**SENATE**

*Thursday, September 02, 1999*

The Senate met at 10.33 a.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, leave of absence has been granted from today's sitting to the following Senators: Sen. Wade Mark from August 29 to September 09, 1999; Sen. Joan Yuille-Williams from August 30, 1999 to September 09, 1999.

**SENATOR'S APPOINTMENT**

**Mr. President:** Hon. Senators**,** I have received the following communications from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: MR. KELVIN RAMNATH

WHEREAS Senator Wade Mark is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KELVIN RAMNATH, to be temporarily a member of the Senate, with effect from 30th August, 1999 and continuing during the absence from Trinidad and Tobago of the said Senator Wade Mark.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 26th day of August, 1999.**"**

**OATH OF ALLEGIANCE**

*Sen. Kelvin Ramnath took and subscribed the Oath of Allegiance as required by law.*

**PAPERS LAID**

1. Loan Contract No. 1180/OC-TT between the Republic of Trinidad and Tobago and the Inter-American Development Bank, Secondary Education Modernization Program, July 6, 1999. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*

2. Audited Annual Financial Statements of Trinidad and Tobago Mortgage Finance Company Limited for the year ended December 31, 1998. *(Hon. B. Kuei Tung)*

3. The fifty-sixth Report of the Salaries Review Commission on a review of the salaries and other conditions of service of the offices of Executive Director and Deputy Executive Director, National Library and Information System. *(Hon. B. Kuei Tung)*

**ORAL ANSWERS TO QUESTIONS**

**Solomon Hochoy Highway**
**(Pedestrian Walkovers)**

**14. Sen. Prof. John Spence** on behalf of Sen. Diana Mahabir-Wyatt asked the Minister of Works and Transport:

(a) Does the Minister of Works and Transport intend to build pedestrian walkovers for the Solomon Hochoy Highway which is being reconstructed?

If the answer is in the affirmative, could the Minister tell this honourable House how many such walkovers would be built?

(b) Could the Hon. Minister tell the Senate how many pedestrian walkovers the Ministry of Works and Transport plans to build over the next two years in other parts of Trinidad and Tobago and how many are being constructed?

**The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh):** Mr. President, the answer is yes, it is proposed to build pedestrian walkovers for the Solomon Hochoy Highway which is being reconstructed, particularly in areas where communities are separated by the highway.

The number of walkovers will be determined on completion of a study to be commissioned. It is anticipated that the study will also indicate the need for underpasses. Plans are afoot to develop a new transportation plan which would be very comprehensive and would address all the needs of the travelling public throughout the country in terms of pedestrian walkovers, overpasses and underpasses.

The study referred to earlier will also determine the number of pedestrian walkovers to be built. A walkover is currently being constructed at the Cross Crossing Interchange which is a component of the Southern Roads Development Programme.

Thank you.

**Road Building and Repair Programmes**

**(Safety of Children)**

**15. Sen. Prof. John Spence** on behalf of Sen. Diana Mahabir-Wyatt asked the Minister of Works and Transport:

(a) Can the hon. Minister of Works and Transport tell this Senate in what way the interest and needs of children are taken into consideration in road building and repair programmes being undertaken by his Ministry?

(b) Are there any other measures planned specifically for the safety of children travelling in public transport?

**The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh):** Mr. President, in road building and repair programmes, the interests and needs of children are taken into account in several ways. These include appropriate sidewalks and steps for safety; zebra crossing and other sign aids to warn motorists that they are approaching a school; and traffic lights to ensure that children could cross the road safely.

Other measures specifically for the safety of children travelling in public transport are:

1. The Public Transport Service Corporation buses are equipped with side and overhead rails for adults and children.

2. The noise levels in maxi taxis are regulated.

3. The introduction of the rural transport buses means that public transport to those areas is safer, more affordable and travelling time is reduced. This allows for safety and flexibility.

**Sen. Prof. Spence:** Could the hon. Minister of Works and Transport state whether the new rural transport buses are going to be tested for vehicle emissions?

**Sen. The Hon. S. Baksh:** Yes. All the buses would be tested for that.

## Child Care Services Bill

**16.** **Sen. Prof. John Spence** on behalf of Sen. Diana Mahabir-Wyatt asked the Minister of Social and Community Development and Minister of Sport and Youth Affairs:

Could the hon. Minister of Social Development inform the Senate whether he intends to introduce the Child Care Services Bill which was put out for public comment in 1990?

If the answer is in the affirmative, could the Minister state how soon the Bill will be introduced?

**The Minister of Community Development and Minister of Sport and Youth Affairs (Hon. Manohar Ramsaran):** Mr. President, as Minister of Social and Community Development, I do not intend to introduce the Child Services Bill which was put out for public comment in 1990 due to new developments in this area since that time, and the consequential changes in Government's approach to matters relevant to child care services in Trinidad and Tobago.

The primary purpose of the Child Care Services Bill was to license and regulate the operation of Child Care Centres in Trinidad and Tobago through the establishment of a Children Services Board which would have been mandated to formulate policies with respect to the care of children.

Since 1990, the Government of Trinidad and Tobago has been signatory to two very important international conventions related to children: the Declaration for Survival, Protection and Development of Children agreed upon at the World Summit for Children in 1990 and the United Nations Convention on the Rights of the Child in 1991.

In view of the foregoing and as a consequence of other international developments with respect to children internationally and in the region, there was general consensus that there was need to review the 1990 Bill to take into account current developments. In addition, since that time, a number of committees have been established to examine matters pertaining to the child including the National Plan of Action Committee established in 1992 in accordance with the goals of the Declaration for Survival, Protection and Development of Children.

As Sen. Mahabir-Wyatt would know—she was advised in response to an earlier question raised in the Senate on July 02, 1999 on the said committee—the National Plan of Action Committee is responsible for the implementation of the national plan of action for the survival, protection and development of children.

In cognizance of the linkage of the goal of the National Plan of Action Committee and the Articles of the Convention on the Rights of the Child, the committee has also undertaken the responsibility to widely disseminate information on the Convention on the Rights of the Child and to implement programmes geared towards the well-being of all children.

In terms of the legal implications of the Convention, however, it was recognized that tangible action was required. In this regard, the Government of Trinidad and Tobago, specifically the Attorney General, in July 1998 appointed a committee to prepare a comprehensive package of bills to reform the laws relating to children and family.

The committee has worked tirelessly towards completing its task and has prepared five bills for submission to Cabinet. These include:

1. The Children's Authority Bill, 1999.
2. The Children's Community Residences, Foster Homes and Nurseries Bill, 1999.
3. The Adoption of Children Bill, 1999.
4. The Miscellaneous Provisions (Children) Bill, 1999.
5. The Family Court Bill, 1999.

**10.45 a.m.**

These various pieces of legislation complement each other and are expected to serve as a comprehensive package for the protection of the general welfare of all children.

The main piece of legislation is the Children's Authority Bill which will allow for the establishment of a Children's Authority as a central co-ordinating body responsible for all matters relating to children. The Authority shall be under the direction and control of the Minister of Social and Community Development and shall advise the Minister on matters relating to the operations of the proposed Children's Authority Bill.

The Authority would also have, and exercise such functions and powers and duties, as are imposed on it by the proposed bill, in particular:

(a) Monitor residences and foster homes and conduct periodic reviews to determine their compliance with such requirements as may be prescribed.

(b) Investigate complaints of staff, children and parents or guardians of children with respect to any child who is in the care of a residence, foster home or nursery and the residence's, foster home's or nursery's failure to comply with requisite standards as prescribed under the Children Community Residences, Foster Care and Nurseries Act and any incidences of mistreatment of children in such places.

(c) Monitor agencies which address children's issues.

(d) Investigate complaints of reports of mistreatment of children in their homes.

(e) Act as an advocate for the rights of all children in Trinidad and Tobago.

(f) Co-ordinate support services in relation to the care and treatment of children.

(g) Monitor the placement and treatment of children at risk.

(h) Approach the proposed Family Court for suitable orders in respect of children at risk.

As previously mentioned, the other pieces of legislation will serve to complement the Children's Authority Act and their primary objectives are spelt out as follows: The Children's Home Residential Centre Foster Care and Nurseries Bill, 1999. The primary objective is to set up a regime for the registration, licensing, monitoring and regulating of these types of child residences. It will also set guidelines for the operations of these types of homes, nurseries and residences and introduce a formal system of foster care managed by the Ministry of Social and Community Development.

The Adoption of Children Bill, 1999. The primary objective—in general, the bill will introduce better procedures for governing adoption and, in particular, will take into account the provisions of the United Nations Convention on the Rights of the Child on this matter. The bill will also introduce reforms to facilitate the

adoption of children by foreigners, male adopters and adoption of children who are non-Commonwealth citizens.

The Miscellaneous Provisions (Children) Bill, 1999. The primary objective—the bill proposes to address some of the matters covered by the Convention on the Rights of the Child. Some of the proposed legislation will include standardization of the definition of the child in different legislation, as far as possible, to mean a child under the age of 18 years; the abolition of corporal punishment of a child of any age and the prohibition, as far as possible, of imprisonment of children in adult prisons.

The Family Court Bill. This Bill will establish a Family Court with both Magisterial and High Court jurisdiction providing for families, a judicial process that is more user-friendly, informal and sensitive to the needs of the parties.

The outlined package of legislation will address a number of other issues but this morning, time will not permit me to say all. Allow me, however, to note that legislation is also being considered to ensure adequate standards of care at homes for the aged and instituted. As you will most likely be aware, this is the International Year of Older Persons and my Ministry, as the focal point on this matter, has initiated a number of activities to mark the year.

Permit me, Mr. President, to add that Government approved the establishment of the National Co-ordinating Committee on Disabilities to implement a National Policy on persons with disabilities to serve as the secretariat to the committee. A Disabilities Affairs Unit has been established. Again, this is particularly to provide adequate educational background for children with disabilities.

In response to the hon. Senator’s other question, the comprehensive package of legislation will be introduced in the Senate very shortly, the strategy proposed being the introduction, in the first instance, of the Children's Authority Bill, 1999; the Children’s Community Residences, Foster Homes and Nurseries Bill, 1999; the Adoption of Children Bill, 1999; and the Miscellaneous Provisions (Children) Bill, 1999. The Family Court Bill, 1999 will be introduced at a later stage as certain issues are reviewed and are being finalized.

The Government of this country fully recognises the importance of providing a secure and enabling environment for the development of our nation's children and is in the forefront of actions in the region towards ensuring that this objective is met. I trust this response would satisfy the concerns of my colleague, the hon. Senator, and do assure the hon. Senator that she will soon be given the

opportunity to make a valuable contribution to the process when the proposed legislation is introduced in the near future.

Thank you very much.

**Sen. Prof. Spence:** Mr. President, I wonder if the hon. Minister would give us the assurance that these bills will be passed in the next session—I assume they are no longer coming in this session—and would not lapse like so many important bills have lapsed in this session.

**Hon. M. Ramsaran:** Mr. President, I assure the Senator that the bills will be presented to the Parliament in the next session. As to being passed, depends on both Houses of Parliament.

**Sen. Mohammed:** In light of what the hon. Minister has said and the number of bills he indicated that the hon. Attorney General is presently drafting, I would like to know whether the Government intends to take steps to increase the number of social welfare workers and probation officers, and to improve the conditions of work for these officers in that area.

**Hon. M. Ramsaran:** Mr. President, that is a very broad question but, indeed, I would like to assure the hon. Senator that the bills are being prepared and will be ready for our next session of Parliament. The second part about increasing the staff has to do with the overall strategic review by Government and this is being done to ensure that we deliver services to the country.

## DEFINITE URGENT MATTER

**Sen. Nafeesa Mohammed:** Mr. President, I seek your leave to move the Adjournment of the Senate for the purpose of discussing a definite matter of urgent public importance under Standing Order No. 11(1).

The matter relates to the recent flooding and the hardships caused including the loss of life and property to the residents of the Beetham Estate, Barataria, Aranguez, Mount Lambert, Champs Fleurs, Bamboo Settlement and other surrounding areas.

This matter is definite for it is about flooding in our country at the present time when we are in the heart of the rainy season and, indeed, the hurricane season.

The matter points to the extensive damage—

**Mr. President:** Do not go into details of it at all.

**Sen. N. Mohammed:** Mr. President, the matter is urgent because the rainy season is upon us and any delay in debating the matter and taking immediate action could result in further hardships and disasters, including the loss of life, the outbreak of diseases, the destruction of homes and household items, the destruction of food crops and, consequently, food shortages. Over the last two weeks, these areas have been hit by floods on more than two occasions.

The matter is of public importance because it affects a large percentage of our population; it affects the health of our people and the food supply to our country. As we all know, the Aranguez area is known to be the "Food Basket" of the nation and if this problem is not addressed immediately, we can be faced with food shortages and, consequently, high food prices.

Apart from the above, it is well known that flooding has been very extensive in other areas, especially near the Caparo River.

I therefore seek leave to discuss this matter with the hope that immediate action can be taken to tackle the flooding problem in our country which is worsening in recent times.

**Mr**. **President:** Hon. Members, I received this application from the hon. Senator this morning. She came in and we had a discussion on it. I explained to the Senator the circumstances under which a request under Standing Order 11(1) is likely to succeed. In the instant matter, those circumstances are not satisfied and, therefore, the application is not entertained.

## ARRANGEMENT OF BUSINESS

**The Minister of Finance (Sen. The Hon. Brian Kuei Tung):** Mr. President, I seek leave of the Senate to deal with Bill No. 1 on the Order Paper at this stage of the proceedings, as well as Motion No. 2 at a later stage.

*Agreed to.*

## CONSTITUTION (AMDT.) (NO. 3) 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 Constitution of the Republic of Trinidad and Tobago be now read a second time.

The Bill which we have before us is a Bill to empower the Parliament to appoint Joint Select Committees to report to the House of Representatives and to the Senate in respect of the administration and manner of exercise of powers, and methods of functioning of and criteria adopted by Government Ministries, the Tobago House of Assembly, Municipal Corporations, Statutory Authorities, State-owned or controlled enterprises and Service Commissions.

The rationale behind this Bill is that the people who are the source of power for persons who hold official positions are entitled to know, through their representatives, the way in which Government and the state is administered and to have officers account to them, through their representatives.

It is a measure which would empower parliamentarians to probe allegations of misuse and abuse of power, corruption and any matter which falls within the ambit of the powers given to the select committees. The powers given to the select committees are powers which have been clamoured for over the years.

**11.00 a.m.**

As a matter of fact, in respect of government ministries and other aspects of governmental operations and state operations, there have been requests even from the days of the Wooding Commission Report that select committees of Parliament should be empowered and should be created in order to monitor and scrutinize activities. It would seem to me that the people of our country have been denied these powers for too long.

In respect of service commissions, Mr. President, there have been calls, from time to time, for government to take steps in order for service commissions to become more accountable. Governments have tried to deal with that matter in different respects. This administration has decided that it would not alter the powers of the service commissions, it would not reduce their powers, but what it would do, is give to the people, through the Parliament, the power to scrutinize their actions.

Mr. President, under the Bill, the committees would be entitled to appoint specialist advisors to assist these committees in their deliberations. The reports, prepared by these committees, would be laid in the House of Representatives. There is also the provision for a report of the service commissions to be sent to the Prime Minister before it is laid.

It may be prudent to start this debate by saying that the Opposition has always stated that there must be machinery and there must be investigations in respect of

allegations of corruption against government ministers and ministries. What this Bill does is put on a platter for the Opposition, a machinery whereby the people, through their representatives, would have the power to investigate allegations of corruption.

Under this Bill, Mr. President, one would see that the select committee would have the power to look at the administration, the manner, the exercise of the powers and the functioning and criteria adopted by state authorities in the exercise of their powers. If it is believed that the Airports Authority is corrupt, or the administration of the Airports Authority is corrupt and there are allegations in respect of any of the matters there, this committee, of which the Opposition would be part, would be able to send for books, call persons, call ministers, ask questions and they would have the coercive powers in order to investigate.

Under the present set up, the Opposition is saying that it is impotent to get the information: it wants an investigation. This would provide a way in which, simultaneously with allegations, there can be investigations. If it is also felt that another corporation—whether it is National Petroleum or any other government-owned or controlled corporation—is corrupt, this gives the power. Mr. President, the philosophy behind this is that people are entitled to know when there are these allegations, and they are entitled to know. We have done it in two ways: firstly we have given to individuals, through the Freedom of Information Bill, a statutory right to have state-held information. Secondly, we are giving to the Parliament, through their representatives, the power to scrutinize and monitor governmental and state actions.

Mr. President, this is not a Trinidad and Tobago trend. This is a trend which is worldwide. It is recognized by all the institutions, regional bodies, whatever it is, that in order to have more open and transparent government, there must be machinery and institutions for accountability. The most effective way is when there is accountability through the Parliament.

When I go to deal with the service commissions, I would show that what has happened here is, really, what happened in other parts of the world in some measure and in other parts of the world there have been even greater means of scrutiny. I know that there have been certain views expressed about having Parliament scrutinize the Judicial and Legal Service Commission. I have brought with me proceedings of the Home Affairs Committee of the British Parliament where it is shown how matters affecting the administration of justice are dealt with. This Bill does not scrutinize, it does not give the Parliament or the Parliamentary Committee the power to scrutinize the administration of justice.

In order for me to explain this let us start with how the state operates. The state in constitutional law, under our set-up and in a similar set-up like ours—for example you may have the interchange of the crown and the state. The state really operates under three arms: the Executive arm, the Legislative arm and the Judicial arm. The Executive arm of the state is the part of the state which deals—you have the Cabinet, but you also have the administration of the state. Therefore, when the service commissions are performing their functions, the service commissions are not performing legislative functions or judicial functions; the service commissions are performing a part of the Executive arm of the state. What happened before we got independence is that it was thought that if you had a set-up in which you appoint judges, police officers and teachers in which politicians are involved in the appointment process, there can be political manipulation, and therefore it would not be a fair system. Therefore, it was decided that we would go with the model in which they are part of the Executive arm but the politicians would be insulated—from appointing, transferring, disciplining and matters like that—by having a service commission appointed in the form that we have.

Mr. President, although a service commission is an independent body—under the Constitution in which it does not consist of politicians, you do not even have a Permanent Secretary or anything like that—it is part of the Executive arm of the state. The Judicial and Legal Service Commission, for example, does not have any powers to decide a case. When it sits it does not sit as a court. It is part of the Executive arm of the state. It is certainly not part of the Legislative arm or part of the Judicial arm of the state. The Judicial arm of the state is the arm of the state which is responsible for deciding cases, for adjudicating on matters.

Mr. President, the concept therefore is, if the Executive arm of the state has to account to the people through Parliament, there must be some machinery for that accounting to take place. It is in that set-up one sees that Parliament being the institution which, under the Constitution, has the power to make laws and which has the power to, in effect, address grievances and raise grievances of people—one of the most important functions of Parliament is scrutiny. Parliament is the institution which will do that.

**11.10 a.m.**

Mr. President, the Legislative arm sees about the Parliament, which, in effect, sees about passing laws, and other related matters, and the Judicial arm as I said. On April 7, 1995 the *Express* carried an editorial which I want to quote. Its heading was: “Time to rethink the Service Commissions.”

> "These Commissions, responsible for recruitment, promotion, discipline and dismissals in the Public Service, the Teaching Service, the Police Service, the statutory bodies and the Judicial and Legal Service, are visibly malfunctioning. Vacancies are often not filled on time, even in important senior government posts, with the result that, as a calypsonian once put it, 'everybody acting'.
>
> This is partly because the Commissions cannot cope with the thousands of promotions they insist on handling themselves. So over 12,000 teachers and 1,000 principals and vice-principals, are handled by the five-person Teaching Service Commission which jealously guards its authority to hire, promote and release teachers, even when they are being promoted into other departments in the public service."

I quoted that, in order to show that for some time now the question is asked in all circles of society, that we have to rethink forms of accountability, not only for the service commissions but also for Government. One of the most effective ways that Opposition and parliamentarians can make a government account, is through parliamentary committees. That is why there is a growth industry in the Commonwealth, in having select committees to monitor the activities of government. I do not think that I need to quote because I would assume, and I am sure, that most of us even browse through the *Parliamentarian*. One would see from country to country, over years, how this system has been introduced.

Even in respect of the appointment process of judges and matters relating to those aspects, we see that countries have gone that route also. Canada has a committee which monitors that process, Uganda, South Africa and the United Kingdom, just to name a few. One sees the growth industry in service commissions in order to monitor the activities. Why is this so? Because it has been recognized that that is the most effective way the people can monitor and scrutinize the actions of these bodies.

Mr. President, there are certain untruths which have been said about this Bill. This Bill does not, in any way, give the committee the power of a court to change or modify the decision of any of the service commissions or government departments. It does not give that power at all; it is purely the power to scrutinize. It has been said that this Bill collides, in some way, with what is stated in section 129(3) of the Constitution which deals with the fact that a decision of a service commission cannot be inquired into by any court.

Mr. President, I do not wish to spend much time on that because it is quite clear that these committees are not courts. As a matter of fact, the function of the select committee—if I may quote a book which is well known to persons who have studied Constitutions, *Judicial Review of Administrative Action*, De Smith, Woolf and Jowell, the fifth edition, it says, dealing with respect to the role of select committees:

> "Critical scrutiny of policy and administration is perhaps the most important function of the two Houses of Parliament. But criticism is seldom effective unless it is backed by accurate information about the facts lying behind the shaping and execution of policy. As the complexity of the processes of government increased, the inadequacy of the information available to Members became more apparent. In an attempt to bridge the gap between departments…a small number of select specialised committees of the House of Commons, with inquisitorial powers in respect of defined areas of governmental activity, was set up in each session from 1967 to 1979."

The question of these committees contravening this section, in my respectful submission, is a nonstarter.

It was also said that the committees would interfere with the independence of the service commissions. I do not see that because they would not have the power to change the decisions. The committee would merely have the power to get information. If it is that by members of a service commission mingling or coming to Parliament to talk about the people's matters, it means there could be compromise and independence could be affected, then something is radically wrong with the process. If that is the case then members should not see each other at cocktail parties and talk. I have gone to many of these functions since I became a minister of Government, and I see everybody talking to everybody, intermingling with everybody, having *tête-à-têtes* with everybody. If it is the concept that you have a Parliament and a select committee and when you bring the members of the Teaching Service Commission, that would affect and undermine their independence to ask them questions, then something is radically wrong with the process.

Just before I go into some of the matters relating to the service commissions, I have asked the Chief Parliamentary Counsel Department to circulate, through the Clerk of the Senate, the Bill as amended and as has been dealt with in the House, in a form which would be easy for Members to read. I do not know if that was done, but I am reading from that copy.

Regarding the history of this Bill, Mr. President, it did not fall from the sky and just drop in the Parliament. A bill was prepared and put out for public comment. There were comments received, the Government considered those comments, a bill was laid, I think, in the House of Representatives, I am not too sure if it was laid in the Senate. All these comments were taken into account, and in the other place, comments on this Bill were also taken into account. So we have a distilled version of the Bill.

One would see that the Bill adds a new clause to the part of the Constitution dealing with Parliament, Part II, which deals with powers, privileges and procedure of Parliament. The Bill adds a new clause 66(A) and that is the appropriate place for it in the Bill, because it has to do with the powers of Parliament and what it deals with, with respect to Parliament. The clause quite clearly states:

> "(a) in addition to any other Joint Select Committee which Parliament is empowered to appoint under its Standing Orders, Parliament shall, within one calendar month—…"

It goes on to say that the committees will be able to report to the House and lists the different ministries, the House of Assembly and the service commissions. It continues:

> "in relation to their administration, the manner of the exercise of their powers, their methods of functioning and any criteria adopted by them in the exercise of their powers and functions.

(b) For the purposes of this section an enterprise shall be taken to be controlled by the State if the Government or any body controlled by the Government—

(i) exercises or is entitled to exercise control directly or indirectly over the affairs of the enterprise;

(ii) is entitled to appoint a majority of the directors of the Board of Directors of the enterprise; or

(iii) holds at least fifty percent of the ordinary share capital of the enterprise,

as the case may be;

(c) a Committee appointed for the purposes set out in paragraph (a) may—

(i) appoint sub-committees from among its members and delegate any of its powers to such sub-committee;

(ii) adjourn from place to place;

(iii) appoint specialist advisers to assist them in their deliberations;

(d) subject to any order of the House or resolution of a committee, the sittings of a Committee shall be held in public;

(e) a Committee appointed for the purposes set out in paragraph (a) shall make a report of its opinion and observations which shall be laid in both Houses of Parliament.

(2) Subject to this section the Standing Orders of the Senate and the House of Representatives shall apply to a Committee appointed under this section.

(3) Subject to the Standing Orders of the Senate and the House of Representatives a Committee may regulate its own procedure."

Clause 66B talks about the reports of service commissions to be sent to the Prime Minister who shall cause the reports to be laid.

It is not a difficult or extensive Bill, but it has important consequences, in that it empowers Parliament to provide this form of scrutiny and gives the power to the committees to get assistance in doing their job.

Mr. President, as I said, this Bill will be a very important tool to investigate allegations of corruption. If this Bill is passed and the committees are set up, it would, therefore, mean that they would have power. Obviously there would have to be Standing Orders to deal with this aspect, and this Bill does not deal with the Standing Orders; that would have to come in a different way, if it is agreed upon. The committees would be able to exercise powers as they see fit, in accordance with how these select committees operate.

What has happened in Trinidad and Tobago over the years is that the Parliament has not used its select committees most effectively, and even where there are provisions for select committees one has to concede that they have not been used very effectively. It is hoped that by giving this empowerment to Parliament, the people of the society would also have more interest in what is happening in Parliament. One sees that when there is a sitting in Parliament, the public gallery is scarcely filled, or there might not be anybody. That is because

people feel alienated from the process of Parliament, when it is supposed to be the process by which people would feel that their affairs are being conducted.

It has been found in other countries, where this has been introduced, that the people of the society became more interested as to what was happening in Parliament, and the institution grew stronger.

So, Mr. President, I do not think it can be doubted that this would be one of the effects of this measure, as far as the Government is concerned and, therefore, it is something which I think any parliamentarian would want to support.

**11.25 a.m.**

The aspect of the Bill that has generated some controversy is that dealing with service commissions. I think there is a strong school of thought and opinion in Trinidad and Tobago that the service commissions should be scrutinized and monitored, but whatever is being done should not be done in a way which would take away from their powers or affect their independence. That is why, when one looks at it, one sees quite clearly it says what its powers are. It does not say that it could change any decision and it would seem to me that question does not arise.

Another aspect of the Bill that has also generated some criticism is that which deals with the scrutiny of the Judicial and Legal Service Commission. The argument is that since the Judicial and Legal Service Commission appoints judges and magistrates and deals with legal and judicial officers, then the Parliament should not be the place in which the commission would have to subject itself to scrutiny by having to attend. I may say that, in dealing with this matter, for the consideration of the Senate I will put forward what I consider to be happening in the Commonwealth and in the world. Obviously, it is a matter that will generate discussion and we can see whether, as parliamentarians, we are or are not prepared to go that distance.

