to ensure that the Judicial and Legal Service Commission of the judges and magistrates function efficiently.

If it is that the Attorney General, in his contribution here—and I imagine that he still believes that he has the answers to all the problems as they relate to the administration of justice, and he particularly felt that this chancellor of the judiciary was important—I would have thought that he would have come to this honourable Senate and indicated to us, "this is what I always felt; this is what I wanted; this is how we will proceed." But there has been no mention of this at all. *[Desk thumping]*. I continue to quote:

> "Apart from looking at the functioning of the Judicial and Legal Service Commission and apart from looking at the court's structure, it is very important for us to look at the matter of judicial training and a judicial school. It can be safely said that unless we have a system whereby new judges are given the orientation in respect of dealing with the court system and dealing with matters—and even judges who are there—we would have serious problems. As a matter of fact, when one looks at the British system one sees that there is some machinery for having judges going to school in that they have refresher courses from time to time."

Mr. President, we are not saying that the witness protection programme is not important, but here it is, in a contribution dealing with the increase of judges the Attorney General has not mentioned anything about the training of judges. What about this judicial school he spoke about in 1993? Three years later he is talking about a Bill that is just two pages which can be drafted so quickly. He has not mentioned anything in his contribution about this judicial school. I am hoping that in his winding up he will tell us a bit about this judicial school; about this chancellor of the judiciary.

In the Minister of Community Development, Culture and Women's Affairs' contribution, one of the areas she mentioned was that of gender-sensitive training. The Attorney General spoke about, maybe the last Prime Minister did not have influence with his Cabinet. Maybe it is that the Minister of Community Development, Culture and Women's Affairs does not have influence because I have not heard the Attorney General mention anything about this issue of gender-sensitive training. That conference which was held a few months ago in Beijing dealt with the whole issue of the rights of women and equal opportunities and I know that this Government is concerned with equal opportunities. That is why for the first time in Trinidad and Tobago we had a female Attorney General. Granted, she only lasted about three months *[Interruption]* simply because the former Attorney General of three months felt that her appointment was that of a gift. I am hoping that this Government is concerned about equal opportunities and the rights of women. On Saturday I sat and listened to the contribution of the former Attorney General and she spoke about women and the fact that we must continue to be vigilant and ensure that we get what we deserve, and having earned and reached where we have reached in life, on the basis of merit, we must stand firm and ensure that we take our rightful places.

3.20 p.m.

Unfortunately, her Government did not see it the way she saw it. Here again, we are looking at the whole issue of women in the judiciary. I am looking at my Friend, the Attorney General's contribution, where he is saying that it is critical, the way in which appointments are made. In the Court of Appeal there is only one female judge; in the High Court there are only three and I know that the hon. Attorney General is aware of what is happening presently in the Hugh Wooding Law School. Women are excelling much more than their male counterparts. When one looks at the results and those entering the Hugh Wooding Law School, it is almost 65/70 per cent women and 30 per cent men. What is the reflection of the extent to which women have excelled as it relates to the judiciary? Again, one does not want to encroach on the rights of the Judicial and Legal Service Commission, but it is an observation that one must make, particularly with regard to the fact that this Government has indicated that they would be dealing with discrimination and they would be dealing with the whole issue of equal opportunities and bringing that legislation very early before this honourable House.

Mr. President, it is very easy for my Friends on the other side to keep saying, when this government was there what they did. The point is, they have offered themselves for office; they are in Government now and should do what they are supposed to do and stop talking about when who was there what they did not do. The Attorney General said that it is just a question of two pages, it has nothing to do with three months.

If I can just read from the contribution of the Prime Minister of Trinidad and Tobago when he was in Opposition dealing with the Motion of the Administration of Justice. It says:

> "Filling the vacancy is not the point. It is who you fill the vacancy with, how you fill the vacancy, why you fill the vacancy like that, the criteria for filling the vacancy, and if there has been interference in one way or the other. Have other deserving persons not been appointed? That is the thrust of the argument."

Mr. President, having regard to the fact that the former Attorney General and the present Prime Minister had expressed these concerns, I was hoping that the Attorney General would have at least indicated to us how his Government would be dealing with these concerns which they had some three years ago.