When governments have to write constitutions to deal with the judiciary, governments have to write these constitutions in such a way that people will accept them and they would be assured that there is no political interference in the judicial process. I have in my possession an international review of existing models of judicial appointments that was done by the Law Society in the United Kingdom. This study examines how judges are appointed in different jurisdictions.

To summarize it for you, Mr. President, and for hon. Senators, it says that one must have a method by which there is election of judges, as done in the United States of America. There is also a method by which one has a commission comprising members of the executive, that is to say persons from life such as lawyers, judges, *et cetera*, but also members of the executive and, in some cases, have Members of Parliament. There are other cases in which there would be no members of the executive or Members of Parliament. So, therefore, these are the different main kinds of methods.

What I want to stress is that this Bill does not intend to change the method of appointment of judges that we have. As a matter of fact, the Bill expressly says what it will do, so that no politician will be a member of the Judicial and Legal Service Commission. It does not attempt to do that. It does not say that a permanent secretary would be a member of the Judicial and Legal Service Commission and it does not say that any appointment made by the Judicial and Legal Service Commission has to be ratified by anybody. All that this Bill does is say that the people, through the Parliament and the committee, would be able to inquire into X, Y and Z.

One will ask, "Well why is that so?" I think we all know, as parliamentarians, that one of the most effective ways of preventing misuse and having betterment of service is to have information and for people to feel that they can be scrutinized. If one has a set-up, Mr. President, where persons who exercise these kinds of powers are not subject to scrutiny, then there will be consequences in which one will have lack of confidence in its administration. I am dealing with it in this way because I want now to show that this Bill, firstly, does not deal with the appointing process, that is to say it does not attempt to change the appointing process, it merely provides for scrutiny of the appointing process, scrutiny by the Parliament and for the people to know about the appointing process and what is happening. When I say appointing process I mean all the other matters mentioned, the other functions the service commission performs.

The Bill does not attempt to provide machinery to scrutinize the administration of justice. I say this because in the United Kingdom, and in other countries where there are parliamentary committees, they have gone that route, scrutinizing not only the appointing process but also scrutinizing the system of justice and the administration of justice. This Bill does not scrutinize the administration of justice or it does not make accountable to the Parliament the exercise of judicial powers. The powers which the Judicial and Legal Service Commission have are administrative powers. They do not decide cases, they do

not judge cases, they do not send anyone to prison, they do not impose fines, they do not award compensation. They perform administrative functions.

In some countries, Mr. President, instead of having only a Chief Justice they have another individual who is the holder of another post. In some jurisdictions they call the person a Chancellor and that person sees about the administrative aspects of the administration of justice. Under our system the holder of the office of Chief Justice is responsible both for the administrative aspect of the administration of justice—he presides in the court and also is head of the judicial aspect of the administration. So the Bill, therefore, does not in any way scrutinize judicial accountability. It does not deal with judicial accountability. It deals with administrative accountability.

Judicial accountability—if a judge, in the exercise of his powers, decides a case rightly or wrongly and there is dissatisfaction about it, he or she is answerable to a higher court; the Court of Appeal or the Privy Council under our setting. So that is the form of judicial accountability that exists in Trinidad and Tobago. In other countries, Mr. President, including the United Kingdom, the Parliament, the Home Affairs Committee, scrutinizes the exercise of judicial powers. That is to say, can ask questions about why a judge passed this sentence, why he did not pass the sentence, and the person who has to account for that is the Chancellor of the Judiciary.

For example, there might be a case where a judge may make a remark which may be considered discriminatory against rape victims and the Chancellor can be asked in the select committee, "What have you done about that?" Not to change or to tell him what to do but, "What have you done? Have you acted upon it? What have you done about that?" This Bill does not deal with that.

Mr. President, I want to refer to an article in the *Commonwealth Law Bulletin* entitled "Public Accountability—Who Judges the Judges?" I am referring to this article in order to show what is happening in other parts of the world and what they are doing, but we are not doing that in this Bill. I should mention that in some jurisdictions they have decided to have an Ombudsman for the courts and the Ombudsman would have the power to investigate and in some countries a special Ombudsman investigates the exercise of judicial powers. So in some administrations there is an Ombudsman who exercises administrative aspects and matters relating to the exercise of judicial expression.

In an article published in July of 1993, which I mentioned, it is an extract from a paper presented by the Vice-President of the Court of Appeal of Fiji in May of 1993 and he said:

> "We live in an era of greater public demands for judicial accountability. The call for judicial accountability is gaining momentum in many parts of the world. The judiciary is no longer considered a sacrosanct and inviolable sanctuary of its occupants. The surprising, interesting and some even might say encouraging fact is some of the members of the judiciary are themselves at the forefront of this call.
>
> *Growing need for public accountability*
>
> Donald C. Rowat, Professor of Political Science at Carleton University in an article entitled '*Why an Ombudsman to supervise the Courts?'*, gives the following 8 reasons why since the Second World War there has been a growing need in democracies for Courts' greater accountability and responsiveness to the public:"

Mr. President, bear in mind that this consists of jurisdiction in which the courts also are accountable, not only to a higher court but accountable to the population. These are the reasons that he says had motivated that. This author also quoted from a book by David Pannick in his book *JUDGES,* that there should be:

> "…a Judicial Performance Commission in England in order to regulate and deter injudicious conduct appears to have fallen on deaf ears."

So one is seeing the international trend is, yes we accept that you must have administrative accountability in respect of the appointing process, but you must go further now and have a machinery for judicial accountability.

Here are the reasons, Mr. President, to show why it is important for the public to have this kind of, according to him, accountability of the judiciary.

> "(1) The growth in size and complexity of the judiciary…citizens are asserting their rights by taking more and more cases to court.
>
> (2) Better-educated citizens are insisting on judges being more accountable for their actions and statements.
>
> (3) Most judges are appointed, so the public have no direct control over them.
>
> (4) Judges in the lower courts are of poorer quality…

(5) Most judges have continuous tenure during 'good behaviour.' Since this term usually means only the capacity to perform their duties, they cannot be removed from office for other reasons. This often leads to what is called 'the arrogance of office,' especially since judges wield the tremendous discretionary power of contempt of court in their own courtrooms.

(6) The procedure for removal of judges is too difficult, and cases of their removal are rare in both the Commonwealth countries and the United States. In the United States the only recourse used to be impeachment, a procedure that was extremely difficult to initiate.

(7) Often there are no provisions for disciplining judges. Hence, there is no way to remedy cases of minor misbehaviour, such as maltreatment of witnesses or litigants in court. The reports of the Swedish and Finnish Ombudsmen show that there are many such cases. In fact, most of their court work is investigating cases of this kind.

(8) There are no provisions for remedying unintentional mistakes made by judges or officials of the courts. The debate in the legal community always seems to be about 'discipline' and codes of conduct, which are always concerned with *wilful* misbehaviour, but as the Ombudsmen's work shows, much maladministration is unintentional, simply caused by…mistakes, while courts are becoming large organizations…Since courts are in a hierarchy like any other organization, theoretically, misbehaviour and mistakes are supervised by the higher levels within the court system."

And it goes on about the need for accountability.

**11.40 a.m.**

Then it goes on to page 1233, under the heading *American Initiative*. It states:

"It might, therefore, be useful to pause here and briefly note the position in some of the American States. California created a Commission on Judicial Qualification in 1960…The Commission has power to recommend to the State Supreme Court to censure or remove a judge."

So there was a commission to monitor whether the judge's appointment was right, whether he had met the tests, *et cetera*.

"In Hawaii, the Commission of Judicial Discipline was established in 1979…"

And was mandated, apart from disciplining, to assess the performance of judges.

It also quoted what Lord Atkin said:

"It is reassuring that more and more judges are adopting the views of Lord Atkin that '*justice is not a cloistered virtue, she must be allowed to suffer the scrutiny and respectful even though outspoken comments of the ordinary man*'.

In 1983 Justice Michael Kirby, in a radio talk over ABC…pointed out that the catalogue of complaints against judges is as endless as human error...He added that constitutional guarantee of independence stands as a guardian not only for the fearless judge but also of a judge who cannot or will not properly discharge the functions of his office. Mr. Justice Kirby, now President of the New South Wales Court of Appeal, has more than once recognised the need for external stimulus to deal with complaints against the judiciary for such matters as rudeness, tardiness…incompetence or for '*a small thing like suspected inability to actually hear the evidence or the argument*'. In 1998, in an address entitled—'*Ombudsman—The Future*' Justice Kirby had this to say:

> *The courts:* In his address at the National Press Club, Professor Richardson referred to the delays in administration in the courts. He referred to delays in the delivery of judgments and the variation between States revealed by recent statistics of the Institute of Judicial Administration. In one State, the average delay in the delivery of judgment was 47 days. In another it was 140 days. Clearly delays of this order are generally unacceptable. Prof. Richardson proposed the creation of a judicial ombudsman. I am far from disputing this proposal. However, I questioned whether it is necessary to create yet another officer and why the already existing ombudsmen should not have this responsibility as they do in Scandinavia. This is not to inhibit judicial independence. No one would suggest that the ombudsmen could tell judges how they decide cases. But looking at issues of administration, at the efficiency of the court registries and of the judges themselves, may be a bracing but healthy corrective to occasional judicial indifference or preoccupation with other tasks. If the ombudsmen were confined to providing a vehicle for investigating

> complaints about undue delay or administrative matters such as the loss of exhibits or chronic problems in dealing with courts, I believe that such a role would only be for the improvement of the administration of justice. In the Philippines, as I am informed, a judge who has not delivered judgment within three months runs the risk that his salary will be suspended until the judgment is delivered. This has provided a mighty impetus to promptness in the delivery of reserve judgments. In comparison, Prof. Richardson's proposal for a judicial ombudsman seems modest indeed. Everybody concerned with the administration of justice must show an increasing concern with the efficiency of the system. The provision of an external stimulus such as Professor Richardson has proposed is one which good judges need not fear. If properly implemented, it would involve absolutely no diminution of the vital independence of the judiciary."

Mr. President, I quote this to show that even in a society in which you have scrutiny for the exercise of judicial powers, in addition to administrative powers, it is being said that if judges are really independent, if they are really competent and efficient, they would welcome that kind of scrutiny for their actions.

But, this Bill, as I want to emphasize, does not deal with asking a judge why he did or did not decide that. All this Bill does, as far as the Judicial and Legal Service Commission is concerned, is ask questions relating to the performance of administrative functions which is part of the executive arm of the state; it does not deal with the exercise of scrutiny of the exercise of judicial functions.

Mr. President, if the Opposition does not want this Bill and it feels that it does not want to support this Bill because it does not want machinery for scrutiny, then it can say all sorts of things. It can say this affects the independence of the judiciary, it is taking away the powers of the service commissions, it destroys the separation of powers, *et cetera*. It could start talk about the issues of the airport, the rice, all sorts of things if they do not want to support the Bill; but, this is a very serious Bill and I would hope that we would look at it in that way.

Before I conclude, I promised to read from some of the materials I have here. I have in my possession—and I could make it available to Senators—*House of Commons, Home Affairs Committee, Third Report, Judicial Appointments Procedures*. This is the committee at the House of Commons, Mother of Parliament, at which the Lord Chancellor and the Lord Chief Justice appear. Now, one may say the Lord Chancellor is in a different position to the Chief Justice here, but not only does the Lord Chancellor appear, the Lord Chief Justice in the

United Kingdom appears before the select committee of Parliament in order to answer questions about the administration of justice, about the criteria for the appointment of judges. As a matter of fact, if one looks at this report, one would see where questions are asked, like the question of the selected criteria of how judges are appointed, what is the system they use, whether they should sound people to find out about them and they are being asked how the process takes place. The reason for this is that by asking questions, by finding out, by giving suggestions the process can be improved and people will know and will have more confidence in the set-up. It is very interesting. I do not think I would have the time to read from all.

Mr. President, I have another report here, *Home Affairs Committee, The Work of the Lord Chancellor's Department, Minutes of Evidence, Monday 13 October 1997*. The Lord Chancellor is asked by the chairman:

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

Lord Irvine replies:

> "Well, my priorities, I would say, are to create as open and transparent and as effective a justice system as possible."

They went ahead to ask him what he meant by all that and, for over 19 pages, he is giving answers as to how he intends to administer justice and for the appointment process to be done.

There is another report on judicial appointments in which one would see that the Lord Chief Justice and senior members of the Bar attended the select committee. I also have the report, *Home Affairs Committee, Judicial Appointments Procedures*. In this report, one would see that there are specific questions being asked like: what are the criteria used for the appointment of judges? How is it used? What results are gotten? And why, if one is using these systems, are there problems? After all these things were done, the committee made a report to the Government, which then laid the report in Parliament and the Government had to respond and say what it was going to do with the recommendations.

I have another report that shows the response by the Government. So the rules in the United Kingdom specify that when the report goes, the Government cannot say it is not responding, it must say whether it does or does not accept the report and what it is going to do about it. Very revealing, at page 33 of this report, the Lord Chief Justice of England. Now, I should mention, it was not easy to get this process going in the United Kingdom. Because initially, some years ago, the Lord

Chancellor at the time, Lord Haleshom, resisted having the judiciary, as he said, going to justify judicial appointments. It was a position whereby they were accountable for the administrative aspect of justice, but he resisted having to justify judicial appointments procedures, but it was recognized that that could not be held onto, if one believed in the concept that regardless of the power which even judges hold, they are accountable to the people.

What the Lord Chief Justice said on page 33 was:

> "I think it is the first time the Judges' Council has given evidence to a Select Committee. We would like to encourage the Judges' Council to make more submissions in future, as and when required."

He goes on, and then he is asked about how he is administering and what he is doing about delays. One of the questions even asked was: After the case is over, and the judge makes notes on the performance of barristers; does he make notes of it? What does he do with the notes in order to know what process to use when making appointments? Does he appoint someone just like that? What is the process?

Mr. President, from the other document, *Response by the Government to the Home Affairs Committee's Report on Judicial Appointments Procedures*, I will just give an example. It says:

> "The Professional Judiciary
>
> Recommendation 1: We accept that to require judges to be representative of sections of the community would be inappropriate. Nevertheless, the make-up of the judiciary has an effect upon the public's perception of, and confidence in, the criminal justice system: whilst public respect for the justice system is sustained primarily by sound adjudication and sentencing, genuine understanding by judges of the concerns of ordinary people must enhance their standing in the public eye.
>
> Recommendation 2: We see sound legal learning, independence of mind, an ability to handle the court, maturity, and integrity as key attributes for any professional judge.
>
> Recommendation 3: We believe that the detailed criteria published for a number of judicial offices offer a sound basis for an assessment of applicants. We recommend that an indication should be given of the need for maturity in judicial office.

Recommendation 4: We commend the Lord Chancellor for his programme for reform of judicial appointments procedures."

It goes on and on. Mere recommendations—not to tell the Lord Chancellor and his committee who and who not to appoint as judge—but looking at the general ways and seeing how the system can be improved.

Mr. President, in 1989 I went to a conference of the International Commission of Jurists in Caracas. At that meeting they had to discuss the UN principles on the independence of judges. One of the persons who gave a talk at that meeting was Justice Telford Georges. In his paper that he presented, I think he was being very prophetic at the time, but I would like to share his words in which he talked about service commissions.

He expressed the view that it may be—and I am not recommending that, but I am just showing how this matter had evolved and how people are looking at it. He expressed the view in 1989 that it is probably better to have politicians on a commission to appoint judges because they would be accountable if there was a bad appointment. I should let you know that several countries have done that. I want to make it quite clear that I am not advocating that, but I have shown how there are the different systems.

**11.55 a.m.**

On page 5 of his speech he said:

"Increasing the number of persons involved in the selection process can serve to achieve a balancing of interests thus ensuring that no dominant interest prevails though this does not necessarily follow. Judicial and Legal Service Commissions can turn out to be facades behind which politicians carry on their manipulation. An appointment directly by a politician can be more salutary insofar as his responsibility is plain and he may be forced to take into account the consequence of plainly being partisan."

It is an issue on which there have been discussions and expressions of views and quite recently there was a seminar, Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach, although there has been disagreement at the Commonwealth level on some of the matters which have been said as to how to go with them. I would read from one of the papers delivered by The Hon. Justice Dame Silvia Cartwright and under the heading "The Judiciary: Qualifications, Training and Gender Balance" she said:

**Mr. President:** Hon. Attorney General, just to remind you, you have three more minutes.

**Hon. R. L. Maharaj:** Much obliged, Mr. President.

"Judicial independence exists for the benefit of the community. As Sir Ninian Stephens, then judge of the High Court of Australia and later Governor General of that country observed: 'What ultimately protects the independence of the judiciary is a community consensus that independence is a quality worth protecting.'

Nor does judicial independence 'imply a privileged position for judges, it is not a licence for idiosyncrasy let alone a passport to step outside the boundaries of the law'. The ability to recognise one's prejudices or idiosyncrasies and to deliver impartial justice in the interests of the community at large inevitably demands that judicial officers are appointed from the ranks of those whose qualifications are of the highest order. Without the respect of the community, judicial independence will not survive. Incompetent, corrupt, dilatory or even rude judges will seldom now be tolerated. Inevitably there will be pressure from the community or from other branches of government for their control or removal. That the independence of the judiciary is closely tied to the merit of those selected for judicial office is widely recognised. For example, paragraph 10 of the United Nations *Basic Principles on the Independence of the Judiciary*[2] states that persons selected for judicial office:

> …shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status except that a requirement that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory."

Mr. President, in concluding, I would say that this Bill is one which would provide the scrutiny by Parliament. It does not go as far as some of those jurisdictions which I have talked about. In respect of the service commissions, it is merely providing scrutiny for the exercise of administrative functions.

Mr. President, I beg to move.

*Question proposed.*

**Sen. Danny Montano:** Mr. President, the Attorney General has spent an hour telling us why we should agree to consent to the passing of the Constitution

(Amdt.) (No. 3) Bill, but allow me to say that I cannot agree to this Bill and I will tell you why.

There are several issues involved here and in fact, there are six groups of institutions that this Bill seeks to attempt to bring under parliamentary scrutiny and the purpose of that scrutiny is supposed to be—as the Attorney General says—for accountability and transparency. The Attorney General has failed to make a case for the reform of the laws as we have them and has really failed to make a case to justify the type of parliamentary scrutiny about which he is talking. He mentioned only two circumstances in making any case at all. He quoted from an article in the *Express* newspaper which said it was time to have a second look at the functioning of the service commissions. And then he spoke about the corruption taking place in several ministries of his Government, and that under the scrutiny of Parliament these things could be enquired into and examined.

Mr. President, what I want to suggest to you and fellow Senators, is that Government is attempting what in fact is a political solution for a management problem and therein lies the crux of my objection to what is taking place here. In his contribution in the other place the Attorney General quoted from the judgment of the Privy Council: the *Endell Thomas and the Attorney General* 1982 case where the Privy Council stated this—and I would read from the Attorney General's *Hansard* contribution—I believe it was Lord Diplock.

**Mr. President:** You are not permitted to quote matters relating or discussed in the other place. You may summarize, but you are not permitted to quote.

**Sen. D. Montano:** That is fine. Nevertheless, what Lord Diplock said in that case was that the whole purpose of Chapter 9 of our Constitution which bears the rubric "The Public Service" is to insulate members of the different services from political influence, and the word that he used was "influence" not "interference". That clearly is the intention of the Constitution—that the Public Service Commission should be free from political influence.

I believe that we all are in some agreement that insofar as the service commissions are involved, there is a need for reform and to improve the efficiency in the administration of government. That is certainly so. Whether that is going to be achieved by bringing the commissions under the scrutiny of politicians is another ball game and in my opinion, what the Attorney General is attempting to do violates the Constitution in the sense that what is going to happen insofar as the service commissions are involved, what is going to take

place is this: The Bill before us is set up so that the select committees of Parliament are going to enquire into the administration, the manner of the exercise of their powers and methods of functioning, and the criteria adopted by them in their decision-making processes. Those are the precise functions of the service commissions, so that the select committees of Parliament are going to enquire into the precise workings of the service commissions. The question is, whether by enquiring, are we interfering or influencing the operations of the service commissions? The question is one of accountability versus independence. Can a person on a service commission be completely independent of the people to whom he is accountable? Is he going to make decisions that are truly independent when he is being summoned to Parliament in front of a committee and being asked all sorts of questions and his judgment and decisions are going to be called into question? Is that going to, in fact, leave him completely independent?

Mr. President, I think only a fool will say yes. It is quite clear that what you are going to have is, in fact, political influence because what happens is this. Within the service commission itself, the people who have knowledge of the decisions that are being made on a day-to-day basis are in fact the politicians, that is to say, the Ministers in charge of the different ministries. If they are dissatisfied with the decisions and the transfers of the appointments that are being made by the commission they are going to be in a position to call the commissioners up by way of the committee and say: why did you appoint Williams instead of Ragoonan as the case might be? What you are going to do is publicly embarrass not only the commissioners, but the people involved. You are going to be calling for their personal files. Are you going to tell me that after you do that you are not thereby influencing the future decisions that would be made? Of course, you will be and that is the whole point. You are going to be intimidating the commissioners by the threat of embarrassment and that will influence the decisions they make and that goes completely contrary to what the Privy Council said in 1982. Once that is done, Sir, it seems to me that what we are really doing then is that this is requiring a much greater majority than what the Attorney General is suggesting. This really is a matter for national debate. This is not just to come on a simple majority to pass. It is a very serious issue and I think that the Attorney General has failed to convince anybody that this is really going to work as he says.

I have certain ideas as to how the commissions might be brought to be more accountable, more transparent, and more efficient but I am not in Government but I do not agree that individuals should be brought before Members of Parliament and embarrassed publicly. I do not agree with that at all and that is at the root of my objection.

**12.10 p.m.**

Mr. President, it goes a bit further than that. I do not know how many times I have stood in this Parliament and said that this Government does not know the difference, or fails to recognize the distinction, between that which is legally permissible and that which is morally wrong. That is what we have here.

We have said, in the other place, and our position is that this type of amendment requires a constitutional majority. The Government says it had legal counsel and that is not necessary. What is its position? It can best be summed up by the attitude of the Government and it reminds me of a friend of mine. Their attitude is, "If you do not like it, take us to court. Sue us. Sue me nah!"

It reminds me of a good friend of mine who is American who is married to a Trinidadian living here, and every time she sees me, she reminds me of a situation which she finds particularly amusing, which is this. She comes to a junction with a red light and she has the right of way when the light changes, and there is a pedestrian crossing right in front of her while the light changes green. He is sauntering across the road while she toots her horn that gets him to pass. He stops and says, "Well, bounce me nah! Bounce me nah!" with a kind of bravado, and the attitude on the part of the Government is, "Well, sue me nah!"

We heard the Prime Minister speak in the other place and that was his position, "Well sue me." The Prime Minister and the Government do not behave in that way. What you have in a situation like that is a shameful action; you have a David and Goliath syndrome. There are individuals on the part of the Government who are making these laws and coming up with these opinions that a constitutional majority is not required. They are individuals wearing only the mantle of the state. They are not the state. They are only wearing the mantle of the state and they will leave it to the ordinary citizen to run the risk of an expensive set of litigation to challenge the state. That is fundamentally and morally wrong. [*Desk thumping*]

That principle is well-recognized in our labour laws where it quite clearly says that if an employee sues an employer, under no circumstances will the court award costs against the employee, even if he loses. So the principle is well-entrenched in our law and we understand the David and Goliath syndrome. What is the attitude of the Government? "Well, sue me nah!" I expected better than that; this is 1999. We expect a government that will understand the concerns of the people of its country. But that is the attitude of the Government.

Mr. President, there are other concerns that I have. The Attorney General talked about corruption and the investigation of corruption within the government ministries. But, while he was talking about that, he failed to make a distinction between what the committees that are envisaged by this piece of legislation and the Public Accounts and Public Accounts (Enterprises) Committees will be. He has not identified what the differences will be. So, we literally have two parallel institutions making more or less the same type of enquiries.

We do not really know how the committees are going to be set up, who will be the chairman, who will be the dominant members and so forth, although it has always been the practice that the Government of the day always has the majority and will stand as the chairman of the select committees. So, if we had a situation like that here, let me tell you how difficult it will be.

I have had experience on both the Public Accounts and Public Accounts (Enterprises) Committees. When you start to ask for evidence and you want documents and so forth to be brought forth, in the particular case of the experiences that I have had, the Government Back Benchers who sit on the committees will filibuster and do everything possible, but agree to call those documents. You are in the minority; even if you are standing as the Chairman, you cannot get the evidence to come before you. So, of what earthly use is the committee going to be if the Government stonewalls itself? [*Desk thumping*]

I am in a situation right now where that is exactly what is taking place. We cannot get to the root of the problem. The Government Back Benchers just waste everybody's time and it is amazing how they sit there and produce absolutely no meaningful contribution and just waste everybody's time. We cannot get the information that we are looking for and, after having that experience, am I going to now think that this is going to work any differently?

**Sen. Shabazz:** At all!

**Sen. Mohammed:** Freedom from information.

**Sen. D. Montano:** Mr. President, I would have to be fooling myself if I honestly believed that. That cannot happen. It is not going to happen. This is a ruse. This is merely a ruse. But it is more than that. What is really intended here is this.

If we were to sit and think, in fact, the number of organizations that this committee or committees—I do not know whether it is going to be one or more than one—will have to investigate; the number of state-owned companies, the

municipal corporations, Government ministries and everything else. Do not forget everything is being duplicated by the Public Accounts Committee and the Public Accounts (Enterprises) Commiteee. If you consider the amount of time that this process is going to take, what is really intended here—and this is where the barb really is in the hook, this is what the real intention is—is not to create transparency or whatever it is, not that at all.

They are going to put some of the Back Benchers they have, some of the "fellas" who are totally useless, who can do nothing else but waste time in parliamentary committees, to tie up the time of the Members of the Opposition and Independent Senate Benches who are not full-time Members of the Government. We earn a stipend to come here once or twice a week but we have jobs to go to, and what this is intended to do is to create so much time involved that it literally becomes a full-time process to deal with all these organizations. That is what is coming down here. It will just never get finished.

I can assure you, when we investigated the Maritime issue under the Public Accounts Committee, that thing took over six months, just one issue. Meeting after meeting, after meeting, after meeting, and you think we are going to get through with this? This will never end. We do not have enough Members of Parliament to do what the Government is suggesting here, which is why I started off by saying that the Government is seeking a political solution to a management problem. I do not deny that there are management issues involved here. I do not deny that at all, but the solution that is being propagated here today is not a solution that is going to be workable here at all.

There is another issue, too, and it involves this. In the original piece of legislation, as I recall, there was a clause that indicated that the committees would have the power to jail someone if the person did not appear before the committee or did not submit documentation and so forth. That was removed. It is not in this piece of legislation. But I want to assure you, Sir, that power, as I understand it, still exists.

I went to Erskine May's *Parliamentary Practice*, the 22nd Edition, and I looked into the powers of Select Committees of Parliament and what it said is this: that the committee by itself does not have the power, but if it decides to summon someone and he or she decides not to appear, he or she can be reported back to Parliament and Parliament can issue a summons and if he or she does not appear, he or she is in contempt and he or she can be held in prison until he or she decides to appear. That is what Erskine May said and the case was *Ashby and White 1704*. So, Mr. President, the power still exists.

If you think that Members of the Joint Select Committee, or whatever it is, who decide not to turn up are somehow free not to turn up, that is not so at all. Against facing an unscrupulous Government, they will face jail. That is the fact. [*Desk thumping*]

Mr. President, the other thing I noted was the question of the Tobago House of Assembly. I was very surprised to see the Tobago House of Assembly on this list. Now, it is not to say that what we are talking about is—I do not know what it is called—the agency that administers the Tobago House of Assembly. What this actually says is the Tobago House of Assembly. In other words, as I understand how this is written, the Chief Secretary and the other representatives of the Tobago House of Assembly are going to be called before the commission.

Now, I have no qualms about accountability and, insofar as their finances are involved, as I understand it, the Tobago House of Assembly is already accountable through the Public Accounts Committee in any event, so they are already accountable to the Parliament insofar as their money is concerned, but it seems to me to be extraordinary that you set up an institution like the Tobago House of Assembly and then decide it is substantially an elected body, and then you say you are going to have to account for what you do to another elected body, when one would think that it is already accountable to the people of Tobago. I would very much like to hear what Senators Moore and Williams have to say on this matter. [*Desk thumping*]

**Sen. Mohammed:** They cannot say anything. They are muzzled.

**Sen. D. Montano:** I believe in accountability, but the problem that I have with this here is that this is not the way to bring the Tobago House of Assembly to account. This is not the way. There is an Act of Parliament that deals with the Tobago House of Assembly. The fact of the matter is the Government botched up that Act in the first place and now they want to come, in a kind of a sideways motion and bring something like this.

We object to it because we feel that the Tobago House of Assembly must be dealt with in a holistic way. The whole thing must be looked at properly and it must not be dealt with in a piecemeal manner. We feel that this Parliament must respect the integrity of the Tobago House of Assembly, and this is not the way that we should be dealing with that.

Mr. President, I do not see that this is going to achieve what we, the people, want. This is not going to achieve that. Flying in the face of opposition from every quarter, including some of the most eminent legal minds in the country, the

Government is pressing on with this as a complete affront to the dignity and intelligence of our senior statesmen of the country.

I am not going to talk about rice and the airport. Not today, Sir. I am not going to talk about that. But this is a complete affront to the dignity of right-thinking and independent people of Trinidad and Tobago.

Thank you very much, Sir.

**Mr. President:** Hon. Senators, we will suspend for lunch at this stage and resume at 1.45 p.m.

**12.25 p.m.:** *Sitting suspended.*

**1.45 p.m.:** *Sitting resumed.*

**Sen. Philip Marshall:** Mr. President, thank you for the opportunity to make a short contribution to this very important Bill. Mr. President, the Attorney General, in this debate and in the debate on the Freedom of Information Bill, completely reinforced and reiterated Government's whole policy of openness, transparency, accountability and the need to inform members of the public and the taxpayer of the day about the work done by various government entities and institutions such as statutory authorities, state enterprises, non-governmental organizations, ministries and other bodies of that nature that use resources that are funded by the taxpayer.

Mr. President, I wholly endorse the Attorney General's support for the need for openness and transparency. This is why I felt that the Freedom of Information Bill was a very important Bill because I think that there can be no greater accountability than direct accountability to the citizens of the country by an organization having to openly account for what is achieved during a specific year under review, what resources it has used and how and what processes have been used in fulfilling its mandate.

My contribution would, really, relate initially to the Public Service Commission. I am not including in this the Judicial and Legal Service Commission. I would start with the Public Service Commission, the Teaching Service, the Police Service. I think those are the three of them. Mr. President, I could understand the frustration, possibly, of the executive of the day, if in terms of their visions and their objectives, what they want for the country as a whole is not being fulfilled as quickly as they think it ought to be. Because there could be certain barriers of implementation in getting everyone with whom they have to deal and getting every stakeholder with whom they have to interface pointing in the same direction.

But, Mr. President, I really do not believe that in this Parliament we have the resources, that the answer is going to be that through parliamentary select committees, we can have continuous systems of accountability of the Public Service Commission. Mr. President, it is one thing to share a vision—in the private sector you normally say that in any strategic accomplishment it is five per cent vision and 95 per cent alignment.

Without doing any detailed investigation, is it possible that the real problem with the service commissions in not being able to effectively deliver what is anticipated of them, by the executive in this case, could just simply be the result that the design of the organizations is no longer aligned? These organizations are possibly obsolete in terms of their architecture, [*Desk thumping*] obsolete in terms of the systems, the processes *et cetera*, obsolete to enable, to effectively support a fast changing and a fast-paced world. Is the answer that what is really needed—I am not suggesting that we need a one-time parliamentary select committee to do this—is a detailed investigation into the present structure, design, technology-enablement, people-enablement resources of these commissions and put it right once and for all? [*Desk thumping*] Put it right! Correct that and with the whole tenement of the principles set out in the Freedom of Information Act, then make those service commissions report. Report on their tenure and on their accomplishments and you would have also, by putting it right, removed any excuse that they were not able to accomplish this or that because they did not have the rudiments of technology and modern business processes to support their mandate.

Mr. President, there is absolutely no way parliamentary select committees could look at statutory authorities, state enterprises and service commissions. [*Desk thumping*] I sit on the Public Accounts (Enterprises) Committee, Mr. President. The only way to ensure effective governance is to imbue, in those who have to account, the principles of good governance: make people be responsible for what they have to deliver to the taxpayer. Just simply do not abide with poor performance. There is absolutely no way where parliamentary select committees, outside the day-to-day and everyday running of the operations of these different entities, can ever add to the improvement of the governance process. We will be talking history. We will be talking about decisions made five and ten years ago. Nothing will be current, absolutely nothing!

Mr. President, we have a Companies Act. We are presently looking at Acts to look at better accountability and reporting for state enterprises. The secret is to nominate good people to run your boards, nominate good people to sit on the

service commissions, nominate good people to lead the statutory authorities, imbue in them the sense of responsibility and good governance. Let them use the processes as in the Freedom of Information Bill to report promptly, to report accurately, to report in detail, to report on major areas of policy and to report to the people of Trinidad and Tobago.

**1.55 p.m.**

Mr. President, if any of these organizations need special expertise or the odd investigation from a specially established parliamentary select committee, so be it. But do not let the parliamentary select committee itself, be the ongoing mechanism and organization that is going to ensure good governance. These committees are simply not going to change the price of cocoa. Absolutely no way!

I feel that the Attorney General has, in the Freedom of Information Bill, started us on a path of accountability. We must look at how we can leverage the responsibility for reporting, to all stakeholders, in a prompt manner as set out in that Freedom of Information Bill.

I am coming to the end of my contribution; I am talking about the service commissions here. We need to investigate, to repeat, what are their requirements in terms of people, skills, decision-making authority, technology, email, database access; whether the people who have to carry out the jobs are, in fact, competent, what budgets do they need from the Minister of Finance, so that they can be an all singing, dancing, prancing service commission to fulfil their mandate.

In the case of state enterprises, a number of our state enterprises compete in the marketplace. There is no way you can have an external public service or parliamentary committee to investigate, in an open and public manner, the business strategies that they may well need to compete and survive; it is just not done. So I do not see how we really could include, in this Bill, state enterprises. There are other systems of governance under which the umbrella of state enterprises can, in fact, be dealt with.

We need performance management; I have said it in this honourable Senate several times. If the reward for failure is the same as the reward for success, we get nowhere. If we have no consequence management in everything we do, we get nowhere. What really would be the consequence management if parliamentary committees talk about a decision or a process by which the service commissions are organized? Unless those service commissions have the resources to eliminate the root causes of their problem, there is no advancement whatever. We would then have a strategic retreat.

Mr. President, I end by saying that I support the Attorney General in his need and thrust for openness, accountability and transparency, but we do not have the resources in both the honourable Houses whereby parliamentary committees can be the umbrella type of organization or systems to promote the governance and transparency of which the Executive is obviously desirous, in fulfilling its own mandate and in accounting to the taxpayers of this country. With these brief words, I end my contribution.

**Sen. Martin Daly:** Mr. President, this is probably the most difficult piece of legislation we have had to deal with for a very long time, because this Bill has implications and room for conceptual differences, that go way beyond the apparently simple purpose of subjecting public authorities to parliamentary committees. It will take a little time to unravel what I mean by conceptual differences.

Let me try my best to first explain what I think are the three fundamental differences between our situation and that of the United Kingdom. Naturally, a lot of my contribution is going to focus on what I consider the absolutely, unacceptable arrangements for the Judicial and Legal Service Commission, but I would like to make some general remarks, which I think affect the concepts that lie behind this Bill.

Previous speakers have already alluded to the unworkability of this Bill simply because we do not have the resources. It is not merely that our Parliament is too small, there are other difficulties to which I will come. No one who has had any parliamentary experience could seriously believe that our Parliament will be able, at least as presently constituted, to carry out the mandate given to it by this Bill. The Bill ought to really—and I do not like to use a word like fail, at any rate, even if we pass it, it should be suspended interminably, until the composition of our Parliament changes to make this work possible.

More fundamentally than numbers, parliamentary committees cannot work as instruments of scrutiny where there is no discernible difference between the Legislature and the Executive. In our political culture there is no discernible difference between the Legislature and the Executive. I have given the example before, and I preface it with the same *caveat* that I am not intending to offend anybody. But when I see persons whom I know are deeply committed to their religion, vote in favour of legislation that is supportive of gambling or extend the hours on which alcohol can be on sale, to facilitate tourists, then I know that they are not exercising a free vote. I know that they are voting simply because they are totally aligned to the Executive, in our constitutional arrangements.

I have been working very hard all year on being more charitable, so while I would like to identify with that part of Sen. Montano's argument that deals with the lack of Backbenchers, I will simply content myself by saying that we do not have any Backbenchers in the sense of people who, because they do not hold some specific executive responsibility, are free to give their own government trouble. Not in the sense of rebellion or going against policy, but in the sense of being able to satisfy the yearning we sometimes see in their eyes, that they would like to support what we are saying or vote in the way we are suggesting. [*Interruption*]

In fact, we have a very good example. I am being reminded, I hear certain distinguished noises that are an excellent reminder of the inability of someone who is robust, talented, outspoken and once described to me as the parliamentarian most feared, who has had to tread stony ground because he has not always been in total agreement with what his executives' higher-ups might be doing. It can hardly be described as uncharitable, it is just true. How are you going to have parliamentary committees sitting in independent scrutiny of any bodies or organizations that are really instruments of the Executive? It is simply not going to happen.

In fact, there was an example in St. Lucia recently—I did not say there was anything wrong with it—where certain Members of the Government Bench either abstained or voted against a guarantee for an airline, and all three of them paid the price. Now, of course, they were going against government policy, so there is nothing wrong with that. But within policy objectives Backbenchers are free, in the systems that we are purporting to follow, to have a different view. In our system they are limited to expressing those views privately, in caucus, behind the Chair or whatever, but they are not free to take a strong line. Consider this: can one who knows anything about our parliamentary arrangements see some Backbencher giving his Minister grief over the airport? It is not possible in our system. That, therefore, is the first area of conceptual difference in our system.

Whatever happens in Cabinet, quite correctly, remains confidential. What happens in caucus, may remain confidential, unless it is leaked. I have actually had the experience of a Minister of Government—I will not identify which one—actually coming to me and saying, "I am glad you are making a fuss about that point, because that is the point I was agitating all the time, but was unable to succeed." So the whole purpose of having parliamentary oversight of bodies that are instruments of the Executive is not catered for in our system; not only because of the size of the Parliament, but because of our political culture.

Another conceptual difference, as I see it, with the hon. Attorney General, is that the United Kingdom Parliament is supreme, or will be supreme until they fully adopt the European arrangements, where different things will take place. Their Parliament is supreme because they do not have a written Constitution and they do not have any constitutional arrangement that permits the courts to abrogate something done by the Parliament. I will come back to the significance of that later on. I am first of all trying to identify the key differences.

Mr. President, if you study, for example, the history of the Conservative Party in the United Kingdom, they have something called the 1922 Committee, which is an influential committee of the Backbenchers who put pressure on the Government to do things in a certain way. They do it politely and do not breach the unity of the party, and so forth. In the Labour Party there are many different groups. I think there are the Fabians, who want to take the party one way, and there is all of this tension. You hear modern politicians saying that their parties are inclusive and there is room for differences of opinion, which are ultimately reconciled.

I will come back to deal with this when I deal in more detail with the Judicial and Legal Service Commission. You cannot brush aside the fact that in the United Kingdom the head of the Judiciary is a politician. British constitutional history is full of these idiosyncrasies which only the British understand, and only the British can make work, but that too is changing as we will see. So the head of the Judiciary in the United Kingdom is a politician and he appoints judges and the people to be Queen's Counsel, so naturally there is pressure among politicians to make this politician disclose what are his selection criteria and so forth. That is where that pressure has come from.

**2.10 p.m.**

So all those references which the Attorney General has given us about the Lord Chancellor—well I am using the expression—being called to book by a parliamentary committee, he is going there as a politician to be dealt with by fellow politicians in a system where the politicians control the appointments to the judiciary, the elevations to silk, as we call it, and the appointments to commissions to be recorders and deputy judges. So naturally, over the years, there has been a lot of complaint about this.

In fact, when I was a student, Professor Wheatcroft, who was the head of the law department at the L.S.E., happened to know the private secretary to the then Lord Chancellor, who was a man called Sir George Coldstream. The talk among

the lawyers was that if you knew George or George knew your father or you played golf with George then there was no problem because George really was looking after the appointments. Of course, people could not stomach a system like that which typified gender discrimination, racial discrimination and the "old boy" network and that is what is responsible for the Lord Chancellor going as a politician before other politicians to be called to book.

We have a completely different system. We have an independent commission and the head of our Judiciary is not a politician. Indeed, when I hear reference made to a Chancellor for us, I shudder, and I will explain why in due course. So let us understand, Mr. President, that there are significant legal, constitutional, political and cultural differences between our arrangements and the mishmash of different countries that we are looking at. If we were talking about a judicial Ombudsman to deal with tardiness, delays, rudeness and inability to hear evidence, as talked about in the quotation from Mr. Justice Kirby, I might have quite a different view because apart from anything else it would be obvious that the Ombudsman would not be a politician or a parliamentarian, so there would be that detachment from the political world of the, if you like, complaints authority for the judiciary.

So to quote from the United Kingdom does not help us. To quote from some of the larger Commonwealth countries does not help us because they have some of the practices and traditions to which I have already referred. The Home Affairs Committee does not help us because of the distinctions to which I have already referred and the quotations from those countries where they have judicial Ombudsmen does not help us either.

To summarize, Mr. President, I have serious conceptual differences from the Government in relation to what is being attempted here. I am not for one moment suggesting it would not be a good thing to have the ability for the Parliament to look into some of these bodies, not necessarily all of them, but it is not workable for the reasons which previous speakers have given, and it is proceeding on a wrong assumption. Even in relation to those bodies that are instruments of the Executive it is proceeding on a wrong, though less grievous, assumption in relation to the service commissions or, at any rate, the Judicial and Legal Service Commission, because there is no proper distance between parliamentarians and the Executive in our country.

However, if the Government wants to attempt something that is not workable and something that will not do violence either to the Constitution or to our political arrangements, that is up to them. I would not vote against the Bill on

those grounds. So the remarks I have been making so far apply to the whole idea of parliamentary committees sitting to scrutinize any of the bodies in this list. But if they want to try it in relation to bodies that are creatures of the Executive, I am not going to stop them. I just do not think it is going to work.

Let us turn now to the vexed question of the service commissions. Now, Mr. President, let me concede immediately that the commissions, this is just my view, other than the Judicial and Legal Service Commission, are also instruments of the executive and, therefore, for that reason I do not find it as objectionable to submit them to these arrangements as I do in the case of the Judicial and Legal Service Commission because ultimately they are instruments of the Executive. They are just hiring and firing people that the Executive, through for example the Commissioner of Police and so forth, should be doing. But the fact is that we have constitutional arrangements where we have insulated from the politicians the people who come under the purview of the service commissions.

Now, I would be the first, Mr. President, in the right context, to say how much I lament the performance of the service commissions. Much of their poor performance has to do with the reasons that Sen. Marshall has given. It also has to do with the fact that the commissioners are neither really executive people nor non-executive people. They are some kind of hybrid because they are involved in other things and they do not have the resources. However, much more importantly, if there is a problem with the service commissions you have two options. You can upgrade them in terms of technology and people and so forth, as Sen. Marshall has suggested, or you can ask yourself whether, after 37 years of independence we need quite that thick degree of insulation.

Much has happened in those 37 years, not least of all that by and large our politicians have learned to behave, at least within certain boundaries, and the courts have acquitted themselves brilliantly in this country, as I will demonstrate. So we have had a few bad judges and we have had some rude judges and we have had some judges who, to use my pupil-master's expression, “were not encumbered with previous knowledge”. That pales into insignificance when we live in a country in which the courts can decide matters, sometimes in favour of the state and sometimes against the state.

As I shall demonstrate—it is the one thing of which I am proud in Trinidad and Tobago—we have developed the rich tradition that whenever there is a dynamic tension between the courts and the Executive, somehow or other we have worked it out. We had reached the *decree nisi* state with the Privy Council, we almost divorced them, and now we are hearing people, at least privately,

saying, “Boy, you know, maybe we should not get rid of the Privy Council; you know, the foreign investors are worried about it”. You work your way around these problems otherwise you have a dictatorship. If you do not have different elements of governance as a whole sparking off and energizing off each other then of course you have a dictatorship. You have one man or a cabal calling all the shots without any constitutionally guaranteed safeguard.

So, to my mind, I do not like Sen. Marshall's solution, because I think it will cost us a lot of money to do—I mean it is an important solution but I would like to see it in relation to a thinner layer of insulation. Indeed, I served on a parliamentary committee in the last Parliament and I am absolutely satisfied that the time has come where the boss—well, let us take the Commissioner of Police, subject to giving the accused, for want of a better word, his natural justice and a hearing and an explanation, the time is long overdue where, if the Commissioner of Police goes into a police station and he sees a police officer sleeping he should be able to kick the chair or the bed out from under him, tell him to stand up straight, come to attention and, if he does not have a tribunal there and give the fella the hearing, give it to him the next day. I mean, it is incredible!

Likewise in the public service: I mean, if a permanent secretary goes into a filthy toilet and cannot fire the cleaner then, of course, the Government is—all governments are going to get frustrated and say, you know, the time has come to do something. But that essential problem is not going to be rectified by parliamentarians assembling in groups and asking the service commission, “How come the fella who refused to drive the ambulance, three years ago now, is either still driving or still on suspension as the case may be?” I am using a hypothetical example. Perhaps I should use a different one.

How come the policeman who was sleeping on duty or who offered personal comfort to a woman who reported domestic violence is still, as frequently happens I am told by the reliable authority, in the service? How is a group of parliamentarians getting together and questioning the service commissioners about that, going to change that? That cannot change anything. All it might do is throw up again more complaints and more difficulties about the service commission system. They will either tell you: “We do not have the resources and technology; we have too much work to do; or, we need to look at the whole system”. Of course people are upset with the non-judicial service commission.

I am emphatic that this is not the solution, both for the reasons Sen. Marshall has given and, I am respectfully submitting, for the reasons which I have given. However, if that is what the Government wants to do with the service

commissions, that is up to them. I would not say I would not vote against the Bill for that reason, but I will have to consider my position carefully. What I am trying to show is that in relation to every aspect of this Bill there are not only practical difficulties, I have serious conceptual and policy differences with the Government over this. But, Mr. President, when we come to the provisions relating to the Judicial and Legal Service Commission, there I have even more fundamental difficulty.

Let me explain why. We are not going to be trite in this Parliament and suggest that judges can do what they like—they can be as rude as they like, they can be as obnoxious as they like. Nobody is suggesting that. However, we have to conduct a calm and unemotional analysis of our constitutional arrangements. I have already explained the differences with the United Kingdom; let me just reiterate. We have a separate body from politicians appointing our judges and dealing with our judges. We have the constitutional mechanism in section 137 for disciplining judges and it is going to serve no useful purpose having a committee which is going to somehow steer this difficult course between the judiciary acting in its judicial capacity and the judiciary acting in its administrative capacity.

It is a long time since I have been on the opposite side of a brief from my good friend, the Attorney General, but I am afraid we are poles apart on this occasion. So I want to go into a little discussion about the Judicial and Legal Service Commission with the differences between us and the United Kingdom firmly in mind. More than that, I want to now challenge head-on this suggestion that we can make any meaningful distinction between the judiciary in its judicial capacity and the judiciary in its administrative capacity.

I think there are three things we will have to take into account when we examine that so-called distinction. First of all, it would be possible for a government, I am not saying this Government, indirectly to influence what the judges do in their judicial capacity by applying administrative pressure. There is no question about it. Of course, one cannot tell a judge directly how to decide a case, but if one has administrative control of the judiciary residing outside the judiciary, one can use that administrative control to bring people to heel indirectly. I am not suggesting this Government would do such a thing but it is distinctly possible because if, for example, you as purportedly, a parliamentary committee—there is a much more fundamental objection which I will come to—looking into selection criteria for judges, as is likely to happen, raise the case of a particular selection or a particular promotion or a failure to promote a particular person and that becomes part of the discussion, effectively the person whose name comes up in that critical connection is destroyed as a judicial officer.

Now, maybe they deserved to be destroyed, that is a different point, but that is effectively what you do.

**2.25 p.m.**

That is an example of where this airy fairy idea that we will discuss selection processes, and remember we are going to do this in response to people's concerns. So the people will have a concern that Justice "X" was not promoted or "Z" was not made a judge. The people will have a concern about that and that would prompt an examination of the selection process and, jump high, jump low, the particular case that has caused the concern or prompted the enquiry will come to the surface. It would not be possible to sit effectively as a judicial officer after that.

Secondly, in my view, the administrative functions of the judge cannot be separated from his constitutional functions, not only because one could indirectly put pressure on the judiciary, it is part of a very modern concept—I am not going to quote from as many books as the Attorney General—but there is a modern concept of institutional independence where one views the entire institution in order to decide what degree of independence one is giving. One cannot argue, in my view, that separating the administrative functions of a judge from his judicial functions does not undermine his independence. I say mostly certainly, they do! Such arrangements would most certainly undermine his independence or the independence of the judiciary.

You see, Mr. President, we learn by experience and, consider one of the functions of the Chief Justice that is undoubtedly administrative but is very important and certainly, if abused, would affect the outcome of litigation; and that is the rostering of his judges. That is an administrative function: whom he rosters, whether he rosters them on the criminal side, he gives them a mix of work, whether he points them in the public law direction or even in relation to the assignment of important and lengthy cases.

So, the parliamentarians are going to look into the administrative functions of the judiciary, and lo and behold, they are going to be discussing rostering: that is who sits in what court and who tries what type of case. You are going to tell me that that administrative function of rostering can somehow be separated from the judicial function? Well, I suppose in absolute theory or semantics—Prof. Ramchand would probably help me—you can say it is separate, but it is an integral part of what is being done.

Likewise, the sending of judges abroad on judicial contact, to which they are entitled as part and parcel of their terms and conditions, is an administrative

decision: whom to send abroad for judicial contact and where. That is an administrative function done by the Chief Justice in order to improve the experience, to fill gaps in people's experiences and so on. Are these parliamentary committees going to look into that? I certainly hope not, Sir.

Now, there are more dramatic reasons why we must not simply pooh pooh the idea that the judiciary can be indirectly pressured. I will come to some examples in a minute. I am not going to burden us with long quotations. I do, however, want to refer to an article called *The State of the Judicature*. It is in the January 1998 Australian Law Journal. It was a speech given by the then Chief Justice of Australia, in September, 1997. It was Sir Gerard Brennan, one of several renowned jurists that the Australians have produced. In this speech about the state of the judicature it begins by saying, and I quote from page 33 of the Journal:

> "If we are to be governed by the rule of law, we must have a judicature to administer it."

You see a fundamental premise there. He goes on to deal with the characteristics of the judicature and impartiality. Then he says on page 34:

> "In Canada, judicial independence has been held to require what the Supreme Court has called 'institutional independence', that is 'the institutional independence of the court or tribunal over which [a judge] presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government.'

That is a statement by Chief Justice Dickson of Canada in a particular case which the Supreme Court was trying. I have given rostering and judicial contact as examples of administrative arrangements that have a direct bearing on how the court functions.

The quotation from Chief Justice Dickson goes on at page 35:

> "The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from *all other participants in the justice system*."

Mr. President, note those words because I am going to come back to them, "they must be separate in authority and function from all other participants in the justice system". May I foreshadow what I am coming to.

In our situation, where there is a written Constitution which permits the judges to strike down laws that are passed by the Parliament usually at the instigation of the executive, in the best sense of the word, the Judiciary as a constitutional

institution and the Executive as a constitutional institution are frequently adversaries. I do not mean adversaries in a hostile sense, but they are players engaging each other. That does not happen in the United Kingdom under their present constitutional arrangements where Parliament is supreme.

So one could have a situation where a judge or, the Court of Appeal, to make it worse, decides a case against the state and if it was the judicial review, the respondent—let us pick a fictional ministry, it might be—the minister for aqualungs. The court decides that the minister for aqualungs has either committed an illegality, a procedural impropriety or done something irrational, which the court has power to do under judicial review. We could have a situation where the minister of aqualungs might be a member of the parliamentary committee overseeing the administrative side of the judiciary, and he is going to be such a saint and have such a mind capable of division, that he will not work out his frustration that his aqualungs scheme, having been declared by the judge or the representative of the judiciary who might be sitting there, having said it is either illegal, procedurally improper or irrational; and you want to tell me that that is going to be a healthy situation and that dialogue is going to be limited to administration? Keep in mind what I said about rostering all the time.

The minister of aqualungs will want to know how come he got that judge to do his case! How did they make these arrangements? How come I got a man who did not understand, who is not encumbered with previous knowledge about aqualungs deciding my case? That cannot work! Because they are both players in the same system.

The last quotation from Sir Gerard Brennan to which I would like to refer says at page 35 of the Journal:

> "The theory behind the concept is not hard to discern. It is the same theory that underlies the Australian doctrine of incompatibility. The courts must not be permitted to be too closely associated with or affected by the political branches of government. But some association is involved in the obtaining of resources. A government which effectively controls the administrative and financial resources required by a court could, if it were ill-advised enough to do so, withhold what the court requires if the decisions of the court were unpalatable to that government. A decision taken on those grounds would, of course, be a blatant attempt to influence judicial decision-making."