Mr. President, in the Attorney General's contribution on that same Motion dealing with the Administration of Justice in 1993, he asked this question:

"I wonder if the hon. Attorney General will tell this country what he is doing about the watered down brandy judges and what plans he has to prevent them from being appointed?

Mr. President, I am not sure exactly to whom the hon. Attorney General was referring at that time. I am hoping, of course, that in his winding-up he would probably indicate to us who were those watered down brandy judges that he was referring to.

The Attorney General sought to indicate to this House that the last administration was not doing anything about this whole issue with respect to the delays in the administration of justice. He mentioned several things that his Government intends to do. He spoke about the night court and the fact that the night court will now be extended to Port of Spain and Sangre Grande. Mr. President, that was already in the pipeline and those things were already agreed to and it was a matter, as they had indicated, of the Arima Court being a trial court to see how things would work out. The Attorney General, at that time, had indicated that once that was successful he would have moved further into these other courts.

He spoke about the Computer-Aided Transcription and he stated that that will now be implemented in the Magistrate's court. It is true that I have not seen the Attorney General in the magistrate's court for some time, but those have already been implemented since last year. If one visits the court one will see where the Computer-Aided Transcription has already been implemented. It is a question of the extent to which it has been implemented, if one is talking about an expansion. But to say that they are now going to be implemented, I think the Attorney General should visit some of these courts and see that those things are already existing.

Then again, I recall the former Attorney General of this present administration on her visit to the Port of Spain Magistrate's court, indicating how shocked she was at the fact that the situation and the circumstances under which attorneys, prisoners and persons attended that place. I was quite surprised that she was shocked because that situation there has been like that for some time. The said *Gurley Report* that the Attorney General referred to dealt with some of the things that needed to be done in order to improve that present situation.

Mr. President, I must say that I was quite surprised that the Attorney General would come and say that the last adminstration did nothing. The majority of the things which he has mentioned were plans and ideas originating from the last

administration. Some were in-train, some were in the pipeline, some were a matter of trials and a matter of expansion, but to say that nothing was done is totally false. Mr. President, it is quite interesting that he is saying that he would be able to find whatever money that is necessary in order to ensure that certain things are done. Mr. President, it would be interesting for the Attorney General to say to us what sort of time-frame he has in mind for all these several things that he has spoken about. When would those things be actually done? And whether or not he is just simply going to say when the last administration was in power, they did nothing and we just came in. He must say exactly what it is that he has in mind and when he intends that those things would start.

He spoke about the Arima High Court. The area that is expected to house the High Court of Arima was cleared some time last year, and that project was expected to start some time in December, 1995. So for him to give the impression as though it is a great new idea of this administration is totally false.

Mr. President, the Attorney General went on and on and took up a considerable length of time linking the whole issue of the witness protection programme with that of the delay in the administration of justice. If we are almost to take a pattern from what happened to Clint Huggins, the increase in judges may not even solve the problem because the witnesses are dying and since this Government has seen it fit to bring in the FBI—and I am sure that we on this side would support any measure that would assist in solving that particular crime and increasing and improving the whole issue with respect to the delay in the administration of justice—it would be very interesting if they would also have the FBI look at other matters since he dealt with witness protection.

3.30 p.m.

There is Selwyn Richardson, there is the Salvary murder, there is Dr. Chandra Narayansingh, Mervyn Hall, Olga Smith, so many others that have not been solved or issues where persons have been charged and witnesses have died and nothing has happened since.*[Interruption*] My Friend obviously thinks he is in another place, Mr. President.

All these issues we agree, on this side, relate to the whole issue of the delays in the administration of justice. There was something called a working plan of the implementation committee arising out of the *Gurley Report*—they were dealing and setting time-frames within which certain things would happen as it related to the *Gurley Report*. Obviously, the Attorney General seems to be saying that he has all the money, he will find the money to implement everything one time. We

are quite happy if that is the case so we are hoping that by tomorrow morning things would just happen. No more crime as they alleged since before November 6, 1995. And lo and behold, as he seems to be suggesting quite casually, Clint Huggins disappeared. Quite casually! [*Interruption]*

As I said, quite causally, he mentioned the fact that Clint Huggins has disappeared, just like the Bill and other things that have disappeared. That was a life. That was the loss of a life; it is not something to be talked about so casually. And we await the outcome of that report from the FBI and the so-called transparency about which they have always been talking.