I have not made up the idea that the judiciary could be indirectly pressured by the Government. We have never had that situation in Trinidad and Tobago. We

have had one or two occasions where what I might consider silly remarks were made by persons in Government and I will deal with those in due course. It may cause Sen. Montano, among others, to look at me less benevolently, but we have to remember these things.

When Justice Georges talked about the judicial and legal services acting as facades, he was talking about personal experience. We are going to get to that. It is only because the Attorney General's time was so limited that he did not explain how Justice Georges came to be saying that. In fact, the Brigadier would also have some idea why Justice Georges was saying that, but we will get to that.

Now, Mr. President, when the executive becomes frustrated with the judiciary, because the judiciary is not malleable, and if the executive is not sensible, as largely our executives have been—I mean, they have thrown some powder now and again, even on the Chief Justice, and that is not all right. If we get an executive that does not respect these tensions, or we have a country in which they are not properly understood, look at what happens, and look at the examples of the subtle pressure and the disagreements brought to other countries.

May I give the example first of Malaysia, a Commonwealth country; a big country; and a silicon valley country; plenty "brain"; they brighter than "we"; Far East tiger and "ting". I would not remind Sen. Marshall of my view of living in Singapore. *[Laughter]* I see he is looking at me with some apprehension. The courts in Malaysia, in 1986, decided a case against the Government of Malaysia and the Prime Minister gave an interview in *Time Magazine* about the case. The court decided that the minister's order revoking a journalist's work permit was not valid. In frustration, the Prime Minister gave this interview to *Time* in which he complained bitterly about the judiciary and then said this—I would love to read the whole passage, but we do not have the time—"if we find out that the court always throws us out on its interpretation, if it interprets contrary to why we made the law, then we would have to find a way of producing a law that would have to be interpreted according to our wish". No damn dog bark. *[Laughter]*

So, the President of the Court of Appeal in Malaysia was affronted by this and other things that were being said by the politicians at the time. So 20 of the judges got together—more than six—and wrote to the King to seek the King's intervention to have this public excoriation of the judges tempered so they could carry on. To cut a long story short, there was a strong reaction from the executive; the president of the Court of Appeal resigned then tried to take back his resignation; then they appointed a tribunal to see whether his resignation should

be stayed; five judges comprising the tribunal found in his favour; and they fired those five too. *[Laughter]* But the country stood for it!

I mean, ultimately, a Prime Minister under our Constitution could, if not fire, disable a Chief Justice sufficiently that he would be useless. I am not saying we have any Prime Minister who would do that. But ultimately, if you have that naked exercise of power, then the dynamic tensions between these bodies, which are so healthy, will be dissolved, that is why there must be no contact. It is like the measles, if you mix up the politicians and the judges, this kind of measles will spread.

**2.40 p.m.**

In Zimbabwe, in more recent times—and I am reading from the *Guardian Weekly* of February 14, 1999—the court in Zimbabwe found against the defence minister in a case in which the court had ordered the release of certain journalists. Journalists are always in these stories. The court had ordered the release of certain journalists and the defence minister said, " I am not doing it. I don't care about the court; I am not doing it." He might have said something like "Chief Justice Who?" and threw a little powder.

So the judges wrote the Prime Minister and said: "How could we operate like this? We are calling on you to tell the defence minister to behave and follow the traditions." Well, the Prime Minister did not see it that way and again—we are pressed for time—the court was effectively disabled. Now, that could be one of our children who gets locked up for something by a crazy defence minister and we get an order from the court to release the person, and what happens? The executive decides they are "mashing" up the court.

We do not want that and I do not want any forum in which any member of the executive—not this executive; none of the executives we have had—who might be so misguided as to bring his "fire rage" about something that the courts have done to bear on some official of the judiciary appearing before a parliamentary committee. I have complete and strenuous objection to that.

Mr. President, there are so many more of these examples. Of course, Venezuela is fresh in everybody's mind so we could put Señora Cecilia Sosa away. That is so well known. It is such an irony that the Attorney General went to Caracas at a time when it was a place where the international commission of jurists would meet. I do not think there would be a meeting there now having regard to the dissolution of the Supreme Court there.

Let us look at our traditions, Mr. President. Have we ever had anything like this? Jack Kelshall got *habeas corpus* when Dr. Eric Williams was our Prime Minister? It was short-lived—they rearrested him on the correct grounds but he got his *habeas corpus,* even in a period of public emergency. I am tempted to refer to some of the forensic triumphs of the Attorney General in this regard, where he has got the courts to make the executive behave.

Now, given that these are our traditions, should we not be applying the maxim, if it ain't broke don't fix it? Where is this public outcry about the Judicial and Legal Service Commission and judicial appointments? Sure, there have been appointments sometimes that the profession and other people have not liked; sure, there have been judges who have behaved badly, but where is this same level of outcry about the Judicial and Legal Service Commission that we have about the other commissions, most notably about the Police Service Commission and the Public Service Commission? Where is that level of public outcry? This is a small specialist group of people and our judiciary has worked well. We have never fallen into any of these pitfalls and I do not want anyone to come within powder-throwing distance of my Chief Justice. I do not want that in this country at all. There is nothing in our history that requires us to alter the system even to the extent of looking into administrative functions. There are plenty of examples in other countries that if you give a frustrated executive the opportunity to demolish the judiciary, they will do it. That is not our tradition. But let us have some unseemly altercation in one of these parliamentary committees with an official of the judiciary, whether there was justifiable anger on the part of the member of the executive or not, and that starts sending the judiciary down the slippery slope that we do not want.

I remember as a young lawyer going to listen to all those cases in 1970. There was a certain trade unionist who was in detention. He came before the person who was then Mr. Justice Hassanali and he pulled a fish head out of his pocket to show the judge how bad the conditions were in detention when you had not been charged with any crime. I followed those cases. I must have been a lawyer then maybe 13—15 years; I cannot remember. I could not believe that I was seeing acted out in front of me everything that you had read in the constitutional works of the highest importance in London, where during a period of public emergency a trade unionist—Kelshall, Granger and others, even during a period of public emergency, could come from where they were adjudged to be a threat to the state, rightly or wrongly, could come from their place of detention, be brought there, not with black eyes—and let us go back to Malaysia—they didn't come with black

eyes, even though they were regarded as enemies of the state, they could be brought from their place of detention in as good a health as the diet would permit, appear before the courts and have a full say and even get their release. We must not interfere with that tradition in our country. We must not interfere with it, even in the guise of apparently seeking to do good.

**Mr. President:** The speaking time of the hon. Senator has expired.

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

*Question put and agreed to.*

**Sen. M. Daly:** Mr. President, I do not accept the philosophy that the people have concerns and we need the people's representatives, that is, the parliamentarians, to have the power to scrutinize any of these commissions. But in the case of the judges, that scrutiny would inevitably lead us in a direction in which we do not wish to go. It can, if abused, affect the method of appointment of judges. It can, if abused, affect how cases are decided and how judges behave judicially.

I knew my learned friend, the Attorney General, was halfway on our side even before he started, but certainly by the time he started talking about the—well he did not call it the voluntary process, I will call it the voluntary process. By the time he started talking about the voluntary process of mingling in cocktail parties, I knew we had some conceptual difficulties because I have overheard it; in fact, anyone who has been to any of these parties. The Ministers themselves cannot even go and take a drink without somebody coming up and saying: "Man, Theodore yuh know, meh son apply for the police." You know what I mean. Let us get real. What happens in a situation like that? He would just say, "Boy look, the wife waiting for a drink over there; or the Prime Minister calling meh", and you get rid of the person. If you are a more abrasive type you say, "Well what yuh telling me that for."

So if we are going to start talking about the voluntary process of cocktail party mingling, we are really in trouble. I have seen people importune judges in public functions, but they know what to do. It is a voluntary process. They are free not to go and they are free in varying degrees of rudeness, to tell the person where to get off. But when they have to participate in this system, some of their responses would be quite involuntary and coerced by the system and that is why we cannot have that mingling, as the Attorney General so very attractively put it.

Mr. President, this Bill really, I have tried to demonstrate, is not just—*[Interruption]* I think you want to trap me into running out of time, but it is all right, I do not mind, in the best sense. Yes, let us talk about that incident; actually, I am glad you reminded me. It is really because it would not have been proper for you to do it.

It really started with a mutiny. I think I can tell the story in the time left. It is really instructive. It really started with a mutiny and the whole trial went wrong. Why? First of all somebody had the idea—clearly it would have been difficult in the situation to have other local military officers because the military was so small and not least of all because of the rumours about who was playing both sides. Do you remember those days, Brigadier? It would not have been possible to have officers here try these people. So somebody had the bright idea that it would be very acceptable, politically—first administrative decision relating to a judicial matter that went wrong—to try these soldiers if we have Acham Pong and others.

**Hon. Senator:** Danjuma.

**Sen. M. Daly:** Danjuma. How could I forget Danjuma? In fact, I have a tennis-playing friend who is 93 years old—well I do not play tennis anymore—and we refer to him as Danjuma because of the way he runs his tennis committee. People do not know this, but I speak with personal knowledge. A local, very distinguished, leader of the Bar—we still had Q.Cs as opposed to S.Cs in those days—was bespoken to be the judge advocate general and the idea was that if these men from abroad went wrong they would have the guidance of the distinguished local judge advocate general.

Surprisingly, when the plane arrived with the officers, they came with a judge advocate general too. They brought us one of those in case we needed one. I think, Mr. President, you know a lot about this story from the way you are smiling. So the then Attorney General had the considerable embarrassment of having to go to the house of the local judge advocate general and say, " I have a terrible embarrassment. I have two of you." But happily, the distinguished judge advocate general of Trinidad and Tobago said, " Mr. Attorney—as we speak to the Attorney General—you have no embarrassment, I am quite happy to relinquish the task."

Well the rest is history. A plea of condonation was raised; it was overruled and the Court of Appeal, in a decision which was unanimous, said that there was a mistrial. If I have got anything wrong, the Attorney General will correct me. And someone, who shall be nameless, frustrated by this decision and other things to do with public order, referred to "two by four" lawyers and that is when we knew we

had a democratic state, because the reprisals against the lawyers and the judiciary were confined to the relatively mild remarks referring to "two by four" lawyers.

The person certainly did not go on to say if they interpret the law the way we do not want it, he would fix the interpretation. The only problem was that after that, that Court of Appeal which comprised Mr. Justice Clement Phillips of revered memory, Mr. Justice Aubrey Fraser and Mr. Justice Georges, somehow broke up. We never quite understood why. Phillips stayed, Fraser went to Jamaica and Telford Georges went all over the world and distinguished himself as a jurist, but Trinidad and Tobago could not hold him. And we know that the court dissipated because of that decision.

But that was a relatively minor mishap. We had other courts and in time even though things were said about the quality, we got ourselves back up to speed. I personally heard the senior law lord of the House of Lords of the Privy Council say that there has been a sea change—that is the word he used, Sir—there has been a sea change in the administration of justice in Trinidad and Tobago over a definable period of time. He said it in my presence and in my hearing. He said there was a sea change. Why is that, Mr. President?

When *Pratt and Morgan* came, a judicial decision that frustrated the whole country—I must say 90 per cent of the country out of deference to certain of my colleagues—and successive executives, what did we do in Trinidad and Tobago unlike some other Commonwealth countries? Sure, we spoke against it; we said that the law was a donkey; sure, we did many things, but Chief Justice Bernard, followed by Chief Justice De Labastide, set about ensuring that we got ourselves up to compliance with the *Pratt and Morgan* timetables.

**2.55 p.m.**

No one said abolish anybody, or do this, or do that, or the other. As a good, solid democratic country, the judges gave a directive and, unlike Malaysia and unlike Zimbabwe, the whole Government, all of its arms, got together—the Executive provided the resources; the Court did the work. For two years, they heard nothing but murder appeals and we are probably, if not the only one of the few countries in the Commonwealth that has completely met the challenge of *Pratt and Morgan*. We have other countries, very nearby, who are still complaining about *Pratt and Morgan* and still threatening to pass legislation to reverse what the court did.

Mr. President, I am spending time on this to show you that there is nothing in our history that requires us to put even a fingernail, let alone a thumb on the Judiciary, whether it is only or merely in its administrative functions. There is

nothing in our history to require that. Absolutely nothing! We have had a strong and sterling tradition where, whatever the tensions between all the executives we have had and the judges, we have never had this kind of problem, except for the unfortunate break-up of that particular Court of Appeal, happily, the effects of which were not long-lasting.

So, why do we want to interfere with this at all? What requires it? Where is the public complaint? Where is there anything in our history that requires this?

But I know that the moment one of these parliamentary committees sits and has a parliamentarian, happily not in this House, who—well, "couth" is not the word that comes immediately to mind; I am trying to be charitable—makes some uncouth remark to one of these service commissioners, and I am not confining my remarks to the Judiciary, and as we are, at least men are anyway, to be politically correct, it becomes a big ego thing and this one wants to get that one and the whole vendetta starts up. Where is that going to take us? Is that going to inure to the benefit of the country? We have to keep these contenders apart.

Can I end by just repeating this dictum of Chief Justice Dickson:

> "The role of the courts as resolver of disputes, interpreter of the law and defender of the Constitution requires that they be completely separate in authority and function from *all other participants in the justice system*."

If that is the case, I venture to suggest that because we have chosen—in the case of the Judiciary, it goes beyond a choice because the Judiciary's functions are clearly separate—by solemn constitutional arrangement to make the work of the other service commissions, at least partially separate in authority and function, we have to consider carefully if we are going to dismantle that.

It is not as objectionable as what is being proposed in relation to the Judicial and Legal Service Commission, but it still has to be considered carefully because, albeit I have conceded that they perform an executive function, the people chose—after a very solemn process repeated in two Constitutions, and supported by two different Constitution Commissions—to say that those arrangements, warts and all, were still the best for the country.

Therefore, there is a strong case as well—I suppose it is a difference in a nine and a 10—for keeping all the service commissions free of these parliamentary committees because if everything that I have tried, in the time available, to bring to the attention of Members in our constitutional arrangements, our political history, the mistakes of others, our political culture and so forth, therefore, Mr. President, I am grateful.

May I say that I have put forward an amendment. I am quite certain that the Government will be persuaded to leave the service commissions out of this, but in the event that, because of the pressures of time we have to come to a different arrangement, I have put forward an amendment that specifically relates to the service commissions. But I am reminded by my colleague that I am insisting, really, that the service commissions be removed completely, failing which, because we do things in the spirit of compromise and we really do not want to make a huge constitutional mistake, I have put forward an amendment for the Government's consideration that would give some reporting link, innocuous though it is, between the Judiciary and the Executive. But, it is really not the preferred solution, and if we were not so pressed for time, I am quite sure that this debate would have gone on intermittently over a longer period, so that we could consider some truly difficult points, and kind of no-turning-back points, over a longer period.

Thank you, Mr. President.

**Sen. Nafeesa Mohammed:** Mr. President, I feel very humbled, indeed, to have to participate in this debate following the contribution of my senior, Sen. Martin Daly, because his debate certainly raises some very far-reaching constitutional issues. I know he is an Independent Senator; we happen to belong to a political party and, therefore, I will proceed to make my contribution as I ought to, in keeping with our role as the official Opposition in this country and, certainly, the alternative Government.

Mr. President, this Bill seeks to allow politicians to interfere with the work of the service commissions under the guise of parliamentary reform and, in our view, it is dangerous. It is yet another one of these bills brought by this UNC administration and by the hon. Attorney General that seems to have some very sinister motives behind it. This Bill seeks to fundamentally alter our constitutional provisions, and it seeks to do so in a very surreptitious manner and we, on this side, are not in support of this piece of legislation as it is.

We acknowledge that there is a need for reform in some of our institutions but, certainly, the manner in which the hon. Attorney General has brought this Bill to the Parliament, leaves much to be desired.

Yes, we all want to have some mechanism and some machinery in place to investigate all the allegations of corruption that have been made, especially in recent times, but why do they have to come in this manner to seek to introduce mechanisms of the type we are talking about?

I think at the end of the day, what the hon. Attorney General and, indeed, the UNC Government, are seeking to do is to go back on the hustings and say, "You see, we promised you freedom of information and we promised you parliamentary committees, and you have gotten parliamentary committees." I would like to quote from page 23 of this document called the *UNC Manifesto*. They actually had a manifesto for the General Elections of 1995. On page 23, under the heading "The Parliament", it says here that:

> "The government of the day must be accountable to the people through the Parliament.
>
> The reforms we propose in parliamentary procedures would facilitate open and transparent government. The UNC proposes that select committees of the Parliament be appointed to monitor the operation and functioning of all Ministries of government."

Punto finale. It does not say service commissions. At the end of this section under "The Parliament", it goes on to say that:

> "A UNC Government will implement those provisions of the Constitution which require a Member of Parliament to vacate his/her seat if the member is expelled or resigns from the political party on which ticket the member was elected."

Mr. President, the facts are there for all to see how this Government says one thing and, in truth and in fact, does another.

I quoted that section because Sen. Daly, at the beginning of his contribution, made a very important distinction when he was comparing the United Kingdom system as opposed to our system. He made reference to the fact that in Britain, there is a principle, or a concept of parliamentary sovereignty that prevails in England.

For those of us who studied law in the West Indies at the University of the West Indies, we were well-grounded because the fact that in some of our jurisdictions, or many if not all of our jurisdictions, we are quite different from the British in the sense that we have written Constitutions and, unlike the British, where Parliament is supreme, in our jurisdiction, our Constitution is supreme.

In dealing with the supremacy of our Constitution, we know that there are various provisions in our Constitution and, certainly, a deliberate effort was made to have certain safeguards so that no Government would come and easily alter the Constitution unless it obtained an appropriate majority to do so.

This is why we have a very serious problem with this Bill as it is before us today and that is why I used the word "surreptitious" to describe the method by which the hon. Attorney General is seeking to effect so-called parliamentary reform.

When we look at the Explanatory Note to the Bill, even the amended one, it tells us that it is seeking to amend section 66 of the Constitution. When we look at section 66 of the Constitution, we are seeing that section comes in under a part of the Constitution which deals with money bills and what have you. They are now coming to stick in these new sections 66A and 66B and we know that under our Constitution, there are two specific provisions, sections 53 and 54. Section 53 says that:

> "Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so however that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54."

**3.10 p.m.**

When we go on to section 54 of the Constitution it says:

> "(1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.
>
> (2) In so far as it alters—
>
> (a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 110, 113, 116 to 125 and 133 to 137;…"

*et cetera*

> "a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members…"

Mr. President, this Government has tried, what in local parlance we call a "*gyan*". They are trying a fast thing where they are purporting to amend the Constitution in a very far-reaching way under the guise or coming under a part of the Constitution that will not require a special majority of votes in order to effect the change that they wish to effect.

Mr. President, this is a matter of very serious concern to us. It is not the first time that we have had to take this objection to legislation brought by this Government, where they have been tampering with our Constitution. When there are objections they try to pull out those parts that appear to be entrenched provisions in the Constitution, to come to get a simple majority and so have their way. You see, Mr. President, at the end of the day, it is the people who will speak out.

This Bill, in our opinion, impinges directly on an entrenched provision in our Constitution. I refer specifically to those provisions that deal with our various commissions which can be found in Chapter 9 of the Constitution. Therefore, by coming with a Bill that does not require a simple majority, we have grave concerns.

Certainly, after listening to the hon. Attorney General's presentation this afternoon, where he spent so much time talking about judicial appointments, it is clear to me that he seems to be focussing on the Judicial and Legal Service Commission. We certainly, in our system of democracy, try, as far as possible, to uphold the separation of powers doctrine. We acknowledge that in some areas there may be overlap, but when it comes to the Judiciary every effort is made to ensure that we retain the independence of our Judiciary. Therefore, we have very serious concerns with this particular piece of legislation.

Mr. President, I am sure Members present would remember, when earlier this year, this Bill was being debated in the other place, I distinctly remember the headline news. It was between late February, early March when a number of individuals and groups as well expressed very serious concerns about this Bill. I have in my possession a clipping from the *Trinidad Guardian*, of February 23, 1999 page 1. The headline states:

> " 'Leave us alone'
>
> CJ, Lalla blast Bill to probe service commissions"

I would just like to quote one or two relevant paragraphs here. It says:

> "The four service commissions have come out against attempts by Government to appoint parliamentarians to investigate the operations of these bodies."

It goes on:

> "The Judicial and Legal Service Commission (JLSC), the Police Service Commission, the Public Service Commission and the Teaching Service Commission have all responded to the Draft Bill, asking that it be withdrawn.

In a seven-page response, the JLSC said that to remove the independence of the service commissions and allow a 'wholesale invasion of their field by parliamentarians was wholly unjustifiable.'

Kenneth Lalla SC, a member of the JLSC and chairman of the Police and Public Service Commissions, told the *Guardian* yesterday that the proposed legislation was intended to erode the independence of service commissions."

It goes on:

"According to the JLSC, 'The cardinal principle in relation to the service commissions is that they must be able to function without political interference, so that the Public Service is insulated from such interference in matters of appointment, promotion, and removal of its officers. In our view, the proposed legislation militates against and tramples upon this principle.' "

Mr. President, the following day, another big headline. For the first time in the history of our country—page 1 of the *Trinidad Guardian* of Wednesday, February 24, 1999. The headline states:

"Six legal heavyweights tell Government:

Withdraw that Bill

Two former presidents, the present Chief Justice and three former Chief Justices yesterday called on the Government to withdraw the Bill which seeks to appoint parliamentarians to investigate the operations of service commissions.

They argued that 'since Independence it has been a fundamental policy of our Constitution to isolate and insulate the Public Service and the Judicial and Legal Service from political interference by vesting the power to make appointments of and to discipline persons in those services in independent service commissions.

They argued that the independence of the judiciary was the corner-stone of the Constitution."

Mr. President, the following day, February 25, 1999, headline:

"Battle of the Bill

Attorney General Ramesh Lawrence Maharaj yesterday knocked critics of his Constitution Amendment (No 3) Bill, saying they did not study it properly.

Without calling names, Maharaj said the concerns of the critics were misplaced, as he presented the Bill for debate in the House of Representatives."

Today we heard the hon. Attorney General refer to people saying untruths about the Bill. I wonder who those people are.

Mr. President, the arrogance of this Government to ignore the warnings of six of the most eminent legal minds in our country; it really tells us that this Government, regardless of what, they have their agenda and they intend to go ahead regardless of what damage they do to our institutions in our country. [*Desk thumping*]

We recognize that there is a need for reforms. We recognize that there is a need for parliamentary reform. But when we look at the genesis of parliamentary committees what we would see is that—especially in recent times in other Commonwealth jurisdictions and so forth, for example in the United Kingdom, India and Canada—in these countries you have parliaments where there are large numbers of parliamentarians who make up the parliament. I think in the Lok Sabha we had the benefit of some of the Indian parliamentarians who visited our country earlier this year. I remember they had indicated that they had approximately 200 members of parliament. With such a large number, only a handful of those members of parliament can be made ministers or members of the Cabinet. Therefore in those countries, where the parliaments are so large, the idea of having parliamentary committees may be more effective. Because in those situations you would have many more backbenchers and people who would have the time to devote to the work that will be required from these parliamentary committees.

In our present parliament today, if you look at the reality of it, I think we have approximately three backbenchers in the other place, because most of the elected Members of Parliament are members of Cabinet.

**3.20 p.m.**

Who amongst the ministers would have the time to really devote to these various parliamentary committees that they are talking about? When we talk about numbers in Parliament, it is of concern to me, because in dealing with a Bill like this, it is certainly interfering, altering provisions in our Constitution, whether we want to admit it or not. Mr. President, in matters of this type you need to have the support of the people, and how else do you show that support? If it is that you form the government and have the required majority of support in the Parliament to enact the particular piece of legislation, then by all means, we know it would reflect the will of the people.

But this Government which came into power after a 17/17/2 situation, clearly does not have a mandate to effect the kind of far-reaching reform that this Bill is seeking to make. Sen. Kelvin Ramnath knows that and I am sure it hurts him more than anything else. I think Sen. Marshall and my own colleague, Sen. Montano, spoke about the time that would be required to make these committees functional. In Trinidad and Tobago we do not have full-time parliamentarians. The point has already been made.

What is even more unfortunate is that, while this Government is boasting about parliamentary reform and so forth, it sounds good, but let us look at the reality of what exists today. Already we have in place legislation—and indeed through the Standing Orders there are provisions for certain committees of Parliament to operate. Reference was made to the Public Accounts Committee, and we have the Public Accounts (Enterprises) Committee.

I came across a document which contains an address by the Auditor General of Trinidad and Tobago which was made to the Public Accounts Committee on February 28, 1996. At page 35 of this document is the Auditor General looking at the whole situation involving the Public Accounts Committee. Under the heading of "Recommendations" it says:

> "In Trinidad and Tobago there is the legal framework which provides for full accountability. Urgently needed, is the strengthening of all institutions and systems which promote accountability in order to ensure that the resources of this country, influenced as they are by worldwide economic diets, are managed economically, efficiently and effectively; that there is Value for Money and that corruption has no place in the public affairs of the nation."

At page 44 of this very address, it states:

> "It is hoped that urgent action would be taken for the strengthening of the Public Accounts Committee. It is strongly recommended that detailed guidelines similar to those of Canada be drawn up and be approved by the Parliament of Trinidad and Tobago for use by the Committee. Such action could only foster a movement <u>Towards Greater Accountability</u>."

So when the hon. Attorney General seeks to introduce this type of legislation under the guise of promoting accountability, transparency, openness and access to information, all these are matters that we certainly would want to see, whatever mechanisms are reasonable, in the circumstances, to be put in place to promote these things. But in looking at this particular piece of legislation, we can only

conclude that this Bill is really a ruse. I think my colleague used that description. In fact, we are asking that this Government focus and concentrate on beefing up the present arrangements that exist, particularly, with the existing parliamentary committees.

Mr. President, when they come here and talk about accountability, we really have to wonder. At page 2 of this address it refers to the accountability cycle in this document. I have to ask the question: To whom is Carlos John accountable? I thought it might have been the Hon. Sen. Dr. Daphne Phillips. Apparently she is accountable to Mr. John, and the Minister of Agriculture, Land and Marine Resources as well. [*Desk thumping*] We have to wonder how committed they are to accountability! I see Minister Kuei Tung raising his hands, but it could be the Prime Minister, I do not know, but decisions are being taken and we have to search for the answers. We know of the haste to pave that savannah area, but we want accountability, transparency, and openness. How much money has been spent?

Imagine in this document, in dealing with the cycle of accountability, it refers to the manner in which you can be made accountable. It talks about the budget estimates of revenue, expenditure and what have you. Imagine a servant operating under a ministry has more powers than the minister himself to incur expenses and spend taxpayers' money that has not yet been allocated. And they talk about accountability! Far from it, Mr. President.

In fact, we call on the hon. Minister, whoever is in charge, to take some decisive action. [*Interruption*]

**Sen. Kuei Tung:** Is the hon. Senator aware that there are certain Chief Executive Officers in state enterprises who have a lot more power than government ministers?

**Sen. N. Mohammed:** It is obvious, but I have never known of any CEO or any person working in any state enterprises or whatever, abusing his authority in the way that this particular gentleman has done, unilaterally, assuming unto himself the authority to come after and legitimize what he did.