I wind up by saying that I think it was quite unfortunate and quite an unfair comment to suggest that the Attorney General of the last administration—as the present Attorney General seems to suggest—did nothing about crime. So often we have to depend on the media to find out about some of the things this Government is doing; the same *Guardian, Express* and the other newspapers that very often people give comments on how to deal with those people. The same *Guardian,* those are the people one has to look at; one has to read those papers to find out when they give press conferences. That is how one finds out about many of the things they are doing—not in this Senate or in the other place. And when certain things are not reported the way they like, they say other things. So when Members of the Government come here and say that the last administration did nothing and these are now their plans, it is very similar to when we hear the Attorney General saying that the idea of the press complaints bureau was his; he set it up and so forth and Mr. Ken Gordon says, otherwise. It is quite unfair and incorrect to suggest that the last administration did nothing related to crime.

We on this side recognize that it is absolutely necessary for this Bill to be supported and I just want to state categorically that this was a measure—and the Attorney General stated what the former Prime Minister said after he met with the Chief Justice, that he knew that it was absolutely necessary to have an increase in judges, both in the Court of Appeal and the High Court. Some people think that they can do things instantly as they want to suggest here and when people complain they pull it back, like they give Easter Monday instantly and then pulled it back. We ensure that when we make decisions and implement them, they are right and are in the best interest of the country. We are sure that supporting this Bill would be in the best interest of the administration of justice and, therefore, I support it.

Sen. Prof. Julian Kenny: Mr. President, my comment would be as brief as the Bill. I give very strong support to anything which will enhance the quality of justice in the country. However, I do have a concern which has already been expressed from the Independent Benches.

My comment is that it would seem that many major businesses are being brought to this Senate being piggy-backed on bills which are really quite minor. I notice that in today's *Daily Express* the Parliament of Canada is opening for this current session and there was an announcement that there was to be some explanation or information on the legislative programme for the next two years. I have this concern about what is our legislative programme. I am a stranger to matters of this kind and when I see a bill, such as the one that we are discussing this afternoon, I go through the law books to inform myself and to find if there are major policy matters which are going to be raised piggy-backed on these bills, only to find that I am wasting my time.

We had the spectacle recently of an Act that comes to this Parliament every three years, the extension of the Rent Control Act. I found that a major statement was being made about housing policy and the establishment of a housing commission, so my comment is that I continue to be somewhat confused.

I think whether it is 90 days or 100 days it is really quite irrelevant. We really need to know what is the actual legislative programme.

Thank you, Mr. President.

Sen. Nafeesa Mohammed: Mr. President, on my way to Parliament this afternoon, I wondered whether we would have the good fortune to see the former Attorney General, Mrs. Kamla Persad-Bissessar here presenting this Bill. I was taken by surprise a while ago when I saw it is, in fact, the new Attorney General. It reminds me of the treatment that was meted out to another female Member of this present coalition government some years ago and I refer to Miss Hulsie Bhaggan and that is why I am where I am today.

Mr. President the Bill that is before this honourable Chamber is, indeed, a very important one. In my view, it is a matter that we ought not to politic with, regardless of our political affiliations. I think all Senators of this honourable Chamber, both sides and the Independents and those in the Lower House as well, are all very concerned about the problems that are affecting the administration of justice in Trinidad and Tobago.

Indeed, Mr. President, over the last four years and more since the former administration had come into government in 1991, the question of the administration of justice was very high in terms of being an area of priority for the then government. As early as May, 1992, the then Attorney General had made a statement in another place pertaining to the recognition of the problems affecting the administration of justice and the fact that the then Government appointed a team of experts to look at the whole question of the administration of justice in a very comprehensive and holistic way.

Shortly after the appointment of this team of experts, you had the *Gurley Report* being presented. The hon. Attorney General has quoted both from the statement of the then Attorney General and indeed he made reference to the *Gurley Report*.

3.40 p.m.

Mr. President, page 1 of the *Gurley Report* states:

> "On Friday 15th May, 1992, the Honourable Attorney General read a statement in Parliament wherein he expressed deep concern *inter alia* as to the slow pace of the legal process, the backlog of cases awaiting trial in both the civil and criminal jurisdictions, the adverse resulting effects caused by delays, and the need for an urgent action plan to activate the Team charged with the responsibility 'to provide solutions for immediate implementation to deal with the problem of delay'.
>
> In alerting the National Community to this state of affairs the Honourable Attorney General expressed the view that this matter 'demands the highest priority on the National Agenda' and that 'we can no longer continue to pay mere lip service to the problem'. We must act and act swiftly."