**Sen. Gangar:** Have you ever heard of Ken Julien?

**Sen. N. Mohammed:** That is really, really, Mr. President—if a minister behaves like that—

**Mr. President:** Do not belabour the point anymore, I think it is made.

**Sen. N. Mohammed:** Thank you, Mr. President. I know there are procedures for judicial review, and when it comes to the misuse and abuse of power, thankfully we do have some recourse where these matters can be dealt with. But that is not all. The situation with the savannah is just one of several instances.

We have had situations where allegations of corruption have been made, investigations were ordered, but where are the reports? The Soodhoo report is still unavailable to us in the Parliament, and the country. Yet this Government talks about accountability and transparency, and it wants to set up committees to report to the Parliament? We want to see the Soodhoo report. Do not talk about the airport!

My colleague, Sen. Montano, made reference to the situation involving the Tobago House of Assembly, whereby, under this legislation, it is now subject to the scrutiny of our Parliament. I remember when the Tobago House of Assembly Act was being debated in this Senate and the intent behind that legislation. I am sure, if it is that there is a need to introduce mechanisms for accountability within the Tobago House of Assembly, certainly greater accountability, the way to go is to look at the Tobago House of Assembly Act and deal with it on that basis.

Mr. President, more and more, we are beginning to feel that this Government is on a deliberate mission to squeeze the people of Tobago and, in fact, to pressure them to such an extent because they know they have no support to get from Tobago. That is why in tomorrow's *TNT Mirror*, Friday 03, September, 1999, the headline reads, "Charles talking secession." They know that they cannot get the support of the Tobagonians and they are pressuring them into taking a particular course of action. Mr. Speaker, that is really in poor taste. [*Crosstalk*] Certainly, the people of Tobago would not support the United National Congress, and we all know that. They made their deals, that is history now. That is why they know that to make the kind of changes they are seeking to do requires a constitutional majority which they do not have. They have to buy out other people to get that support.

There is another sinister intent behind this piece of legislation, and we have to look at this Bill in its proper context. I remember earlier this year when an alarm went off again. I have in my possession an editorial from the *Trinidad Guardian*, a clipping from page 8 of Monday, January 27, 1999. I am going to quote some extracts from this editorial. The headline is entitled "Missing the mark"; well we know today we are missing Wade Mark. In this editorial—[*Interruption*] I am

sure in a debate like this as Minister of Public Administration he ought probably to have gotten up and cleared the air, because there are still many unanswered questions.

In the editorial it says:

"Two weeks ago, this newspaper sounded an alarm over the contents of a Cabinet minute dated October 29, 1998. The minute laid down that ministers should be 'fully informed and prior approval obtained before ministries and departments engage persons on a temporary basis to fill positions that are either established, temporary or contract.'" [*Interruption*]

Whether it happened a year or two weeks ago, it certainly reveals for all to see, the real intent of this Government behind this Bill, and what is contained in this Cabinet minute.

The article continues:

"Because, as Mr. Lalla realised, the minute appears to contravene section 121 of the Constitution, which vests in the Commission the power of appointment to all public offices. There is no question, then, of the approval of government ministers being necessary before appointments are made.

Mr. Dumas commented that it 'raises the suspicion that ministers are seeking to get their own people in.'"

We know that is a fact.

"Improper Move

Miss Jennifer Baptiste, president of the Public Services Association (PSA), has written to the Prime Minister saying that the move is 'constitutionally improper' and asking whether there is 'a more sinister move afoot.'

In his turn the Minister of Public Administration…"

We are really missing the mark.

"Wade Mark, responded by calling a news conference to say that the Cabinet minute had been misunderstood, and devoted considerable energy to attempting to allay the fears raised by it.

Unfortunately, his lengthy response failed to do any such thing. On the contrary, Mr. Mark merely deepened suspicions about the Cabinet's decision. The day after Mr. Mark issued his statement, Mr. Lalla was reported as saying that he still did not understand the rationale for the decision.

These somewhat tortuous statements suggest either an attempted whitewash or a fundamental misunderstanding."

Mr. President, that is why I used the word "sinister", because in light of this Cabinet minute, and looking at this piece of legislation that is before us today, we can really gauge where this Government is coming from.

**3.35 p.m.**

You see, I would like this Government to tell us what is the status of this Cabinet note and minute. Is it still subsisting? Has it been withdrawn? I am sure it is in effect. Over the last few months I remember when this issue was hot, when it was brewing, the Cabinet hurriedly had some meeting with some members of, I cannot remember which commission it was, but since then the thing has been kept at a hush-hush level. But as they talk about transparency and accountability and openness we, on behalf of the rest of the population of Trinidad and Tobago, would like to know what is the status of this Cabinet note and minute.

Mr. President, what is very clear is that this Government is attempting by Cabinet authority to undermine the service commissions and alter section 121 of the Constitution, which comes under section 54 of the Constitution, through Cabinet authority and to come with this Bill amending the Constitution which does not fall under section 54. So, therefore, it is difficult for us to believe the hon. Attorney General, when he says that they are not interfering with the independence of the service commissions because all indications are that is exactly what they intend. I came across a book—I am sure Sen. Ramnath might be familiar with it—entitled *Of Society and Politics, Miscellaneous Commentaries on Trinidad and Tobago* by Trevor Sudama.

It is a kind of obsession that they have had over the years in terms of the public service and what have you and, to some extent, some of the concerns may very well be legitimate, but at the same time let me just quote what Mr. Sudama had to say. This was published way back in 1979. In dealing with the public service commission he asked the question, "Can it be salvaged?" At the end it says here:

"In conclusion, it would be fair to say that the Public Service Commission finds itself in an ambivalent position. It has *de jure* independence but *de facto* involvement with the political apparatus of the country. Recent history may even justify the charge that it acquiesces supinely to the whims of dominant politicians. To present an image of independence may involve the Commission in tortuous and gratuitous exercises which are neither genuine

> nor convincing. Yet an operational involvement and identification with the political group in power does not seem to produce the speed and efficiency in the implementation of Government plans and programmes which ought to go with it. In short we are having the worst of both worlds.
>
> In terms of its overall functioning, the Commission lacks the professional touch and is too encumbered with bureaucratic procedures."

In the end he concludes by saying:

> "The lasting impression given is that the Commission neither initiates new personnel policies nor does it evaluate in any meaningful way its present policies. It merely carries on willy-nilly drifting with the assumed direction of the political wind."

Mr. President, this was from 1979.

I listened to Sen. Marshall's contribution and we recognize that some of the procedures that may exist at present may well be anachronistic and we may need to effect some reform. We acknowledge that there may be problems in terms of the operations of the commissions, but what we say is, if a particular commission is taking a long period of time to make a decision on a matter well, by all means, come in the right way with a piece of properly drafted legislation and seek to effect the necessary changes. If you wish to introduce some time constraints, for example, put a time limit within which decisions ought to be made, come in a clean way, come in a proper way and introduce proper legislation and level with the population. Do not come in this kind of surreptitious way under the guise of parliamentary reform to seek to interfere and undermine the independence of our commissions that has been protected in our Constitution over the years.

Basically we have heard my colleague, Sen. Montano, talk about the mix-up between a political solution for what is basically a management problem. We really need to focus a bit on the need for reform in that managerial capacity and provide the resources necessary for speeding up the processes and improving the conditions so that we can have more speedy decisions and what have you. Do not come and interfere in the way in which you are doing in this legislation because, at the end of the day, when you make these commissions answerable to the Parliament, it is a group of politicians who, as it had been explained already—I think it was the hon. Attorney General who used the word, talked about influencing decisions, the fact is that it does not auger well for our democracy. We have to be very vigilant, we have to be very careful and if we want to talk

about reform and improving the institutions that exist, by all means let us do it in a proper way.

The latter part of the hon. Attorney General's presentation today, dealt specifically with judicial accountability. Although he said he was not recommending or advocating X, Y and Z, the fact is that he seemed to have some kind of obsession with the judiciary. We are very concerned because if he is seeking to effect reform in our judiciary, we say that you need to do it in the proper way because there are safeguards in our Constitution. If you wish to alter provisions of our Constitution that deal with the judiciary then we will have to comply with the requirements under the Constitution and, in most cases, it will require a special majority.

So if it is that you will get that support from the Parliament, by all means, and to get that support you need to level with the people. If the people in the country, as the hon. Attorney General talked about the people wanting accountability and so forth, if they clamour for it, if they want it, the parliamentarians will certainly be guided by the voice of the people. So you will have that mandate to effect the kind of change that you are talking about. But to come in this way is really a glaring attempt at undermining the independence of our judiciary.

Now he talks about accountability and in the context of the judiciary. Whatever the problems may be, whether it is with judicial appointments or what have you, or the manner in which decisions are made, whatever it is, in our country we know for a fact that we already have mechanisms in place which cater for accountability and, indeed, transparency within our judiciary. I refer specifically to the recourse that exists to the courts in the event of any actions that may warrant some kind of review.

Mr. President, there have been several cases in our country where our service commissions have been taken to court for decisions that were made and it was the judiciary that determined these matters. Even the Judicial and Legal Service Commission has already been a party to proceedings. So there are existing mechanisms for accountability and transparency in our judicial arm because in our court system there are procedures that permit judicial review of administrative action.

So that, Mr. President, whilst we know that in some areas there is overlap when it comes to the separation of powers, we know when it comes to the judiciary we make an extra special effort to keep this arm of government separate from the executive and from the legislature. When dealing with parliamentary committees and talking about wanting to set up parliamentary committees, *et*

*cetera*, we would support—especially in the context of what the hon. Attorney General talked about at the beginning of his presentation, that these parliamentary committees will provide a mechanism to investigate the allegations of corruption—legislation that would set up a parliamentary committee that will specifically deal with corruption in our country. We would have no difficulty in supporting a measure like that. We know that discussions have been ongoing with respect to updating integrity legislation in our country and certainly the idea of introducing an ethics committee may well be a worthy idea for us to look into. So it is not fair to misquote us to say that we are against parliamentary committees or we are against accountability and transparency and openness, *et cetera.*

**Mr. President:** The speaking time of the hon. Senator has expired.

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

*Question put and agreed to.*

**Sen. N. Mohammed:** Thank you very much, Mr. President, and I thank my colleague. I am nearing the end of my contribution. In all the discussions that have taken place so far, I am reminded of a debate that took place in this Parliament some time ago. I think it was in 1994 or thereabouts when the hon. Attorney General—who was then in the Opposition—introduced, I do not know if it was a motion or what, but a debate took place in which he was advocating the need for us to establish a Chancellor of the Judiciary here in Trinidad together with the Chief Justice. I know that is something he has talked about from time to time. I have seen it in the *Hansard* report but he has touted the idea in the past and I know today he made mention of some matters pertaining to a Chancellor of the Judiciary.

If you want to make these kinds of reform, all we say is that you will have the opportunity again. Go to the population, get your mandate; if you have the required majority and you want to effect this type of change, so be it. In the meanwhile, do not interfere with and undermine the independence of our service commissions in this very surreptitious way because, Mr. President, the independence of our judiciary is a cornerstone of our democracy and we certainly want to preserve what is left of our democracy. I thank you, Mr. President. [*Desk thumping*]

**Sen. Kelvin Ramnath:** [*Desk thumping*] Mr. President, I did not rise to demonstrate my usefulness [*Laughter*] but rather to make some independent comments from the Back Bench. I am not, as you know, in the Cabinet nor in the

Front Bench and, therefore, not privy to a lot of information, so I shall not interfere. Rather, I would comment on what I see as very positive, futuristic and revolutionary steps to promote efficiency in our system of governance in this very crucial period. Sen. Marshall made some very important points and as a consultant, one with whom I have had the honour to work, I can only say that his recommendations are indeed very useful, not only in managing governmental affairs and the apparatus of the state, but indeed in every sphere of business and organizational life in the country.

**3.50 p.m.**

I do not want to comment on what Sen. Daly has said. I understand the delicate relationship between the arms of government and the very fragile nature of government itself under the Constitution. I share his very deep concerns about any government, indeed, anyone interfering with a very stable society and a judiciary that has demonstrated brilliance.

The Attorney General has demonstrated brilliance of the same order in his quest to modernize the Government and the laws of Trinidad and Tobago. He also happens to be my representative in Parliament, and the person for whom I have voted on a number of occasions.

In the event that Sen. Mohammed is concerned, I could understand her deep frustration. That has been exemplified in her choice of language here this afternoon. I understand her difficulty at this time in determining whether she will or will not be the candidate for Barataria/San Juan. It is quite obvious to me she has great concerns about these matters.

I want to deal with some of the comments she has made, her words chosen to define the legislation: sinister; surreptitious; interference; tampering with the Constitution; focussing on targeting the judicial and legal system; arrogance; undermining the service commissions; corruption; Government's agenda; Soodhoo report; airport; attack on the independence of the service commissions; ignoring warnings of six eminent citizens; and to whom is Carlos John accountable.

All of this in relationship to a Bill which is designed, not to give the Cabinet, not to give the party of the Government, not to give anybody other than joint select committees of the Parliament of Trinidad and Tobago the power to investigate certain decisions and actions contemplated by bodies which have the responsibility over a period of time for carrying out the work of the state.

I cannot understand, therefore, how these negative comments that have been made in the debate so far could be made in the context of a Bill that is designed to look at the administration, the manner of the exercise of powers, the methods of functioning, and criteria adopted by the commissions that are responsible for the administration of the public service, the police service, the teaching service and the judiciary in the country.

The very same critics go on record from time to time criticizing the Government for not performing in very effective and efficient manner. The very people who, today, condemn an effort by this Government to make these organizations more useful; to speed up the processes in the administration of justice; to make the civil service more efficient; and the police service more disciplined. The very people who criticize us are those who have gone on record today as saying that this Bill has ulterior motives, it reflects a hidden agenda, and it is designed to cover up corruption, among other things.

Mr. President, perhaps we should look at the positive side and intent of the legislation and, perhaps we should start looking at the Government in a very unbiased way. We should start giving the Government some credit for the things that they have been doing with respect to providing a better place to live. If one looks at the positive side, we will see that the mechanism is being created to investigate the same airport about which many things have been said.

Perhaps, we should look at the opportunity to investigate many of the actions that are currently being taken by the Government because it does provide for that. It provides for enquiring into government ministries. Whereas the mechanism has not been set up—I am referring to what Sen. Montano said earlier as to the determination of the committee that will carry out these exercises—the fact is that legislation has to be put in place and the necessary standing orders will have to be put into effect to ensure that this committee works.

What we have heard from the other side is that parliamentary committees do not work, it is frustrating to get information, and everything designed to frustrate the attempts of the Government to carry out an important exercise. Parliamentary committees do not work because we probably do not pay parliamentarians enough money, but we could deal with that. I am sure that there is a body that can deal with that. Perhaps parliamentarians ought to be full-time people. Perhaps we ought to have one Chamber and put an end to a system of government of appointed people and increase the size of Parliament, pay them well, give them staff, committee rooms, so that they can carry out the functions that are necessary to ensure that these committees do, in fact, work.

In my time in the House of Representatives I used to be on several committees. The Speaker of the House of Representatives summoned a senior official of the PNM administration at the time, Sen. Ken Julien, before a Public Accounts (Enterprises) Committee to discuss matters pertaining to Point Lisas. We were served with a writ saying that the committee had no power to summon Sen. Julien and Senior Counsel QC recommended to the Speaker that, in fact, that was the position. So, I do not know whether any subsequent changes were made to the law to provide that opportunity.

But, the Public Accounts (Enterprises) Committee and the Public Accounts Committee review what has gone by several years later, perhaps, and seek to investigate the accounts of Trinidad and Tobago or state enterprises and statutory bodies, long after these accounts have been submitted and audited, in some cases, the audited reports are for work done years before they come to Parliament.

These committees cannot replace what is being proposed by the Attorney General. What is being proposed by the Attorney General is not to enquire and investigate into accounts and reports of the Auditor General, but actually, to deal with current situations, to review decisions, to review positions, to review whatever is necessary that is taking place in government ministries, statutory bodies, the Tobago House of Assembly and enterprises controlled by the state.

We, fortunately, do not have as many state enterprises as we used to have. We had 60-odd state enterprises at one time. But, certainly, if we look at the operation of state enterprises in the country, one will see—as one minister said earlier—that people in state enterprises, in many cases, have more power than government ministers. They certainly have greater benefits and higher pay and better perquisites than government ministers do, but they also have greater powers than government ministers. The tendering procedures in many of those companies require updating. In fact, some of those companies may be operating systems that are very archaic.

I am not suggesting, by any stretch of the imagination, that Government needs to parallel its thinking along those lines. What I am saying is that the Parliament of Trinidad and Tobago should have an opportunity at any time to investigate what is going on in state enterprises or what is going on in ministries of government. This piece of legislation gives us that opportunity. I think that a great onus will be on parliamentarians themselves to ensure that this piece of legislation is made workable.

But instead, Mr. President, we have listened to a treatise on what the intent of Government is. This Government has never had a minister who goes into a police station when somebody is arrested and takes out his son or daughter from the police station. This Government did not fire a pilot of an airline and read out the medical record of a captain who did not want a certain minister to bring his girlfriend on the plane from Barbados to Trinidad. This Government is not on record as doing things like that. If Sen. Mohammed will listen I shall give her an education on things that happened under her own party's leadership. This Government did not quietly sit, plan, manipulate and manoeuvre in order to remove a Speaker and create a state of emergency—legislation drafted by one of the so-called six luminaries—put the Speaker under house arrest and created a state of emergency.

**Sen. Mohammed:** A point of clarification, Mr. President. I was just wondering if the hon. Senator would let us know which of the six luminaries did the drafting that he spoke about.

**Sen. K. Ramnath:** I am sure Mr. President will rule me out of order if I were to involve people who are not able to defend themselves.

It is very instructive that we should remind ourselves about what transpired in the society under a government at the time, whose members today, are being very critical of intent, or accusing this Government of hidden agendas. If Sen. Mohammed wants to find out why there was an obsession with the service commissions, she should try to find out from somebody very close to her who has a lot of political experience, what kind of activities did people like Mr. Jimmy Bain and Mr. Inskip Julien perform when they held certain very important positions in service commissions in the country, when it was virtually impossible for somebody from Couva to get a job in the public service. This independent service commission—

**Sen. Prof. Spence:** Mr. President, a point of order. I think it is not right to name individuals, members of the public who are not here to defend themselves.

**Mr. President:** Yes. I think the Senator is right. Would you refrain from calling names please.

**Sen. K. Ramnath:** I apologize if I have called their names, but not in any derogatory manner.

But I am simply saying we have a system that is archaic, antediluvian, backward; a system that does not serve the good of the society, a system that

allows people who are appointed to make decisions without anyone having an opportunity to ask questions.

**4.05 p.m.**

If you are going to have an efficient public service, you cannot give the service commission more money and hope that would work. You cannot provide them with computers, databases and technology and expect to have a more efficient public service. If you ask Ministers of previous governments—and one of the problems with the Opposition Front Bench is unfortunately, they have not served in government so they do not understand the frustration of Government Ministers in having to deal with not having adequate staff, not having staff appointed, promoted or even disciplined. The frustration is quite obvious. It has nothing to do with wanting to put whoever a Minister wants; that is the job of the Public Service Commission, but if the Public Service Commission for one reason or the other, or any service commission, has a difficulty in providing government ministries with this kind of staff and properly trained people, then it is quite understandable that the Government must ensure that it has mechanisms in place to enquire why these things are not being done.

I think many people have missed the point and that is, the Public Service Commission is not responsible for training, technology, databases and those things. What we would like to see—I am sure everybody knows if you ever get into government, God forbid—is that when there is an establishment it is filled in a manner that is satisfactory and when you are enquiring about staff someone does not tell you we do not have the machinery in place to interview or do performance appraisals or whatever has to be done to make the ministries more efficient.

I do not know where anyone got the idea that the intent of this legislation is to interfere with these commissions. What we are saying is that—and I would read it for the benefit of those who have not read it. It is:

> "…to appoint Joint Select Committees to report to the House of Representatives and the Senate…"

That is what the committee would be doing. It is not reporting to Cabinet, so that some Minister of whom you are afraid would take action. It is reporting to both Houses of Parliament—a report which is laid in this Chamber—so that Members would have an opportunity to read what the committee has found in its investigations. It has nothing to do with appointments of anybody. It has nothing to do with disciplining anybody. It would be rather irresponsible for a select committee of the House to make statements about the integrity of persons in public life and lay it in the House.

This debate so far has been characterized by some kind of paranoia that a vicious Government, one that has its own private agenda, is about to pounce on those sacred organizations. I am not in the mood to go on any excursion with respect to these organizations, I think there are very noble persons who are serving in many of these organizations. Perhaps the time has come for us to look at the relevance of these organizations in an independent Trinidad and Tobago.

The Government has said, let us not make any major constitutional changes with respect to how people are hired, disciplined, promoted, fired or whatever. Let us try to see whether in the interim we could introduce a system that makes them more accountable to the citizens. None of us here has to defend our stewardship to the people who vote in Trinidad and Tobago. Perhaps in the next election some might, but none of us here, with the exception, of course, of the Attorney General who is elected.

It is very important for us to understand what one has to face up to when one asks people to vote for them. When you tell them as a parliamentarian that we do not hire people, you would be surprised to know how many persons in Trinidad and Tobago will say, then something is wrong with you if you are the Government and do not hire anybody. It is the service commission that hires people. But why have you not carried out your function in a very efficient manner when we do not fire public servants? We do not even transfer them. We cannot even promote those who deserve promotion. And they say: what are you in Government for? That is the reality we face from day to day.

I want to remind Sen. Mohammed that it is her party-sponsored government that sought to introduce a police board, and the intention of introducing that was to circumvent the bureaucracy and the difficulties associated with the management of the police in the country. What I am dealing with here is not the details of that, Mr. President, what I am trying to demonstrate is that Sen. Mohammed's party, when in government, experienced the frustration when the entire Trinidad and Tobago was up in arms against what they considered to be an inefficient police service seeking to create a board and it was, in fact, an attempt to amend the Constitution; it was the Constitution Bill. The Senator would not remember that, of course, because that is not consistent with her attacks on the present Government. She would agree with me if one looks in depth into the management of the public service of the country. The management of the various organizations, which must work in the interest of the public, have many difficulties. In fact, our present system is inconsistent with modern management practices. It is inconsistent with accountability.

I remember when I was in the Ministry of Energy and Energy Industries—I had the honour to serve in government for a short while—and I was told by a public servant that I cannot summon a member of staff, I have to pass through the Permanent Secretary. Well, you would not want to know what I told my staff. I could not understand that. I thought I was the head of a team of people, having been elected to lead a team of people who were going to carry out certain important works for the Government of Trinidad and Tobago and I understand that frustration. I think everyone in Government understands that frustration, but this is not the intent of this piece of legislation, I want to remind you. It is to enquire in relation to the administration, the manner of exercise of their powers.

I was looking at the constitutional provision of the appointment of the various commissions and if you are going to enquire, it is the commissioners, who in my view, will have to come before the committee if they are required. I do not see how that interferes with the administration of justice. I do not see how judges are going to be made to come before a Joint Select Committee of Parliament. I do not think that this is the intent of this legislation at all, or the administration function of Judges will be interfered with and, therefore, their judicial functions would be compromised.

I would see, for example, something useful coming out of an enquiry into the administration of the judiciary in terms of making it more efficacious, so that instead of the Chief Justice having to make his annual speech at the opening of the law term and justifiably complaining about power in the Hall of Justice and the breakdown of air-conditioning and water supplies and so forth, a House Committee that enquires into the operation of the judicial system of the country, the difficulties experienced by judges, the difficulties in determining cases, and not complying with certain time periods for delivery of judgments and so forth, I could see that being part of a Joint Select Committee to assist in making their jobs much easier.

I could see Mr. Lalla and representatives of the service commission coming before a House Committee and telling it they do not have the budget, they do not have the staff, they do not have the technology and the databases, and so forth, with which to work to provide government ministries and departments with the level of public servants they require. That is why I ask Senators to look at the positive side of this legislation instead of seeing ghosts and being paranoid over a relatively innocuous piece of legislation designed to create greater efficiencies in the public service in the country.

**Sen. Prof. Spence:** Mr. President, I thought the hon. Senator might be winding down so I want to ask this question before he finishes. I wonder if he is aware that this Bill does not give any more power to summon people than any previous legislation. The part which suggests that the committees have the power of a commission of enquiry has been removed. So in fact, the example he quoted in which a member of a public corporation refused to come would still apply. He could still refuse to come and nothing that is said in this Bill makes a difference.

**Sen. K. Ramnath:** I am sure that the Attorney General will take note of that, but as far as my experience goes, that is a procedural matter and as Sen. Montano quoted from *May's Parliamentary Procedure* which indicated that power lies with committees of Houses of Parliament and with the Speaker of the Parliament, I am quite sure that those powers can be vested in the committee. I thank you very much for that observation because in order to make these committees work, it is necessary that there is no hindrance.

I simply want to comment on the observation of Sen. Montano which was repeated by Sen. Mohammed and that is trying to find a political solution to a management problem and I advise that you require a political solution. This is not a management problem. If you do not put the legislative framework in place you would not be able to get the efficiencies you want.

**4.20 p.m.**

How are you going to? What is the management problem to which they are referring? Does it have to do with discipline? Does it have to do with lack of promotional opportunities? Does it have to do with training of public servants? Those things have to be done in the various ministries of government.

I want to look at some of the comments that have been made, not necessarily here, but elsewhere, about what takes place in government ministries. Every day in Trinidad and Tobago, people are complaining and, in many cases, justifiably, that they are not getting the services that they require, in spite of the pronouncements of successive governments about the amount of money they are injecting into various government departments and into the various programmes, that these programmes and these facilities are not being made available to the public. It happens under all governments. I say that should be a major concern of all of us to make sure that the period of service in government is designed to, and will provide, the expected level of service that the population requires.

The population is concerned about many things about which many Members of this Senate have spoken. If you do not have the power to investigate, or to

enquire into how some of these ministries are functioning, then you will not be able to go to the public and explain to them why you have not delivered the level of service required. I think it will be a wonderful opportunity for Members of the Senate and Members of the House of Representatives to sit with Ministers of Government and with senior public servants in the country, to talk about what is going on in their ministries and to report to the Parliament.

Reports of Parliament take several forms. You can write a minority report, Sen. Mohammed, if you are not satisfied with the manner in which the committee has operated and your minority report, I am sure, will be laid in both Houses of Parliament and, eventually, be made available to the press and the public, once it has been laid as a document. But it does give that opportunity that we have never had before.

Opposition Members have a habit of complaining that the interaction between Government Ministers and Opposition parliamentarians is very minimal, if any, and Ministers do not account to Parliament, and Ministers and Cabinet operate in such a manner as if they were a law unto themselves. You have heard these comments. I am saying that you will have an experience of your life to sit and question a government minister about what is going on at Piarco about which you have said so much or so little in so many words.