Mr. President, subsequently a committee was appointed and, just for the records, may I just mention the composition of the committee. They were: Mr. Dennis Gurley, Attorney at Law, senior ordinary member of the Council of the Law Association—Chairman; Mrs. Christie-Anne Morris-Alleyne, acting Registrar of the Supreme Court of Trinidad and Tobago—Deputy Chairman; Mr. Lloyd Skinner, Assistant Director of Public Prosecutions; His Worship Byron Henriques, Magistrate; Mr. Teasley Taitt, former Permanent Secretary and Management Expert; Mr. Wendell Kangaloo, well known Attorney at Law who for many years was a junior in chambers with our present Attorney General and who was recently elevated to the Bench in Trinidad and Tobago; Mr. Gilbert

Peterson, Attorney at Law; and Mr. Mohan Gopee, Administrative Officer II, Legal Aid and Advisory Authority—a very competent and able team of experts representing a cross-section of the agencies that deal with the administration of justice.

The report goes on to set out the task of the committee and at page 3, mention was made of the fact that during the deliberations of this committee, several papers, reports, treatise, and submissions that were being made over the years were all considered by the team of experts. Indeed, in the debate on the administration of justice in the Lower House way back in 1993/94 mention was made of the fact that over the years there were reports pertaining to the problems affecting the administration of justice being submitted.

Quite apart from that, the team of experts who were entrusted with the task of examining the whole question of the administration of justice and coming up with recommendations also met with, for example, the Law Association of Trinidad and Tobago. They had meetings with the Chief Justice, the Public Service Commission, the Police Service Commission and the prison authorities, all these are relevant agencies that are involved in the administration of justice in our country.

It was said a while ago during the presentation of the hon. Attorney General that whilst the then PNM government had the *Gurley Report* and spoke of the administration of justice, they did nothing. But the fact is that the then government had recognized that there was a crisis in the administration of justice. The then government put this whole question of the administration of justice very high on the national agenda and very serious attention was being given to this whole question of the administration of justice. It is very unfair, and indeed wrong, to come to this honourable Chamber and say that during the last four years, under the PNM, nothing was done pertaining to the administration of justice. I say this with a certain amount of anger because of the distortion and hoodwinking that took place here this afternoon.

For the last three years I worked in the Attorney General's Department, in the Solicitor General's Department and I know, I have experienced the very far-reaching and fundamental changes that were taking place in the administration of justice. It is indeed very unfair to come here this afternoon and distort the truth. It is a fact that under the PNM's administration much was happening insofar as the administration of justice is concerned. *[Interruption]*

Mr. President, my Friend has asked me to identify what the PNM did. I love going into the PNM's manifesto.

Hon. Senator: We do not want any manifesto.

Sen. N. Mohammed: Of course, we have to read it because it is a record of the facts.

Insofar as the administration of justice is concerned, there was the implementation of several recommendations of the *Gurley Report* taking place.

My Friend, the hon. Attorney General, spoke here this afternoon about the filling of vacant posts. My appointment in the Attorney General's Department was, perhaps, an attempt at the filling of vacant posts and during my term there I know of several other persons who were appointed in a very important legal department of the state that, for years, was under-staffed and was experiencing very severe and harsh working conditions and over the last three years some improvements were being seen. There were new members of staff being appointed.

During my tenure there, the department had received certain computers and the whole process of computerization was taking place in that department. I can recall the appointment of several new magistrates. Just last year many magistrates were appointed. I can recall the elevation of several persons to the Bench. Appointments were being made. So, to come here and say that the PNM government was doing nothing pursuant to the *Gurley Report* is really unfair and it is a distortion of the truth and mere politicking.

Let us face reality. The former PNM administration in terms of performance as a government and having policies and programmes, this Government can in no way compare with what that administration was embarking upon. Time will tell! I hope I live to the year 2015.

Hon. Senator: Time is longer than twine.