Let the hon. Sadiq Baksh come and sit before the committee. What are you afraid of? He is not afraid!

**Sen. Cuffy-Dowlat:** He has nothing to hide!

**Sen. K. Ramnath:** I would love to cross-examine Sen. Sadiq Baksh, if I had the information that you claim to have.

**Sen. Mohammed:** We would love to do the same thing.

**Sen. Gangar:** Why are you opposing the Bill?

**Mr. President:** Please, let the Senator continue.

**Sen. K. Ramnath:** I would love to bring the Airports Authority people and the National Insurance Property Development Company. [*Interruption*] Mr. President, I am being distracted by the Senator.

The point I am making is that this Bill allows the Joint Select Committee to interview all the people whom you have been claiming—you use parliamentary privilege to attack many innocent, decent citizens and we are going to give you parliamentary privilege to bring them before the Parliament to ask questions about

how these contracts are being implemented, or whether they are consistent with good accounting and management practices. Yet, when you bring this kind of progressive legislation before the Parliament, you hear all kinds of efforts to interfere.

I think we should consider investigating and enquiring as positive steps, and even interfering in the sense if you define the term properly, as an attempt to find out why things are not being done in the way they should have been done. I read all the time, as I have told you, about complaints from the Judicial and Legal Service Commission, from the Public Service Commission and the Police Service Commission of not having the necessary staff, manpower and money to carry out their work.

As I have said before, this is not an investigation to be carried out by any government, it is an investigation to be carried out by a Joint Select Committee, and I am quite sure that no Member of this Senate has objected or will object to the committee that does this kind of work, because I am sure that in the relationships that have been developed over the years, Members will agree that there has been magnanimity and there has been fairness in the establishment of these committees and in the way in which these committees handle their business.

So, there is nothing to be worried about. Let not your heart be troubled. Do not worry about this Government trying to do things that will buy support from Tobago, or buy support in Trinidad and Tobago.

**Sen. Mohammed:** Or from Arima, or from Point Fortin.

**Sen. K. Ramnath:** You do not have to worry about that. If I may speak on behalf of my youthful colleagues on the Backbench—

**Sen. Gabriel:** Absolutely! [*Desk thumping*]

**Sen. K. Ramnath:**—and I do so, understanding that I serve very short terms on the Backbench, we will not allow any right-thinking person in this country, far less the people who are sitting here, or a government to interfere with the sterling contribution and the high standard that judges have demonstrated in the country. Nobody will allow that.

As Sen. Daly, I am very proud and I say this to those who have been enquiring of me about foreign investments in the country when they meet me in my private capacity, that one thing we can be assured about is that we have a Judiciary that is unparalleled. [*Desk thumping*] For one who has practised before the Judiciary, the Attorney General has never made a comment that suggests that the members of

the Judiciary—I do not want to interfere in the rights of barristers and so forth to comment on individual judgements and so forth, but what I am saying is as a whole, they have made us very proud in the country. There is no need to worry. Sen. Mohammed and Sen. Montano do not have to worry about some government lurking in the dark trying to undermine the independence of service commissions and so forth.

But I do not understand, in light of the severe criticisms against the police in the country as a result of the behaviour of a few individuals, how you would not welcome the opportunity to have the Commissioner of Police, or somebody from the Police Service Commission before the committee to ask pertinent questions that concern the people whom you represent out there; that concern the Members of the Senate and that concern the public at large.

I think we should welcome the legislation, we should see it in a very positive light and we should see this as a progressive step to making government more efficient and, for that reason, on behalf of my colleagues in the back here, I assure you that we will support this legislation, not because somebody is pulling a string, or because somebody is saying that you would not get another 10 days, Mr. Ramnath, if you do not come here and vote.

I assure you that the size of the Parliament should not really matter and whether the British Parliament has 600 members and there are certain guarantees built in that there is the Monday Club, the Friday Club, the 1922 Club and so forth, that makes us any less responsible for our actions in a small Parliament.

With these few comments, I want to add my support to this piece of legislation.

**Mr. President:** Hon. Members, under normal circumstances, we would have gone for tea at this time but I am advised that there is a problem with the delivery—the breakdown of transport—so we shall aim at going for tea at 5.00 o'clock, so another speaker will be permitted. Sen. Teelucksingh.

**Sen. Rev. Daniel Teelucksingh:** Mr. President, let me get into the Bill. Clause 66A is the real heart of the Bill and this is laudable, but only up to a point.

I see no difficulty in supporting the use of parliamentary committees to monitor the functioning of ministries, statutory authorities and enterprises controlled by or on behalf of the state, or in which public moneys are invested. I have no problem with that. To include the service commissions in this clause—and I have read it over and over—seems to be *ultra vires* the Constitution.

Over these two years of consideration of this Bill, 1998 and 1999, the commissions have been the real focus of debate and that has been haunting this debate since morning. The conflicting and divergent views with regard to the service commissions, their functions and their powers have occupied the attention of the past administration—this is not something new—and the present Government, and this debate spans several years before their time.

Mr. President, I do not think after the vote is taken today or Saturday, whenever, that this debate will bring to an end this very contentious issue. It will not.

What I have observed, though, over these last two years of intense discussion on the matter before us, the Constitution (Amdt.) (No.3) Bill, is that opponents of this item in the Bill about the commissions are full of suspicion and fear. This seems to be coming up all the time—suspicion and fear of Government's attempt to control the commissions and to undermine their independence, which rights are enshrined in the Constitution.

I have heard this over and over. This is one side of the story and also the fear of the Executive's interference with the Judiciary, an institution which, by Westminster tradition and, also, our own Republican Constitution, needs to remain insulated from political influence or interference.

While the hon. Attorney General was making so many references to practice in England, somewhere along the line I was tempted to ask him—it is a question that is bothering me; maybe at the tea table he will answer—if there is really a separation of powers in England, or if what we are seeing in England, from all his references to the various reports, if there has not been a lowering of the wall between the Executive and the Judiciary. You are talking about the mother of all parliaments. That is what I see coming across.

**4.35 p.m.**

Mr. President, Government’s position is also well known, we have heard it long before today. Government is saying there is no need to fear and as a government, they are assuring the Parliament and the nation that the real concern is for accountability, transparency, openness and, I want to add, efficiency.

I have been hearing all along, in the piloting of the Bill, a comparison of what we are doing here in Trinidad and what is happening in the Commonwealth. Sometimes I wonder where we are going as a young nation, comparing ourselves with more matured and historically matured legislatures. I have a problem with

the comparisons we make. It is going to take us a long time to possibly reach so far. This type of legislation, I believe, is plagued with misgivings and uneasiness. This type of legislation, I believe, carries a sting in its tail and wears a disguise when put alongside the nation's Constitution [*Desk thumping*]. This type of legislation has to fail the test. No wonder the last administration was accused of trying to disband the service commissions and the present Government will be similarly accused.

The present Government tested the waters in 1998 for the Constitution (Amdt.) (No. 3) Bill, the Bill before us. It was put on the backburner for a year because I believe that the front burners were too hot. [*Laughter*] Mr. President, it is a pity that so many times we dismiss the presentation in February 1999 of former Presidents and Chief Justices. I know many people are laughing at that statement. There are several others who unanimously condemned the Bill. All the other commissions joined in the chorus. I believe that this piece of legislation may yet rank, in certain quarters, to be among the most despised and unpopular piece of legislation for the last two years. I, as a layman, want to ask: Why? And what irony and what paradox when so many of us question the efficiency of certain commissions. Several of us have lost faith in the work of some of these commissions. I want to support—this is my own personal problem—the paradox, irony and the dichotomy when it comes to deciding why not accountability. I think government has a good case in talking about accountability. We are all in favour of accountability and responsible service to the public.

Mr. President, in all this debate for these two years, we want the best of two worlds: to maintain the independence of the commissions—they are to be untouchable because of the Constitution—and yet at the same time to establish relations with the public and be more responsible and accountable and so forth. But we are saying; please politicians stay far.

In our system, what we have noticed here: parliamentary select committees are virtually governmental agencies—many people know that—chaired by the Government. This provision may just be the Achilles Heel in the Bill. I support the principle of accountability at all levels of society. If I say beyond the Ombudsman and the Integrity Commission and similar bodies—if we need to monitor the work, the work of commissions, then it may best be done by the committees or a committee or a body, which is independent, non-governmental and non-parliamentary. I do not know how this was not proposed by those who drafted the Bill.

Mr. President, we are mindful of the—this is most interesting, we are always comparing with what is happening within the Commonwealth, at least. In the next few days we will be hosting the Commonwealth Parliamentary Association Conference. I am absolutely certain that constitutional reform will be a topic: somebody is going to raise it. It has been the intention of the government of Tony Blair to reform the House of Lords, and look where it is happening; in England—to reform the House of Lords. Mr. President, this is one of the most daring of suggested constitutional changes that rocked Westminster, but signalling to Britain's former colonies and protectorates like Trinidad and Tobago that it is time for constitutional reform. It is absolutely essential!

For the last four or five Commonwealth Parliamentary Association Conferences the subject of constitutional reform has been coming up all through Britain's former colonies and protectorates. See what happened in Britain's relationship with Scotland? We have enough reasons and this Bill before us is one. We have enough reasons for us in Trinidad and Tobago to appoint a new constitution review commission instead of piecemeal amendments that continue to absorb so much parliamentary time and create so much bitterness among us. This is the time.

Mr. President, I want to mention this: it will not be long. I just want to use this as an example, because I believe just as it is happening all across the Commonwealth, beginning in England at Westminster, even so, we too need to look very seriously, not at little sections here and there and clauses, but at the whole Constitution. For a long time now—for example I am looking at Chapter 4, a miserable chapter about the composition of the Parliament. This is the most important part of the Constitution, as far as I am concerned, in addition to the first section, the Preamble and so forth—those very vital clauses about life in our society.

This is the illustration I want to make, in support of my contention, that we really need to appoint a constitution review committee or commission to deal with review in its totality and not little clauses such as what we have today.

The results of the last general election in Trinidad and Tobago is the best example of the deficiencies of our Constitution as far as governance is concerned, where half of the Parliament have no say in governance. But we have allowed this to develop because the same ignominy, humiliation and injustice were suffered by approximately one-third of parliamentary representatives for several decades in this country. There are some of you, including the last speaker, who know what I am talking about. It has come to a head now. I am not a prophet, neither am I the

son of a prophet, but I believe that the next election is going to prove a similar result that, if we do not get into constitutional review, serious constitutional review as England and other countries are doing within the Commonwealth, we are going to have the same kind of humiliation suffered as we have at present by approximately half of the people's representatives.

The 1962 and 1976 Constitutions which we have at present—the Constitutions that have been handed down or created since the time of independence—these Constitutions, really, have been influenced in Marlborough House or somewhere on Downing Street. The last speaker, with a lot of experience in the Parliament of Trinidad and Tobago, spoke about making our laws more relevant.

**4.45 p.m.**

The 1962 and 1976 groundwork for our Constitution formulated or influenced from somewhere else, I believe has long since become inappropriate and irrelevant for us in Trinidad and Tobago, and this debate is indicative of that. If ever there is need in our plural society for total constitutional reform, it is right now. Both governments, I contend, of the past eight years, have failed to see that this type of legislation as the Constitution (Amdt.) (No. 3) Bill, is merely a symptom indicative of a constitutional system that is archaic, and pleads and begs for total revision.

I want to turn, just for a minute or two, to Sen. Daly's amendment. I personally believe that this amendment may yet save this Bill from an embarrassing vote. I believe I see this amendment as merely giving a face-saving compromise that ought to be viewed only as temporary. I do not know what he went through in preparing his amendment, but when I listened to his contribution I knew that this had to be a very painful amendment. It is a desperate measure aimed at underscoring for us the present constitutional stance, that the separation of powers is not to be easily dismissed. We are not ready for that.

Others would certainly ask, long after this day is over: Well, what of the service commissions other than the Judicial and Legal Service Commission? If perhaps this Bill is passed, as it was passed at 18/14 in the other place, then I hope and pray that it would be seen as an interim measure until the real serious, complete, constitutional review is initiated, which I most respectfully suggest is long overdue.

I thank you.

**Sen. Prof. Kenneth Ramchand:** Mr. President, I have divided what I want to say into four headings: the first is the word "scrutinize"; the second phrase that I am going to use is "a miscellaneous body of bodies"; the third phrase is "port and the plantation" or "Oxford versus Cambridge"; and the fourth heading is "the deterrent".

Scrutinize: The Attorney General and the Bill itself, have repeated, again and again, that the purpose of the Bill is to scrutinize the administrative working of the service commissions in the interest of accountability, transparency, openness and access to information. They are going to scrutinize the administrative functions only. How to draw the line between administrative and other functions is going to be a very difficult thing, but I trust that some way will be found to draw the line. The line is going to be drawn and the Government will observe that line scrupulously.

The scrutiny we have been told, will be directed only at administrative functions. The Bill and the Attorney General's presentation want us to believe that the emphasis is to scrutinize, not control, alter or modify; scrutinize. They are not going to interfere with any of the functions of these commissions that cannot be described as administrative. As I understand it, Mr. President, and I am concerned that it should be so, the provisions of 129(3) will remain intact.

Mr. President, if the purpose of the Bill is to scrutinize, I have two logical difficulties to report: the Attorney General has made it clear that no sector of the state is immune from accountability to Parliament, as far as administration is concerned. If that is so already, and all that is wanted is scrutiny, why bother to set up the mechanism of select committees just to achieve scrutiny, which you already have the power to do?

Secondly, if all that is required is scrutiny for transparency, accountability and so forth, and we have this nice, shining new, Freedom of Information Bill, why could that Bill not be organized in such a way as to grant the scrutiny, which is the only thing the hon. Minister said he requires?

Mr. President, the Attorney General is an honourable man; he said scrutiny so I cannot believe that he has a hidden agenda. But I wish he had a hidden agenda, because these commissions were set up in 1962, 37 years have gone by, the civil service, the teaching service and people have changed. Our sensibilities have altered, and there are all kinds of things that have happened in the society telling us that if you set up something in 1962 and 37 years passed, maybe you should look at them, reform them, reorganize them, re-orchestrate them. That is what is needed.

I cannot understand why the Attorney General is going to come here and say that all he wants to do is scrutinize. He should come here and say, "I want to reform." If the Attorney General had said that we want to reform these service commissions without taking away from their powers and independence, I am sure this entire Senate would have backed him up. So I really have a problem with the emphasis on scrutiny. I am not even going to report the common talk of the streets where people are fed up with some of the service commissions, and feel that they should be brought to book and things have to be done to straighten them out. I have experience of slackness with some of these service commissions, and I would like to see them reformed.

Mr. President, as I said, a great logical difficulty for me is that there is a crying need, both on account of time and of things we have heard and experienced with the working of these commissions, for reform but we are coming here with a very piecemeal measure to scrutinize. That is not enough. So much for scrutiny.

A miscellaneous body of bodies: A number of enterprises, authorities, service commissions, ministries and so forth, are going to come under the scrutiny of select committees of Parliament. There is the Tobago House of Assembly, the municipal corporations, government ministries, service commissions, the Tourism Industrial Development Corporation, and Carlos John. How can the device called the select committee of Parliament have the flexibility to deal with such a varied set of authorities and bodies? Is the select committee a huge plaster that the Government is going to drop on every sore? Should we not be looking at each of these bodies and authorities, see exactly what is wrong with them, where we have to make reforms and adjustments, and then find a mechanism to bring about the necessary changes and reforms? This blanket plastering that is being attempted, one solution to a whole set of different problems, might not work because we might not have the material resources to do it, and we might not be able to form the right kind of select committees.

I want to look at the list and complain that the lumping together of all the commissions, is an attempt to conceal from us the gravity of the proposals. They threw in Tobago House of Assembly so that we would get confused. Within service commissions you have the Judicial and Legal Service Commission, the police service, the public service, and the teaching service, but the Bill says "commissions" and you have corporations, government ministries and all of that. In 1962 when some of these institutions came into being, the framers of the Constitution talked about public service, police service, teaching service, they were clear about the special kind of things with which they were concerned. They

wanted to insulate these bodies from direct political interference; and they had a sense of the fitness of things that directed them to deal with the question of the judicial and legal service separately. They did not lump them together. But here in 1999, we have them all being lumped together.

So this leads me into section three, "port versus plantation" or Oxford versus Cambridge.

**Mr. President:** I am sorry to interrupt the hon. Senator who will continue after the tea break. I understand that tea has arrived, so we will suspend until 5.30 p.m.

**4.57 p.m.:** *Sitting suspended.*

**5.34 p.m.** *Sitting resumed.*

**Sen. Prof. K. Ramchand:** Many wickets fall right after the water break, Mr. President. [*Laughter*]

In the first two movements I was concerned with "scrutinize" and I was concerned with "a miscellaneous body of bodies". I have to apologize to the Senate for advertising the third section under the wrong heading. It is "Port versus Plantation" and "Oxford versus London" not "Oxford versus Cambridge". And it is "Oxford versus London" because I am referring to Dr. Eric Williams and Dr. Rudranath Capildeo at Marlborough House. In this section, Mr. President, I want to look at the framers of the Independence Constitution and the kind of arguments they had about the establishment of service commissions and why the service commissions came into being.

I will just tell you in passing that if we had a lot of time I would have gone into many details here because, at the moment, I am editing the autobiography of Mr. Lionel F. Seukeran who was present at the conference and who has given us a blow-by-blow, day-by-day account of what went on. However, I will do it very briefly. On the Opposition side was Mr. Seukeran, Ashford Sinanan and Dr. Rudranath Capildeo and on the government side, of course, was Dr. Williams. These service commissions came about because of a profound distrust.

The Opposition just did not trust the Government and the Opposition insisted that one must have these service commissions to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly by the government of the day. This was not dressed up as any kind of intellectual or philosophical procedure. What they said was, "We do not trust you fellows and if it was us you would not trust us, so let us

set up these commissions to insulate people from direct political influence". Those three service commissions were set up in that way. The Opposition also told Dr. Williams and company, "We do not trust you; you fellas will do what you like if you are the government, so we want to have a body that can keep you all in check".

The separation of powers that was advocated by the Opposition was again advocated out of distrust. It is ironic, yes; we can say, "Well, politicians not trusting one another!" Be that as it may, the Opposition said, "We do not trust you. We want to have the separation of powers. You cannot interfere with the Judiciary and if push comes to shove the Judiciary could check up on you and control you". So, Mr. President, the origin of these things involves the service commissions being separate from the Judiciary, the service commissions being put in there to insulate certain classes of state workers from direct political interference, and the Judiciary being there as a watchdog for democracy.

If the framers of the Constitution wanted select parliamentary committees to scrutinize the service commissions they would have written it into the Constitution then and there. I say that because I know the Attorney General has argued the opposite point that if the framers of the Constitution did not want Parliament to scrutinize the administration of the civil service, then they would have said in the Constitution that they did not want that. Do not try that, Mr. Attorney General.

It is a very smart argument which would fain persuade us that the proposal for having select parliamentary committees scrutinize the administrative side of the commissions is really the will of the framers of the Constitution. That is not true. The framers of the Constitution would turn in their graves if they felt that 37 years later someone was saying that they wanted parliamentary committees to scrutinize these service commissions which we had set up as a defensive measure. It was a defensive measure.

So, Mr. President, I am not always a traditionalist, but when I examined the arguments that took place at Marlborough House and the way in which the service commissions were set up and the special function that was being attributed to the Judiciary for the preservation of our democracy, I feel that before we make a change we should think about whether the situations that the framers of the Constitution were trying to deal with, still exist or whether a distrust for other reasons might be in the atmosphere. We should think about whether there is still the need to insulate the service commissions; whether there is still the need to have some body out there that is not controlled by the political directorate, some

body that would have the moral authority and the protection under the Constitution to stand up against abuses and excesses.

In my mind I make a distinction between the Judiciary, and the Judicial and Legal Service Commission. However, I feel that if you interfere with the Judicial and Legal Service Commission, you are interfering with the Judiciary and my resistance to the present Bill has to do with my feeling that I do not want the Judiciary interfered with. As I understand it, the Government cannot tell the Judiciary or pressure the Judiciary to say that an amnesty is legal or illegal. They cannot get the Judiciary to give blessings to a police state or a repressive state. They cannot get the Judiciary to entertain the idea that the army should be an arm of the state. The Judiciary simply would not entertain any kinds of measures by the Government of the day, and I do not refer only to this Government, I mean any government, to take total control of the state.

No one can know, Mr. President, how near to or how far away we are from the day when a government will attempt to overthrow the Constitution, or set up a Prime Minister or a Chief Minister for life, or decide that there shall be no more elections in this country for 15 years. We do not know when and if that would happen but we have to recognize that it is a possibility. It can happen; and if it can happen we need to have something on the books or something in the Constitution that can help us to rally against it. If the Government of the day were to do something as utterly undemocratic as to say, “We cancel all future elections”, and “We have a Chief Minister for life”, and “This is a one-party state”, I believe the Judiciary will have the moral authority and the standing in the world to appeal to the United Nations or some other body to say, “Please invade this country and relieve us from people who are about to set up a tyranny”: and that independent Judiciary would be listened to in the world.

I am not panicking, Mr. President. I am not hysterical about it. I am just imagining the worst case. There are all kinds of other arguments joining up the powers and not retaining the separation. There are all kinds of arguments that one can put against the attempt to end the separation of powers, but the argument I am standing by, the main reason I have for not interfering with the Judiciary is an argument that all politicians should embrace. All politicians in countries like ours should take comfort from the fact that a Judiciary, protected by the Constitution and protecting the Constitution, is our last bastion against the excesses of politicians who might not be as law-abiding and decent as the politicians of the present time. Thank you. [*Desk thumping*]

**Sen. Mahadeo Jagmohan:** Mr. President, I too wish to put in a small contribution on the Bill before the Senate. The Bill before the Senate is very significant. It is a very serious Bill. It is an important Bill. In my view, the mere presentation of the Bill before this Senate is a blow to the service commissions. It seems as though it is hitting the Judicial and Legal Service Commission the hardest and, by extension, the Judiciary, because the Attorney General dwelt a great deal on the Judiciary and the Judicial and Legal Service Commission, therefore, I have a few words on this.

On a lighter note, a while ago when Sen. Ramnath spoke he was harping on: Why is the Opposition against the Bill? Why are they not positive about it? It is an important Bill and it is meant for the good of the country. I want to remind Sen. Ramnath that for a very important function as a marriage ceremony, some people regard it as an occasion of solemnity and fear and others regard a marriage ceremony as an occasion of joy and happiness. So if we have differences of opinion here it is on the basis of our concept, our philosophy, our mandate and our overall policy.

When, prior to August 31, 1962, there was a great deal of movement between Trinidad and London—I think Sen. Prof. Ramchand alluded to some of it—a great deal of discussion took place. If any of us still remember, some of the people involved were back and forth from here to London for consultation in order that they do a good job of it and I merely wish to state that a great deal of thought went into drafting this Constitution. I have no problem if the Government of the day wishes to change, amend, alter or do anything to the Constitution, but the way it is being done, somebody referred to it as being done piecemeal. We do not agree that this Bill before the Senate will serve Trinidad and Tobago in any real manner.

**5.50 p.m.**

By that, I mean proper machinery should be put in place in order to either change or amend the Constitution and the best machinery is to get a mandate from the people of Trinidad and Tobago and that could be done by way of a general election, which is not far from now, and the government of the day can use that as one of the issues, can use something in their manifesto in order to deal with this.

It was already mentioned that either at No. 10 Downing Street or at Marlborough House in London, a great deal of discussions took place in order to arrive at this document, the Constitution of Trinidad and Tobago. It was good to hear that the late Mr. Lionel Frank Seukeran—of reverent memory—was there;

led by Dr. Rudranath Capildeo, himself a lawyer; and several other people. But along with them, there were certainly great legal luminaries such as Sir Ellis Clarke who had a pivotal role in this; Mr. Tajmool Hosein was looked upon at that conference as a person with deep thought in legal matters. Then the delegations speaking with the home office or the colonial office and the delegation also included a Mr. Alexander who was an advisor to the then chief minister; and you also had Mr. Richards, who became the first Attorney General of Trinidad and Tobago; and Mr. Vernon Jamadar also had quite a role because he spoke to the press intermittently on progress in London.

Much could be said, but much was already said and I do not wish to take up parliamentary time repeating a number of things that were already said. What is bothering is that such a comprehensive and meaningful document has come to this Parliament without the real type of mandate or consultation. We are of the view that this should be withdrawn at this stage and plans be made to have the entire Constitution reviewed. I say so against the background that if we keep on doing it piecemeal, then it might be referred to as the Constitution of England; that is not one compact document, but rather several documents and pieces of legislation, precedents, rulings of the court and such are taken into account.

If we proceed like this, some people in Trinidad and Tobago—already we have a group, which I will not name, levelling wanton condemnation on the religious bodies and, that same group or another group might want to get together and alter all the holy books in Trinidad and Tobago. Who knows? Because they already have a series of literature—a very objectionable type of literature—all over the place.

When one looks at the Explanatory Note, it explains that this form of unrestrained power now seems incompatible with the principles of accountability, transparency and openness in a free and democratic society. What I have gathered by this is that the Government is not sure that it wants to do what is being presented here today. As such, I am stating that in order to get efficient service from all the service commissions, since it is seen that this Bill will undermine their authority, it would simply mean that the question of performance would become questionable hereafter if the Bill is passed. We must take that into account.

A new wind is blowing over Trinidad and Tobago. I do not mean the wanton loss of life on the roads and the criminal activities; I am talking about the recent getting together of the Hon. Leader of the Opposition and the Hon. Prime Minister on a very important issue. People who matter get together to talk. It is

my view, and I am subject to correction, that the Prime Minister of the country meets when necessary with His Excellency, the President of the Republic to discuss matters of state. That is my view. That is how I know it.

If the service commissions are tardy and not accounting for their activities and so forth, I believe the machinery to deal with it is right in the hands of the Prime Minister. Why has he not dealt with it? If he intended to deal with it through that course I am sure he might have met with success because the hon. Leader of the Opposition supports any such move that is meant to help the country

Mr. President, the service commissions play a most meaningful role in the running of all sections of the public service. Without them, the public service cannot operate, notwithstanding the shortcomings here or there. This Bill is not a simple one, as the Attorney General attempted to establish, this is a very difficult and complex Bill before this House. There are amendments before us, but to go by way of amendments would be a short-term measure, but this is not the real solution; the real solution is to withdraw this Bill and have machinery in place to amend the entire Constitution. Then, and only then, we will be moving in the right direction.

It is quite good and, certainly, the masses of the electorate, voted for individuals who become ministers of government, and there can be parliamentary committees to monitor their work as against parliamentary committees that will monitor service commissions.

Apart from the difficulties we face day to day, we may have difficulties with the work of the service commissions, and in any segment of human endeavour there is always some kind of difficulty and this could be overcome in a particular way, as I have just enunciated. So I suggest, Mr. President, without attempting to utilize parliamentary time unnecessarily, that the Government—you see, when I say Attorney General it would seem as though we are talking about one person—might be well-intentioned, but the Government has erred and should pull back this legislation and come up with a compact document to amend the Constitution and let the Constitution reflect the establishment of parliamentary committees and their duties.

I thank you, Mr. President.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. President, when I reflect on the numerous pieces of proposed amendments to the Bill, it tells me, Sir, that there is a conscious effort to have this Bill made in such a palatable form that it could really be accepted. It is a good sign because I hope the Government realizes that if there

is no Opposition and Independent support there can be no joint select committee. I think this is something and, hence, there is the need to ensure that we have a mixed majority support, rather than a one-sided support.

Mr. President, I look at the different ministries, the assembly, the corporations, these agencies, *et cetera*, which are under the scrutiny of these parliamentary committees. I look at the Tobago House of Assembly. I said there must be a lot of gall in the Government to include the Tobago House of Assembly in this exercise knowing full well the sourness that is public, with a flawed Tobago House of Assembly Act and the sort of confusion, conflict, "commess", bacchanal, "bassa bassa" between the Tobago House of Assembly and the Central Government.

We need not look far. Just a few weeks ago we had the National Housing Authority being locked out in Tobago. We have the confusion of the boat. We have the confusion of the tax collection. We have the slang, "no water no hotel". We are saying, "here we have a flawed Act to govern an assembly", and yet we are saying we want to scrutinize the assembly. I do not understand it, Mr. President. I am confused.

I looked at the corporations. Every day we have conflict. The Local Government Minister cannot agree with this or that corporation, and we want something to scrutinize it. What do we want to scrutinize? The thing is open! Open scandal! That is what it is. And so, Mr. President, I cannot understand how this could be anything that we need to investigate when the whole thing is an open scandal.

Mr. President, who determines what or whom to investigate? So, you see, I see why Prof. Spence probably had the same thought when he said that the committee must be chaired by an independent body. Because who will decide what topic, which agency, which government ministry? It is too much. I think we have much to fix before we even attempt this Bill. I say the Bill is premature, even in an amended form.

Mr. President, the functioning of the ministries need overhauling. Secret bad reports, staff reports, and yet we blame the commission. I have had my own experience. My boss says to me, "Eastlyn, what do you do?" He does not even know what I do. I tell him what I do, he writes it on the wrong form, the form comes back to me saying that this has been written on the wrong form and he gives me all box three. What does the commission have to do with that? So what I am saying is that many of the faults that we can find as if they emanate from the commission, really emanate from the public service, from right in the ministries.

We also need to look at long suspensions without pay where no report is coming from the division or the ministry. We had people in Tobago suspended for four and a half years with full pay. What are the commissions doing about it? We have no report from the division. We do not even know this or that.

We look at the channel of communication. You cannot send something straight to service commissions, it must pass through the head of division, this, that, the other. We devised the means in the public service to get around that. We started sending carbon copies directly to service commissions and we got back a note saying that it must follow the normal channel of communication. Then it goes to your first boss who keeps it in a drawer and forgets it; or "That is that miserable Eastlyn again, I ain't have no time with she?" So there we have it, Mr. President. Originals are lost. Your application is delayed past the deadline. It is on file.

About three months or four months ago I investigated a young lady who said, "I have not had my appointment, I wrote to the service commission, they do not know what I am talking about". I came down to the Ministry of Health on Independence Square. I go in there and the lady's letter coming from Tobago is on file, it never went to the service commission. How can we blame the service commission? Twenty-four years it was there. You see, what I am saying is that we are trying to get a better fruit by picking off the fruits. We have to see what the plant is feeding on and that is why I say we need to do a lot of little things before we get to the top.

**6.05 p.m.**

Mr. President, after people had been transferred just recently in Tobago, they opened the drawers and found people's cheques dating back for about eight years. The vote does not even exist anymore. A lady who had retired handed in her papers and is waiting for her pension. What happened to the pension division? Nothing could happen because her documents are in a drawer right in Tobago in the Division of Agriculture and we are going to blame the service commission. Nobody sees circulars advertising promotions if your Head does not like you and so all these things need to be rectified.

Finally, Mr. President, I think our ministers and parliamentarians are very busy people. I do not know where they will manufacture the time to be participating in this.

Thank you.

**Sen. Prof. Julian Kenny:** Mr. President, I agree that we need to have a system of parliamentary committees, and I agree that it requires a great deal of thought, bearing in mind the practicalities, available talents, and so forth. While I may not feel inclined to support this particular Bill, I clearly would go along with what appears to be a concerted effort of compromise.

Mr. President, I would like to use the device that Sen. Prof. Ramchand used—actually, there was no collusion between us—by using a few words and speaking to these words. My prime concern is examining our Constitution broadly to see if we can put some life into it in terms of the real world outside. So I would like to use three words and to draw some analogies.

The three words are: entropy, ecological fragility and homeostasis. These are all words of science. They are perfectly normal words which one would find in any simple dictionary.

Mr. President, why I am doing this, is, as an outsider to law, I am trying to visualize our Constitution and the word entropy is used quite widely in different disciplines in science: in physics and statistics and even in biology. Without going into the actual details of the way in which this term has come into being, entropy deals with the degree of order within a system and it is a general rule that we tend to move from order to disorder. You can only have order in the system if you apply energy to it.

A constitution has a role as an engine, something that does work and nobody in his right mind would attempt to fix the engine while it is running. What you do is try to get the best engine available for your purpose, you give it the right maintenance, the right fuel and the engine has so much life. At the end of a normal life, you install a new engine. It is on the basis of this that I argue for constitutional reform comprehensively, rather than piecemeal.

Mr. President, the other word I used was ecological fragility. It is a concept in biology that the most stable systems are the systems that are large, complicated, with many elements in them. The least stable systems are the ones where there are few organisms living in a generally hostile environment and this is why I was a little disturbed at references to, for example, the United Kingdom and some of the larger countries. These are countries which are complicated socially. I am not saying that we are not, but their sheer size offers the opportunity to grow in an orderly fashion. Our problem is our size, and like any ecological system, where it is small, it is not as diverse. A push now has an adverse effect on the system so it is perturbed away from its main course and deviations can be quite extreme.

We have seen in 1970 and again in 1990 that a little irritant enters the system and pushes it completely out of kilter at great cost to the society and to the entropy of the system. This is why I have used the analogy of a living system and suggest that we are too small, we do not have the diversity of resources that this engine which maintains us can be pushed quite far out of kilter with potentially serious consequences. I am not suggesting that it might go as far as Sen. Prof. Ramchand suggested. He has not actually suggested that, he suggested there is just a possibility. So we do have this concept of fragility of the system that comes from biology and this is determined by the size and diversity.

The third concept or the third word which I used is homeostasis and I know this always raises a chuckle. Homeostasis is a natural phenomenon found in all systems which regulate themselves. Homeostasis or homeostatic mechanisms are found in machines. The governor regulating the speed of the engine, the sensor regulating the temperature; these are all based on a very simple thing. You have an engine which does work and you have a sensor and if you deviate too far from the norm, the sensor feeds back to the system and gets it to switch the air-conditioning on or off. This is what homeostasis is and this is what our Constitution and our laws are. These are systems which regulate the entropy of the system, and regulate the order of the system. These are comments by way of introduction.

I was referring to our Constitution as an engine and I am suggesting that after a certain life you change the engine, always attempting to get more efficiency in the system.

**Hon. Senator:** Foreign used?

**Sen. Prof. J. Kenny:** Not foreign used, thank you Senator. My main point here is that the Constitution is designed to offer a maximization of efficiency of political or social system. It may not necessarily be efficient, but that is what it is supposed to do and periodically, I think each country has to look at its Constitution, then sit back and have learned people look at all these things we are attempting to do and come up with possibly a new model where the efficiency of the system is greater and where there can be a higher degree of order.

Mr. President, I would refer to two things and then go on to some questions. One is the parliamentary agenda and you must forgive me for raising this again, but there is clearly disarray and disorder in the parliamentary agenda.

**PROCEDURAL MOTION**

**The Minister of Finance (Sen. The Hon. Brian Kuei Tung):** Mr. President, I beg to move in accordance with Standing Order 9(8) that the Senate continues to sit until the conclusion of this matter as well as Motion No. 2.

*Question put and agreed to.*

**CONSTITUTION (AMDT.) (NO. 3) BILL**

**Sen. Prof. J. Kenny.** Mr. President, I hope that did not come at the point of ordering me to be brief. I was in fact prepared not to waste parliamentary time, but to utilize it fully so that not only do I clarify my own mind as to where we stand, but possibly to help other Members of the Senate.

On January 26, this year, we had a long memorandum from the Leader of Government Business and there were no less than 22 bills that were going to be introduced and debated before the end of the session and one of these is No. 11. I am not suggesting that the Government said that this was the order of priority; I think Sen. Mark made it quite clear that this is what we hoped to do and it is not necessarily the order. However, I have several concerns about the agenda. First of all, you take it at face value that when you see these things that are within your area of competence or otherwise, you may wish to prepare yourself and I have done this. I have spent considerable time preparing for certain things on this agenda.

Mr. President, the way we are going, several bills that are here on the agenda are most certainly going to lapse. There are several bills on which we have started debate for which we have prepared and they are going to lapse. I would like to refer to a couple of these things. It is now quite clear that the Tourism Development Bill is going to lapse.

**6.20 p.m.**

Now, I went to great trouble to prepare. As some of you Members know, I am not like Sen. Daly who is able to rattle it off; I have to get home and do the homework and the only way I know is like at the university where I struggle through things and I prepare. Everything is written out—not this particular one—as I prepare something for a lecture and I would come in here and I may refer to it or not. But, it is pretty distressing to be a parliamentarian, to come prepared, as with the Tourism Development Bill—and Sen. Prof. Spence will confirm this—I was going to speak immediately after him.

In my files at home, I have three or four pages of closed text on the Tourism Development Bill. To me, it is totally wasted. There are other things which are going to lapse for certain and we even have bills that have been laid, for example, and we know they are going to lapse. For example, the amendments to the National Trust Act are going to lapse.

**Sen. Daly:** Again.

**Sen. Prof. J. Kenny:** Again. Anyway, the ones I found most distressing and which I feel the greatest degree of confidence in speaking to Members of this Senate about, were the Parks and Protected Areas Bill and the Conservation of Wildlife Bill. That is my prime discipline; that is biology. I went to great detail back then to make sure that I was fully prepared and my paper was 11 pages long; it included several pages of amendments. In fact, it included no less than 55 proposed amendments to the Bill. That is the reality.

Sen. Prof. Spence and I have expressed concern to other Members of the Committee and we were invited to the Ministry. In fact, we were seen by juniors, not that we insisted that we are anything special. We eventually saw the Minister and his team and the result of that was that attempts were made to redraft the Bill to send it out, after it had already been laid for, essentially, public comment.

Here we have all this work going to lapse, down the drain. There may be a bit saved from it in that when I was pressed by the Ministry, I gave them a copy of my proposed amendments which I thought made the thing a little more rational, although I still did not agree with the proposed Bill.

So, here you have parliamentary agenda that plays havoc with the work of parliamentarians. You never really know what is going on. When we were doing the amendment to the Dental Profession Bill, we actually were told we were going to do it. I came prepared for what we were supposed to do, to be told we were doing the Dental Profession Bill, so I had to race home to pick up my paper, then I came back down thinking we were going to do the Dental Profession Bill and, of course, things had changed.

So, here we have, to me, disorder in the parliamentary agenda. I know that there are problems with the Government's coming into power and so forth, but the parliamentary process needs careful thought; it needs order, which we do not have.

Mr. President, I turn next to the level of order in the parliamentary committee work. Forgive me, Mr. President, there is just one other point I would like to make regarding the legislation which had been passed in previous administrations and I cannot let this one go.

There is something called the Environmental Management Act, 1995—you knew that was coming, Sen. Tota-Maharaj. This Act requires an Environmental Commission which is a superior court of record. The Act is defective in that the particular section that deals with the appointment of the President and Vice-President is to be made other than by the Judicial and Legal Service Commission.

Here we are attempting to appoint, in effect, someone to a High Court of the country and we are doing it other than by the Judicial and Legal Service Commission. The Environmental Management Act requires amendment. Where is the amendment? We are spending the better part of $5 million a year and the Environmental Management Authority is totally toothless. All it can do is go out and catch a few people dumping coconut shells in the Caroni River and, yet, we have 10 children hospitalised with lead poisoning. Is that being rational? Is that being efficient?

But my point, with regard to the law, is that this is a vital thing. Are we to get any value out of the Environmental Management Act? If we reasonably expect that the Government wants the Environmental Management Act to work, it must appoint the commission and to appoint the commission, it must amend the Act.

We have been told, in response to questions raised by myself and other people in the other place—about when is this commission being appointed, that it would be the end of last year. We were told that there was not a problem of money; it was only a couple million dollars. We were told, again, in response to further questions, announcements that it was going to be the end of the year, presumably the end of this financial year. There is still no sign of it. It cannot be done because the Act is defective and there is no amendment. Now, that amendment, presumably, will come in the final session if it can find a place. This is what I mean when I say inefficiency and disorder in the system.

So, when we are here amending the Constitution, I have these things at the back of my mind, that we have many little things to do. An amendment to the Environmental Management Act is only a one-page amendment. It will not be an extensive debate. The minute that is passed, we can make the Act operative. We can get the commission established.

I turn to the parliamentary committees system. Again, I congratulate the Government in thinking that we ought to have systems that go beyond the parliamentary committee that just deals with looking at draft legislation. However, experience tells me, having served on several committees, that there is

a very serious problem with the efficiency of these committees. Much of the time, the committees have difficulty in finding a quorum.

Now, it is understandable; Ministers are busy. The elected people have their constituencies, so we have the process of parliamentary committees forced on to a few people who are able to make a commitment.

Mr. President, in the last session we dealt with the Planning and Development of Land Bill and I think you will recall that on a legal point raised by myself, without being prompted by Sen. Daly, that the Bill had to lapse because it required a special majority. It came back to Parliament in this session; it was sent to a Joint Select Committee.

I spent a few hours and I wrote a brief for the Chairman of this Committee, taking the main points of all the submissions and the verbatim record and I prepared a brief for the Minister. We met once. The brief was discussed and I was thanked for the efforts I made, which was several hours' work. Just like the Parks and Protected Areas Bill, I imagine I spent the better part of 10 hours. Here I spent two or three hours or more writing this brief—it was probably more because I read all the verbatim records—and here we have a Joint Select Committee of Parliament. We have been able to meet once. Several of the people who are on this Joint Select Committee never turned up and we have another Joint Select Committee which is the one on transplants and genetics. There are people who were listed there who never turned up, or who turned up once to appear to be present and immediately left. Now, I am not blaming them. They have their priorities. But, can the system really work?

Mr. President, I must now confess that I think I have paid my union dues in this Senate in that I have now served, I think, on six or seven of these committees and I think it would be unreasonable of the Leaders of the Parliament, that is the Government, the Opposition and the Independent Bench to expect me to do more. I think that I have done—well, I mean if I am asked, I most certainly will do it because I have taken an oath of office.

But, the thing really distresses me that so much energy is just totally wasted. When we went to the Human Tissue Transplant Bill, the only way in which we made progress was because of Sen. Brigadier Theodore, Sen Cuffy Dowlat, Sen. Prof. Spence and myself. Do you know, Mr. President, that on occasion when there was no way that I could make it because I had previous engagements, I

would come down so that a quorum would be established so they could start and then leave, and then somebody else would be telephoned. Sen. Prof. Spence would be telephoned and asked whether he could come in. Sometimes people like Sen. Prof. Spence came to a Joint Select Committee to find that the thing had been postponed and he had not been called.

This thing requires drastic change and I wonder whether the real issue should not be the reform of Parliament and all the systems. Certainly, the comprehensive and deep review of our Constitution not within this Senate by taking bits of paper, by adding on here and deleting there, but really by having people who are not necessarily in Parliament looking at what we have done, looking at a possible new engine which will be more efficient.

So that my contribution to this thing is really a series of questions. Is this the appropriate time to be discussing change in the constitution, especially as we are told we have to get it through? Any time that I am told that I have to do something, there is a stubborn streak that comes from the back of my brain that asks, "Why do we have to do it?" A constitution is something on which we really ought to be reflecting at leisure.

There ought to be people outside; I ought to be able to go to people outside; people ought to be able to come to us. There ought to be—town meetings are now very popular things. There ought to be wide-scale discussion of the Constitution. The first question is: Is there need for constitutional reform? I think that is a valid question. So I ask the question: Is this the time?

**Sen. Daly:** And the method.

**Sen. Prof. J. Kenny:** And the method? Thank you, Sen. Daly.

Now, the other question related to the Constitution has already been raised by several people, but I cannot help referring to it, again. Is this the way to change the Constitution? That is, do we try to fix this machine which is operating at high RPM by putting our fingers into it?

**Sen. Daly:** No.

**Sen. Prof. J. Kenny:** No. We might get our fingers mangled. We might shut down the machine and this is a problem I face by trying to accommodate the Government, especially as I see there are so many other things which I have pointed to already which need fixing.

The third question I raise is: Should not reform of Parliament come before implementation of parliamentary committees? Clearly, there is disorder in what

we do. Clearly, there is inefficiency; there is much waste of parliamentary time. I think of a number of things that we have debated and they have lapsed.

**6.35 p.m.**

The question then is, should we not be thinking, first of all, of major reform of Parliament and the Constitution? Sen. Ramnath is not here, but I agree with him that there may be other ways of doing things, there may be another more efficient engine. But we cannot—it is not cannot—we may of course do it, but a far more effective way of doing it is: let us continue with the normal work of maintenance of the engine and then set up the means of looking at the new model.

The one thing that disturbs me more than anything else about parliamentary committees—I think other people have referred to this—is that, given the government majority, will the executive that is Cabinet, be the determinant of the priorities and establishment of the committees? As it stands now, if a joint select committee or a select committee of this Senate is set up the likelihood of me or an Independent Senator becoming the Chairman of this select committee is extremely remote, or for that matter a Member of the Opposition. It is remote in the sense that, in my experience with all these committees it is a *fait accompli* that a member of the Government chairs it. This is, to me, a serious problem.

Mr. President, I have gone through elections of the chairman of committees and I know that the decision is already taken, and we go there to attend and we are told that the chairman designate is not able to attend now so they allow us to proceed with the business on the clear understanding—as you know Senator, as you know only too well, Senator we have worked together—that as soon as it is convenient the person designated to the chair comes in and we mind our own business.

On one occasion we have had where a designated chairperson could not be at the election at the start of the proceeding and the instructions were that a Government Senator would chair. This may be the way of doing things, I have no objections to this, really, but I question a system where it is already predetermined that it would work in a certain way. Maybe the Standing Orders can be amended.

Related to this issue is the issue of how is the priority determined if you are going to investigate? For example, if a committee is going to investigate the Carnival Development Committee, I would be very, very keen to be a party to this parliamentary team that would ask questions of very important people on their powers and the basis of their powers. Or they may not want to come. That may be something that I feel very strongly on, and yet somebody might want to look at

the School-Feeding Programme. How are these priorities determined, bearing in mind the limited time available for us? If we reform Parliament, as Sen. Ramnath suggested, we might have one House, we might have a larger Parliament; we might in fact dispense with people who are not elected. [*Interruption*] These are some of my concerns, Mr. President.

I will carefully look—I reserve my position on what we do—at the various amendments and I would see what the arguments are, in the spirit of compromise, to see whether it is possible to support this.

Thank you, Mr. President. [*Desk thumping*]

**Sen. Dr. Eric St. Cyr:** Mr. President, the time is late, but the business before us is so very important that I would have some comments to make and some amendments I wish to propose. I want to begin by reminding us that we do operate with a fundamental law: the Constitution. As I have said before, the ease with which we seem to make or propose amendments to this fundamental law has always bothered me. I think we should go rather more carefully and more comprehensively. I am quite surprised to see that we could amend the Constitution on a matter as serious and important as this with a simple majority, which from a count of heads could be just one tonight.

In my view, the principles by which we should operate should be that there should be, by and large, general consensus in the Parliament and in the nation for legislative action: consensus for legislation. I think secondly, by and large, there should be fairly strict control over the exercise of executive power. I have argued, and will continue to argue, that in my view the greatest threat to man's freedom in society is the arbitrary exercise of state power. Historically the control over state power has always been the concern of democratic systems.

While I want to congratulate this present Government on the tremendous efficiency it has brought to the execution of various programmes, without a doubt they have got many things done which had been eluding us for some time. I always think of swords as having two edges. I would, where I see great efficiency, also want to put even greater controls so that they do not get out of hand.

The French King Louis XIV used to put it this way: *l'etat c'est moi*: I am the state. The Stuart kings thought of the principle of the divine rights of kings, namely: that if you are in power you can do as you please, the best for the nation of course. In a democratic system—the second principle I would want carefully enshrined is proper controls over the exercise of executive power.

The third principle I would like to put in place is that our judiciary should be, without a doubt, independent of controls. In our own Constitution we have also enshrined the principle of the non-politicization of the civil service and related services. I think that is the purpose of the service commissions.

Let me say that on the reading of the Constitution, it appears that the Judicial and Legal Service Commission is not a service commission; it comes under Chapter 7 and is part of the judicial system. [*Desk thumping*] The service commissions, they are under Chapter 9. So that one possibility would have been to allow the draft Bill to go forward as put here: "(f) service commissions" and then argue from the Constitution that it does not apply to the Judicial and Legal Service Commission.

**6.45 p.m.**

Mr. President, that certainly would not be the proper way to go. In fact, the first draft of this Bill made explicit reference to the Chief Justice. I do not think that he is called by those words in this Bill, the reference here is Chairman of the Judicial and Legal Service Commission, but there is no such mention of that officer or that commission in the new draft. But I suspect that it is implied by the general debate, especially the very learned exposition of the Hon. Attorney General as he introduced this Bill.

Fundamentally, Sir, I am against the Executive having control over the Judiciary. The Constitution, as it stands, allows the Prime Minister a great say in the appointment of the Chief Justice; he has to be consulted along with the Leader of the Opposition. The present Constitution also gives the Prime Minister a substantial part in the appointment of all the senior judicial officers, in that, he must not disapprove of the ones being proposed. I think that up to now things have worked reasonably well and it is, perhaps, as far as we should go in that direction. If the proposed section 66(b) which tells that each service commission shall submit to the Prime Minister a report, my understanding is that whoever I report to is my superior. I defer to that person, I report to that person, I relate to that person in a superior and inferior relationship. I really do not think that the Judiciary should report, in that way, to the Executive.

With those comments, Mr. President, I come to the proposed amendment by Sen. Martin Daly. I know it is a valiant attempt to allow the general intent of this constitutional amendment to stand, while carefully protecting the independence and insulating the Judiciary from the Executive. But wherever I saw that the Judicial and Legal Service Commission shall report to the Prime Minister, I put a

very big question mark, because I was uncomfortable. Sen. Daly knows that I do not agree with him in this amendment, for that reason which I have given.

Getting to my proposed amendments, I have a difficulty with elected bodies being brought under the ambit of parliamentary committees. So that in the case of the Tobago House of Assembly, I am not sure, do we bring in the elected persons or the executive persons? I would think from this it would be the elected persons so that, perhaps, the Chairman of the Tobago House of Assembly would be the person to appear before these joint select committees. Similarly, the municipal corporations; these are popularly elected bodies. I would, similarly, not think that they should report to the joint select committee of Parliament.

I do not think we should duplicate the work of the Public Accounts (Enterprises) Committee by having enterprises owned or controlled by the state report both there and to joint select committees such as proposed here. I do not think for the arguments made earlier, briefly by myself, but developed, at great length by others before me, that any of the service commissions and certainly not the Judicial and Legal Service Commission, should be brought under the ambit of joint select committees being proposed here. So for this reason, Sir, I have proposed that we delete those four from clause 3, section 66A(1)(a), and leave only the ministries, because I believe that what we really need is the Executive to account for the exercise of their statutory powers.

If I may make a very brief comment on the very excellent contribution of Sen. Kelvin Ramnath. Perhaps, the greater focus of ministerial input should be in policy formulation, articulation and direction in the ministries and, hopefully, getting the full-time people to actually do the carrying out.

Consequential to the deletion of (B), (C), (E) and (F) from clause 3, we would then need to delete the proposed section 66A(1)(b) which would no longer apply because that deals with the state enterprises. That will follow if we go with the deletion of the first bit. If we take out the service commissions, then 66B, the last paragraph, where it says, "Each Service Commission shall submit a report," should also be deleted.

Mr. President, I know this makes the Bill rather more compact, but I suspect it would be, perhaps, a better Bill. If those things were done I would be prepared to support it, but without those amendments I would find it very difficult to support this measure.

I thank you, Sir.

**Sen. Prof. John Spence:** Mr. President, in view of the time, I would try to be as concise as possible. I want to start off by agreeing with Sen. Prof. Kenny with respect to the agenda and the way we handle our business here. I start with that because I want to make another point, subsequently, on that issue.

If one takes the time we have wasted on Bills that have lapsed, no doubt there would not be the criticism of our not having enough time for parliamentary committees. I think the first order of business is to put our own house in order and then, perhaps, there would be the time for parliamentary committees.

I have supported the idea of parliamentary committees for some 10 years now. Indeed, in the Senate Standing Orders of 1989, we actually included parliamentary committees. Incidentally, Mr. President, these were joint committees with the House. Indeed, if one lays aside the section of this new Bill which deals with the service commissions, then these committees could have been established many years ago with just one provision, that the Standing Orders of the House would have been altered. That being done, we would have had exactly what we have in this Bill, except for the service commissions.

What has been pointed out to me, when I raised the question of whether the Bill gives any extra powers to these committees, is that their power resides, in fact, in the Constitution and in the Standing Orders of the two Houses. But had we established those joint committees there would have been no need for this Bill at all.

I am not alone in having pressed for parliamentary committees. I recognize the difficulties that would arise through the fact that we have so many other activities in Parliament, other select committees, Bills and the rest of it. I recognize that there are few people to go around in these committees and, indeed, that is why we went for joint committees with the House, because then there would be 36 people instead of 30.

First of all, I do not think that the committees are going to investigate the matters listed here, from all the organizations, each year. Clearly, they would be selective dealing with the different organizations and issues in these organizations. I think that there would be policy discussions of these parliamentary committees, and when particular problems arise, like the one that most people mentioned today, namely the paving of the Queen's Park Savannah, we would be able to address these issues through the parliamentary committees.

I think it is extremely important that we also consider how they would function in practice. This is why I wrote an amendment which suggests that they

be chaired by Independent Senators, because it would be quite easy for a government, having a majority on a committee and a chairmanship, to manipulate the activities of the committee in such a way that they avoid any criticism of the Government all together. So although the hon. Attorney General in presenting this Bill said that it is a means of checking on the Government, the Government has the resources, by way of its majority, to completely negate anything the committee might want to do.