Sen. N. Mohammed: Mr. President, as the hon. Attorney General has pointed out, the Bill before this honourable Senate is based on a recommendation of the *Gurley Report*. If I may refer hon. Senators to page 7 of this report, it deals with the question of judicial staffing. I quote:

"(a) The Justice of Appeal

Since 1980, the Court of Appeal has been sitting in two (2) divisions of three (3) judges each in Port of Spain for the purpose of hearing all

> Criminal and Civil appeals. Either 2 or 3 judges hear Magisterial appeals in San Fernando on 2 days each month and in Tobago for one week in each year. A Court of Appeal Judge sits in Chambers on 1 day a week and on average, 1 day a month in San Fernando.
>
> Between August 1970 and July 31, 1971, **621** new appeals were filed. In addition, there were 174 appeals outstanding from the previous year, bringing the total number awaiting hearing to 795. At that time the sanctioned and actual strength of the Court of Appeal was 1 Chief Justice and 4 Judges.
>
> Between October 1, 1990 and July 31, 1991, **1349** new appeals were filed, and 1210 appeals comprising of both old and new were listed. The sanctioned strength of the present Court of Appeal is 1 Chief Justice and 6 Judges, and the actual strength is 1 Chief Justice and 5 Judges.
>
> In 20 years the number of new appeals filed annually has more than **doubled** while the sanctioned strength of the Court of Appeal has been increased by only 2 with the actual strength increased by only one.
>
> The foregoing reveals the dire urgency for increasing the complement of Judges. There is a recent upsurge in criminal activity, hence an increase in the number of criminal matters filed in both the Assizes and the Magistrates' Courts, with the consequent increase in the number of appeals therefrom."

3.50 p.m.

The recommendations were that the vacant post of Justice of Appeal be filled and that three additional posts be created and filled and that steps be taken to establish a third division of a Court of Appeal with a view to making one of the then three divisions a criminal division.

The report goes on—page 9, page 10; many statistics are quoted. Mr. President, in dealing with this whole question of the number of appeals and the number of cases. We keep on hearing about the backlog of cases, and I have to make this comment, that maybe now that our hon. Attorney General is no longer in private practice, the backlog of cases may very well be decreased. I am sure it is just a matter of time before we see the transition. *[Desk thumping]* Frivolous and vexatious matters, many of them.

Mr. President, during the course of the hon. Attorney General's contribution, he referred to a statement made by the former Prime Minister pertaining to a meeting he had with the Chief Justice and his announcement that a new Court of Appeal division would be created and that new judges will be appointed, and then he went on to say that nothing was done. I think that we have to bear in mind that when one is dealing with the administration of justice and, indeed, the judiciary, in democratic societies such as ours, that one adheres to a very sacred principle, and that is the separation of powers doctrine. We all know that in certain areas—indeed, in very many areas insofar as the legislature and the executive are concerned—that there tends to be some areas of overlap with these two arms of government. However, when it comes to the judiciary, every effort is made to ensure that the judiciary remains independent.

The former PNM administration, indeed, had always shown that concern for the independence of the judiciary. I think with this new Government we must be very careful that we preserve the independence of the judiciary. I say this because when one is dealing with the appointment of new judges, as my colleague quoted a while ago from the proceedings in the Lower House in 1993/1994—the comments made by the Member for Couva South at that time pertaining to the criteria being used for the selection of judges and the need to look at the functioning of the Judicial and Legal Service Commission—one has to approach this very cautiously.

The Judicial and Legal Service Commission is an important body; it is an important check and balance in our system of government and let us at all costs try to maintain its independence and not play politics with it. It is improper for us to dictate to the Judicial and Legal Service Commission and tell them how they should go about appointing their judges. That is a matter for the Judicial and Legal Service Commission to deal with.

Looking at the track record of this Government that has been here for just 100 days, already we had that scandalous occurrence in the Ministry of Education where the Minister asked the two permanent secretaries to stay at home. That is very improper. We have a public service; we have public service regulations; we have our various commissions; let us deal with them accordingly, and particularly, when it comes to the judiciary, let us be careful and not tamper or interfere, unnecessarily with the independence of our judiciary. Our judiciary have men and women of competence, very able-bodied persons, and let us leave them to handle their problems.

This whole question of the appointment of judges and so forth, is a matter that involves several agencies of government. It is not just the Judicial and Legal Service Commission. There is also the office the Director of Personnel Administration which is involved in appointments to the judiciary. So to come here and say that the PNM government did nothing insofar as the implementation of the *Gurley Report* is concerned, is really hoodwinking the population, because the fact is, efforts were being made. My colleague made mention of the fact that since last year before the elections, when budgetary allocations were being made, requests were made for funding with respect to this matter. There were several things that were in train and several things were happening in the administration of justice. We heard about the computerization of the courts that had been taking place, and I am very happy to hear that the present Attorney General would be extending this process to the other courts. It is a much needed change in our system. We welcome it and we are also glad to know that he will make all the resources available. So that I am sure in a matter of months this matter will be implemented fully.

With respect to the night courts, everyone knows the night court in Arima was a pilot project that was instituted under the former PNM administration and plans were afoot to have them extended in other parts of the country. In our manifesto reference is made to a pilot programme for community mediation centres for young persons, and the hon. Attorney General came here today as though it was the brain child of the UNC Government. I am really very shocked at this distortion of the truth that is taking place.

Nonetheless, with respect to the Bill that is before this honourable Chamber, we, on this side, are indeed willing to support any measure that will redound to the benefit of this country and certainly a measure like this one, the addition of new judges and the creation of a new division of the Court of Appeal, will go a long

way in dealing with some of the problems that are affecting the administration of justice.

In those circumstances, I give my full support to the Bill.

I thank you, Mr. President.

The Attorney General (Hon. Ramesh L. Maharaj): Mr. President, it was quite clear that the PNM had nothing to say on this Bill; it is quite clear that they had no excuse to offer; it is quite clear that they could not provide any explanation why it took them four years to introduce a Bill like this. Therefore,

what they decided to do was to talk about matters which did not arise from the Bill. There is nothing in this Bill to affect the independence of the judiciary, to affect the terms and conditions of judges, to talk about criteria for the appointment of judges. There is nothing in this Bill to do that.

But I would have thought that since Sen. Nafeesa Mohammed is a lawyer, she would have recognized that in the speech delivered by the Chief Justice at the opening of the law courts, he spoke about certain measures which were put in place by him and the Judicial and Legal Service Commission to improve the appointment of judges. I would have thought that she would have paid tribute, to the Chief Justice of Trinidad and Tobago who is a lawyer who has distinguished himself at the bar in Trinidad and Tobago; a lawyer who has successfully managed a law office. Therefore even if the opposition in 1992 or 1993 was talking about problems in the management of the judiciary, then I would have thought that it was common sense that if it is that you have a person as distinguished as the present Chief Justice, that that would not have been an important issue at this time.

4.00 p.m.

What is really important to this debate is why the PNM, for four years, did nothing to put the machinery in place so that the judges could be appointed. Why did they not do that? They have not said why. I would still give the Opposition the opportunity, if it wants it, to say something.

Mr. President, with respect to the contribution by Sen. Beckles, I do not think there is anything to which I need to reply, but I would just like to read from the Chief Justice's speech which may be of some information to her and to Sen. Mohammed, who are both distinguished lawyers. At page 18 of the Chief Justice's speech he said:

> "With regard to the procedure for appointing judges, the Judicial and Legal Service Commission has recently broken its tradition by publishing a Notice in the press and inviting applications for appointments to the bench."

He went on:

> "Another decision taken by the Commission recently is to deepen the consultation with the President of the Law Association on the selection of persons for appointment of Judges. In addition to asking him to recommend persons for appointment to the Bench, the Commission has decided that before making any appointment the Commission will indicate to the President of the Law Association the person or persons whom it proposes to appoint and obtain the benefit of his views with regard to the proposed appointments. It is

the Commission's policy to use whatever means it can, to try and ensure that the best persons are appointed from those available, and also to inspire greater public confidence in the process of appointment."

I thought Sen. Beckles would have got up and apologize to me.

Mr. President, I think what is more fundamental, however, is the point made by the hon. Sen. Julian Kenny. Yes, it is important to have a legislative agenda. There are many areas in which this agenda is going to unfold, and I give him the assurance that in a short while he will see a legislative plan. I think that was probably the only important issue which was raised on that side, and it came from the Independent Benches.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 4 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the Senate.

Senate resumed.

Bill reported, without amendment; read the third time and passed.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, March 5, 1996 at 1.30 p.m. at which time we would resume debate on the Private Member's Motion in the name of Sen. Martin Daly.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.07 p.m.