If we have an Independent Senator, at least, we can, to some extent, address that issue. Because even though in the committee is a set-up in which the Government may have a majority, I think the chairman of a committee has a great deal of influence in how the committee operates. For example, we have a select committee on the Planning and Development of Land Bill, which has lapsed because the Chairman has not called any meetings. Sen. Prof. Kenny and myself have been accused of keeping back the work of this committee which, of course, is not correct. It is just that the meetings have not been called. So the chairman of a committee can decide how it runs. This is the present situation of parliamentary committees and I have no doubt that these would function in the same way.

I cannot see that one would be able to put into any Standing Orders any words that would avoid that problem. So I think it is important that we find a mechanism to ensure that the intent of the Bill is carried out, namely, that the committees function. One way of doing that is to have them chaired by Independent Senators who have no political axe to grind and no reason to protect either the Government or the Opposition, because the committee may be investigating something that a past government has done.

**7.00 p.m.**

On the subject of how these committees operate, Mr. President, I think it is extremely important. I have looked at how the parliamentary committees operate in the United Kingdom and one powerful tool in allowing them to exert influence is that the proceedings be televised. Now, they may have the power for allowing some of the proceedings to be carried out *in camera*, in confidence, but the general run of the procedures should be televised.

The Government owns two television stations and The Information Channel has a lot of time during which it does not broadcast anything at all, therefore there is no reason why the proceedings of Parliament on the whole, not just for these committees, should not be broadcast during that time. Anybody who wants to look at it, the general public, can do so. The schools can have programmes within

their school time when they might learn about how the country is being governed. So I think it is important that we address the problem in Parliament of the televising of parliamentary proceedings. The present situation and how this works, I think, is most unsatisfactory.

Now, I think also that one way the committees would be able to address their business more efficiently is if they could begin with an annual report from the organization which they have to look at. This would help them to decide which organizations they indeed should address. To me it is a disgrace that government departments do not issue annual reports. I mentioned last week, when we were talking about the Freedom of Information Bill, that the Research Division of the Ministry of Agriculture, Land and Marine Resources has not given a report since 1954 and it is the same thing with many other departments. So it is extremely important that an annual report be provided.

Now, I must say I take the point that when it comes to some of these organizations like the municipalities and the Tobago House of Assembly and so forth, perhaps the report should be coming straight to the Parliament and not to the Prime Minister, certainly in the case of the commissions. So that is another issue on which perhaps we might just spend a minute or two. I believe, Mr. President, that that deals with the committees which I fully support. Indeed, I was unhappy that the Bill places its emphasis not on the parliamentary committees for investigating Government departments on general matters but on the commissions. Indeed, the constitutional change would not have been needed had the commissions been omitted and, therefore, it would not have been called a Constitution (Amdt.) Bill; it would have been called a Parliamentary Committee Bill.

From the beginning, in seeing the Bill, I had suggested to the Attorney General that the commissions be left out and treated separately because I do accept that we have a problem with the commissions. Leave aside the Judicial and Legal Service Commission which, I agree with many of the speakers before, is a special case. Taken all in all just as it is, it may perhaps be useful to have Independent Senators, although they may be not democratic, it may be equally important to have a completely independent judiciary even though there may be the issue of accountability. However, with respect to the other service commissions clearly there is a problem.

I am not yet fully convinced that this is the way to address that problem and speakers before me, Sen. Marshall for example, have mentioned the problem of the functioning efficiency of these commissions themselves. Now, it is possible

that they may be assisted in increasing their efficiency if, by talking at some of these committee meetings, they are able to persuade the Government then to provide them with the resources that they may need and which they do not now have. So although I would not myself have chosen to go that route, and certainly I would not want to go that route with respect to the Judicial and Legal Service Commission, I certainly would not support this Bill if Sen. Daly's amendment is not accepted.

I would, perhaps, be prepared to risk the inclusion of the other service commissions with the expectation that in addressing those commissions the parliamentary committees would not lead us down the path of trying to influence, in some way, appointments being made by those commissions. So, I think I would be prepared to take that risk provided we have the provision that the committees are chaired by Independent Senators, which I think lessens the risk of manipulation by a particular political party—and I am not suggesting that any particular political party would do it—whichever one of the existing ones. There may be some in the future that may do that. So I certainly would not support the Bill if we do not get the amendment proposed by Sen. Daly.

I will be prepared to risk the inclusion of the other service commissions but I am not enthusiastic about it and I would rather that we had dealt with them in another way. I should also like to suggest that there be amendment—this is really not a big amendment. However, I am suggesting that since the committees should be set up within one month of the Parliament sitting, the next phrase seems to open it up again and suggest that the Parliament might decide that they are not set up until towards the end of the session. I think the Attorney General has disagreed with this. In fact, the legal draftsmen have drafted this amendment for me that we should have them set up at least within three months.

With respect to the difficulties within Parliament of not having enough time for these committees, I think that is a matter we seriously have to address. We have been sitting on a committee for the administration of Parliament and I might ask the Attorney General what has happened to that committee because that is one that has not met for a few months. This committee was addressing just that. If parliamentarians were given the resources to do the research they needed to do for preparing their presentations in Parliament, this would release some of the time that they now spend on other activities like sitting on these parliamentary committees. If we had research assistants who could help to prepare the material that we have to prepare, if we had secretaries in the Parliament, all of this would help.

If the present expenditure on salaries for Members of the House and the Senate, which comes to some $7 million a year—and we think it is really important for governance of the country that their incomes be increased so that they can become full-time parliamentarians—could be increased from $7 million to $20 million, I think the country will benefit in the long run. Certainly, the existing system that we use does not make for good governance by Parliament. I have repeatedly suggested that if political parties—three governments now I have made this suggestion—are afraid of the political consequences of increasing their own salaries, then increase them and let it come into effect in the next Parliament. [*Desk thumping*]

Why can this Government not do it now and let it come in after the elections? In that way they can go to the people with that as an issue, do they want increased salaries, and if the population says no then they do not do it. But why should we keep on avoiding this issue when everybody with whom I have spoken agrees that it is an important issue? Perhaps the number of representatives in the House should be increased from 36 to 72. I do not know. There are some constituencies that certainly have so small a number, for example in Tobago, that if they all were the size of the smallest, we would probably have 72 representatives. Then we would have enough people.

So why do we not decide that to govern the country properly there is a certain cost attached to it and this cost may not be $7 million, it may be $20 million or $14 million or what have you? If we do that then we do not have to have this problem of "Can we run parliamentary committees?" which I certainly think are important to our good governance in the country. I certainly think many of the problems that we have of not knowing whether there is corruption or not in the Government would be minimized if we could do some more investigation especially on issues which governments—not this Government, governments—seem reluctant to go into.

Now, it may be that there is no corruption there at all but the problem is that the population does not know. Sometimes issues are treated in such a way that one comes to the conclusion it is so illogical to assume that there is not cocoa in the sun, or whatever the phrase is, you assume that there is. There may not be, but in some cases governments are so inefficient that you have to assume it could not be possible for them to be so inefficient so there must be something else attached to the issue under discussion.

Mr. President, to summarize, I certainly am in support of parliamentary committees. I think we could arrange our affairs in such a way that we have some

time for them. Initially it probably would be the case that we would not be able to spend much time on them but I hope that the Government, this one or some future government, will recognize that parliamentarians need to be paid more so that they can perhaps be full-time or that we could have more parliamentarians in order to be able to govern the country properly. I certainly think it would be useful if the committees were chaired by Independent Senators. This would take away some of the criticism that perhaps the committees might be manipulated by a particular government.

I am not happy about the inclusion of service commissions but provided we can exclude the Judicial and Legal Service Commission I would be prepared to go along with the other commissions. Thank you, Sir. [*Desk thumping*]

**Sen. Diana Mahabir-Wyatt:** Mr. President, this has been one of the most interesting debates I have attended in 10 years or so in the Senate. I have thought about this Bill long and hard because it has been out for a little while. Before I came to the Senate today I had a whole file full of papers and many ideas on which I have changed my mind as a result of the debate. I really would like to thank the people who have contributed to this debate because I have learned a lot. Any day in which I have learned something I think is worthwhile, even if it is 7.00 o'clock at night and I started work at 6.00 this morning.

Like Sen. Prof. Spence I have, for many years, been in favour of joint select committees. I have the same problem that everybody else has, that I am not sure where we will get the time to do this and I really wish that this Government would consider the whole idea of full-time parliamentarians. I do not care if it costs $20 million or $30 million. We spend an awful lot of money on other stuff that we need far less than we need that. If we want good governance, if we want people in this country to start having some faith again in the government, I think that is one of the things we need to do.

Having said that, I also have to accept what Sen. Daly said in one of the most brilliant addresses I have ever heard him give, about the fact that in a country this size we cannot have a separation between Parliament and the Executive because we are too small. Quite apart from the other points, I think that all countries in the Caribbean suffer from the size of their countries. We just do not have enough people to go around and I really have serious doubts about the suitability of the Westminster system in countries this small, but I am not going to go into that tonight because otherwise we could be here until morning.

I would like to also thank Sen. Daly for his exegesis on the difference between the United Kingdom and Trinidad and Tobago when it comes to how the judicial system works and, in particular, the political basis for appointments in the United Kingdom of people within the judicial system. I had no idea that situation existed before and, as a result, he has completely convinced me that, without the amendment he has proposed, this Bill we have before us today just would not work. My mind really has been changed, Mr. President.

I do not come here with a written text from which I read and with my mind made up. I really do try to listen to what is going on in the debate and I was very impressed by what Sen. Dr. Mc Kenzie said, for example. It just had not occurred to me before that often, when we think of what Sen. Prof. Spence just referred to as "bobol" or corruption, or "cocoa in the sun", it could be that somebody has stuffed papers in their drawer and just forgotten about them. For 24 years something did not go out? I have, for a long time, and perhaps wrongly, perhaps judgementally—maybe like Sen. Daly I should start to be a bit more charitable—but I have been very "anti" the service commissions because of the gross inefficiency which is perceived, which I, too, perceive.

I have known instances of teachers who have abused children in schools and although everyone knows about it nothing gets done because the service commission responsible does nothing about it. In the police service we have reports of people being in prison for six years and still have not been disciplined by the Police Service Commission. Whether this can be remedied, as Sen. Marshall said, by giving them more resources—well maybe he is right—I do not know.

I find that the service commissions, when we have tried to get information from them, have completely ignored us. The arrogance and the indifference with which they have treated even the most courteous request have been very hard to bear. Maybe it is that the request is stuck in the back of a drawer with all those checks. However, to just give those people more money and more resources? Maybe it would work, I do not know. I have my doubts.

At any rate, Mr. President, the three issues that really concern me most when it comes to governance in this country at this period in our history are transparency, accountability and trust. If there is anything that will take our population closer to realization of those issues, I am for it. I think this Bill is a beginning. I do not think it is a very good Bill, quite frankly. I am sorry to say this to the Attorney General, but I think that, having taken out all the powers of the commissions of enquiry from the Bill, I do not know what is left. I mean, all they

can do is say, "Please come, drop by and see me one afternoon for a cup of tea and tell me what you have been doing and kindly give me a report every year".

I know I am exaggerating a bit, but the powers that they have in here—if one looks—are exactly the same as the ones they have in the amendments that we made to the Standing Orders. They are really nothing new.

**7.15 p.m.**

So, in the end, I find, as usual, I disagree with everybody. I agree with a lot of what everybody has said, but I do disagree with a number of things that they have said. I think we have to start somewhere with accountability and, while I accept Sen. Mc Kenzie's point, I would just like to see a beginning somewhere. Maybe this would not work at all, but I would like to see a try somewhere.

As I said already, I agree that it may work, to an extent, with Sen. Daly's amendment, because like everybody else, I do not want to see the Judicial and Legal Service Commission covered, I am too scared for that. But, I think that we have got to start somewhere. This is something that I am willing to risk. I am willing to try.

Thank you, Mr. President.

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. President, may I express my thanks to all of the hon. Senators who contributed to this debate. If I may say so, this has been a most interesting debate. It is a very serious issue and, therefore, Senators are entitled to have reservations if they did not fully see it the way the Government was trying to put it across.

Although the hour is late, and it may be that with some other arrangements we could have been debating the matter under some different circumstances, I am consoled in the fact that there is hope that Senators would look at this measure in the way that it could very well be a beginning. I think I have to concede that the system we have at the present time really is not a true system of the separation of powers. As a matter of fact, the Westminster system of government is not a true separation of powers. The constitutional writers have written on this and they have regarded it as a fused system. The American system is the true separation of powers. What has happened is that over the years it has been found that the Westminster system is really an elective dictatorship system; as a matter of fact, it has been branded such by constitutional writers.

Over the years, governments and parliaments have been finding ways and means in order to make the parliament more powerful to redress that imbalance

between the executive and the parliament. One of the most effective ways they have found that this has been done is through joint parliamentary committees. That is why if one picks up a volume of *The Parliamentarian*, month to month, one would see country after country introducing parliamentary committee reforms and it has been found from those countries, that that system, apart from saving resources, makes governments more accountable.

Now, I want to tell this Senate, through you Mr. President, that as an opposition member, I felt frustrated, I felt politically impotent to deal with some of the problems that confronted me as a Member of Parliament. For example, let us say that in the day as an opposition Member of Parliament, you had the situation with Airport Pride—because there was a situation with Airport Pride in the last administration—and, as an opposition Member I wanted information. Now everywhere I read, in *Erskine May*—the Bible of Parliament—it tells you that one of your most effective functions as a parliamentarian is to scrutinize the action of government. But how could I scrutinize the action of government properly if I do not have the information to scrutinize the action of government? And what were the things that I could have done? I could have filed a question; when I filed a question, I got an answer. If I asked a supplemental question, the answer would still be vague, and the minister would tell you that is the answer. I would file a motion on the adjournment; I would get a response. But there was no machinery in which I could go to the Parliament—apart from going to court and the court would not interfere in this—to be able to command the information. One of the things which attracted me to the committee system was the fact that there is a machinery in which, as a parliamentarian, I could try to get. I could use the machinery to get it, there is a coercive machinery, and if the Government does not agree I could file a minority report.

Now, I do not know, Mr. President, if I would get into trouble for saying this, but the fact that an Independent Senator can chair the parliamentary committees is a very good idea. I have told Sen. Prof. Spence that when we are dealing with the Standing Orders—because to implement this we have to have Standing Orders—that is something which I believe the Government should look at very seriously. I give the undertaking that we will look at it very seriously, because if the committee system has to be effective, then it seems to me that the committees—even if it is a committee in respect of service commissions, for example—should be chaired by an independent chairperson, and that person could be an Independent Senator.

So, Mr. President, this gives us an opportunity in this Parliament to be able to change the course of things. This has nothing to do with which government is in power. This has to do with empowering the people. Because at the present time, although we feel that we do not have the time and there are not enough resources given by the government, things would have to change. If you have legal institution, a machinery, in which Parliament must set up these committees, and the committees must function within a certain time, then obviously if a government does not provide resources for that and it is not functioning, it is a contempt of the Parliament. Although things have not worked well with some of the committees, I think that in respect of this matter we should not lose the opportunity of having a very important area of reform in respect of the Parliament.

I want to say that there are many matters which have been raised by Senators which, if I do not mention expressly, I will consider them also at the committee stage, but there are a few matters that I want to talk about, especially on the floor of the Senate. Sen. Daly—I thought that I was in another place in a contribution which, perhaps I have not heard for a long time—in a persuasive contribution gave the differences between the English system and our system. I do not think I want to go through that. I merely want to say that I recognize that, and I also recognize that in countries like South Africa and Canada—although you do not have the British system in the sense that you do not have a chancellor of the judiciary and you have a chief justice—you have the entire administration of justice subject to parliamentary scrutiny.

I feel that in this Bill there ought to be give and take. If it is that the Independent Senators have expressed serious reservations and, in particular, Sen. Daly and those who have expressed those kinds of reservations, I think I would want to concede that we can leave out the Judicial and Legal Service Commission and have the report merely from the Judicial and Legal Service Commission. It is something which I think we can justify in that the point has been made that the commission, even though there would not or may not be direct interference with the administration of justice, the impression can be given as such and it may be that we start it with that and if it is felt that one has to come back, one can come back and see whether the Parliament would agree after consultation, *et cetera*. But, in an effort to try to have the Bill passed so we can have a start of the system, I would be prepared to go with Sen. Daly's amendment.

There is another point, I think, in fairness to Sen. Dr. Mc Kenzie, which struck me when she spoke. It is correct that the Government of Trinidad and Tobago is

having discussions in respect of the Tobago House of Assembly amendments and I think that it may be considered not in good faith to go ahead with the Tobago House of Assembly at this time. Therefore, I think until that is resolved, I would take her point and not proceed with the Tobago House of Assembly.

In respect of the municipal corporation, I will deal with that at the committee stage because I think we can leave the municipal corporation, but I think the Tobago House of Assembly—there was a situation. I do not want to go into the history of the Tobago House of Assembly Bill and say what the Opposition did with that Bill, but there are discussions taking place, and I think a decision on this should await those discussions.

Mr. President, I think it was Sen. Dr. St. Cyr who made the point of the report to the Prime Minister and I think we can change that to the President, because the office is merely a conduit for the matters in order for them to reach the Parliament. So, I would be prepared to change that.

**Sen. Prof. Spence:** Is it appropriate if the President is designated to put a time limit? Because there is a problem that there may be inordinate delay and I would not want to do that with the President.

**Hon. R. L. Maharaj:** I think we can work that out and have a time limit, because when the report is submitted to the President, I think it should come to the Parliament within a certain time.

Mr. President, Sen. Prof. Spence and Sen. Mahabir-Wyatt really raised a most important point and that is, that if one sets up these committees, but one does not have appropriate rules to compel people to come and for there to be sanctions or whatever, one can have a committee trying to get information but the committee can be frustrated. What happened was that when the Bill originally had the powers of the commission of enquiry, the Opposition in the other place voiced concerns about it. What then happened was that the Government took a decision—because it was pointed out to me that under the Standing Orders in any event, the select committee would have the power to send for persons, but under the Bill we would have to make Standing Orders in order to implement this measure, it will have to come to both the House and the Senate and I think that we can look at those matters. I wish to give the assurance that the Government would be very interested in ensuring that the committees would not be frustrated by not being able to get persons to come to give the information.

Mr. President, although it has been construed in some of the contributions that this Bill amounted to an interference in the administration of justice, may I state,

for the record, that the Government of Trinidad and Tobago is committed to the independence of the Judiciary and to the rule of law.

**7.30 p.m.**

The Government in this Bill—and I have stated that when the concerns were raised about whether it needed a specified majority whether it was interfering with the independence of the Judiciary—did not only get internal advice, and I want to put it on record. The constitutional advice, the legal advice clearly showed that it was not, in our view, interfering with the independence of the Judiciary or the separation of powers. I want to put it on record without going into all the details with which the Government was faced, a situation in this matter in which the last administration took a decision in June of 1995.

I have a Cabinet Note here and it recognized that something had to be done to service commissions in order to reform the ways in which they did matters and the Cabinet decision of June, 1995 was to the effect that the service commissions' powers should be delegated to Ministers and that they should—and a report which was accepted said that Service Commission Reform and particularly delegation of authority from service commissions to line ministries, and that service commissions under the Constitution include the Judicial and Legal Service Commission.

When the Opposition could get up today and talk about the Bill interfering with justice and the service commissions, I merely want to put it on record that the Government had been faced with this problem. It did not decide to delegate the powers to ministries. It decided that the way we should deal with it—apart from other things which had been considered in a situation in which discussions are taking place between the Prime Minister and the Leader of the Opposition—is that it should be dealt with in a way, at least to start with, in trying to scrutinize the actions of service commissions.

Time may not permit me, but may I say that the same matter which they have opposed, and I am just trying to show how this partisan politics can affect people. The Cabinet, in a Note presented by the then Prime Minister—now Leader of the Opposition—on a decision on June 29 agreed that the commission should send annual reports to Parliament, and service commissions should revisit their mission to begin seeing themselves more as facilitator and coach of the Executive. This is in black and white. I have cuttings of statements of what the then Attorney General had said. We did not go that route.

There is a problem, and what we decided to do is to give the Parliament the power to scrutinize, to see whether they could get the information, but not to delegate their functions to Ministers. It may be, after we look at it—and it would provide some interface between the Parliament in which we would have Government representatives there—we would see if some of the problems involve resources, or the Government is not supplying the resources, but certainly we did not think that we could come to the Parliament on a matter like that to take away the powers of the service commissions in a very arbitrary way.

Mr. President, we know that I have not dealt with all the matters that have been raised and I ask Senators to forgive me if I have not dealt with them. I give the assurance that at the committee stage I would deal with and try to respond to them.

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.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed,* That clause 2 stand part of the Bill.

**Sen. Daly:** May I ask a question? Can you alter the Constitution by a simple majority?

**Mr. Maharaj:** Yes, you can. Section 54 provides for altering and it describes what altering is in the section and you either alter it if it needs a specified majority, or a simple majority and it has happened in the past.

**Sen. Daly:** I would not say anything else to disqualify myself.

**Mr. Maharaj:** The reason I put it on record, Sen. Daly.

*Question put and agreed to.*

*Clause 2 ordered to stand part of the Bill.*

*Clause 3.*

*Question proposed,* That clause 3 stand part of the Bill.

**Mr. Chairman:** There are several proposed amendments which were all circulated. To put some order into it, we would take it by the order on the draft Bill so we should deal firstly with 66(A)(1)(a).

**Sen. Prof. Spence:** Mr. Chairman, I assume you are working from the amended draft.

**Mr. Chairman:** Yes. The draft is the one with the word "AMENDED" written at the top which was circulated, I believe, by the office of the Attorney General.

**Sen. Prof. Spence:** Just to tell you it would be useful to put that on the record first so we would know what we are doing.

**Mr. Maharaj:** The Bill is marked "AMENDED" and it represents the Bill which was amended in the other place.

**Mr. Chairman:** We have the first proposed amendment by Sen. Dr. St. Cyr.

**Sen. Prof. Spence:** Mr. Chairman, I think I have one before that. It is just a question of limiting the time. It limits the time for appointment of a select committee to three months.

**Mr. Maharaj:** And the Government accepts that. Mr. Chairman, I beg to move that clause 3 be amended as follows:

"In proposed section 66A(1) delete the words "so soon thereafter" and insert the words "such time" and after the word "resolve" the words, "not being later than three months thereafter".

*Question on amendment put and agreed to.*

**Mr. Chairman:** We now have a proposed amendment by Sen. Dr. St. Cyr to 66A(1)(a).

A. In proposed section 66A(1)(a) delete the following:

"(B) The Tobago House of Assembly;

(C) Municipal Corporations;

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

(F) Service Commissions"

**Mr. Maharaj:** May I say I would support the amendment to delete the Tobago House of Assembly for the reasons that I have given. In respect of municipal corporations, I think that they expend moneys and they should be accountable to Parliament. Statutory authorities and service commissions with the exception that I said, we would deal with Sen. Daly's amendment.

**Sen. Dr. St. Cyr:** Mr. Chairman, the issue of service commissions other than the Judicial and Legal Service Commission gives a measure of insulation of the public service from political interference and that is the underlying principle there. Are we violating that by including them?

**Mr. Maharaj:** Mr. Chairman, the position is, we are not interfering if it is purely scrutiny in respect of the administration because it is the Parliament getting information on their administration and we are not interfering. As a matter of fact, we are merely getting the people through Parliament to get the information. We are not telling them they cannot do what they want to do. It expressly says it is for scrutinizing.

**Sen. Daly:** If it is as simple as that, Mr. Chairman, can we not say that is the purpose? I notice in many of the bills now we have a preamble which has a kind of a mission statement; the objective of the Act is this, that, or the other. Can we say what is the purpose?

**Mr. Maharaj:** The Explanatory Note says:

> "The Bill would empower Parliament to appoint Joint Select Committees to report to the House…on the administration and manner of exercise of powers and methods of functioning..."

And it would empower special advisors to be appointed. If we want to put in the words "to scrutinize" I do not have a problem with that. I thought it was quite clear. It says:

> "The Bill, therefore, gives effect to the principles of accountability, transparency, openness and access to information held by the administrative sectors of the State."

**Sen. Prof. Ramchand:** I really do not understand why the Freedom of Information Bill plus Parliament's power to set up a committee to investigate if necessary would not do.

**Mr. Maharaj:** The Freedom of Information Bill would give an individual, but Parliament has a duty. A Member of Parliament may want to find out information,

or the committee of Parliament may want to find out information with respect to how the service commissions function. Therefore, by having this information, Parliament would know, the people's representative would know what the problems are in the service commission. So it is a way of getting the information why things are not functioning properly and then that would be a report which comes to Parliament for public consumption. If the Teaching Service Commission happens not to be functioning properly and the relevant ministry is not taking steps to provide for the confirmation—I am just saying that—then that would be the reason why, as the editorial in the *Express* 1995 said, you have so many people acting. And that will come head on. The committee would investigate it, look at the facts, *et cetera*, and bring it to the Parliament. But the committee has no power of sanction to tell them that they cannot do this or they cannot do that, or to prevent them from doing their work. It cannot even instruct them as to how to perform their functions.

**7.45 p.m.**

**Sen. Prof. Ramchand:** And there is no other device for doing what this select committee would have done?

**Mr. Maharaj:** One would think that a parliamentary committee which represents the people—if you go to appoint another body, you may have to have somebody to scrutinize that body. I think we must understand that our function as parliamentarians, our most important function, especially if one is not in Government, is to scrutinize governmental action, and if the Parliament cannot scrutinize governmental action, it is not performing its function. So, what has happened is that over the years, because of the absence of the machinery, parliamentarians have been unable to scrutinize governmental action and that is why this setup is used.

If you have an Ombudsman, you will probably still want to have somebody to monitor that to see whether that is being performed properly. That is why, as I said, throughout the Commonwealth, this is what has been used. Even though there are a few systems—in America, for example, the committees system has gone a different route. Even before you actually have to make a decision, you have to go to the committee to get approval. This is not that. You cannot prevent them from doing things; you cannot stop them; you cannot change that decision; but you get information; because one of the most important aspects of democracy is to get information and expose, if it is necessary, to force them into action.

**Sen. Prof. Spence:** Mr. Chairman, could I just say that one has to recognize that sometimes, one is also checking on the activities of government ministries. I am aware of a situation in which there are a number of senior officers who are acting in the Ministry—and, quite frankly, I think the Minister likes it so—and those officers are afraid to give impartial advice because they may not get appointed. They feel, rightly or wrongly, that the Minister may have some influence in their appointments. So, I suggest that it is not only the commissions that one is checking on there, but perhaps checking on what is going on at the Ministry as well.

**Mr. Maharaj:** Mr. Chairman, that is a very important point because the committee would have the power to even question the ministries in relation to what is happening with the service commission and also question the ministries in relation to matters unrelated to the service commission.

**Sen. Daly:** Is the committee going to be able to question whether the service commission has validly performed a function?

**Mr. Maharaj:** No.

**Sen. Daly:** Where is the prohibition against that? You see, I will tell you what is my concern, why I raised this thing about altering the Constitution which is another reason why they should not have us doing this under these time constraints.

Section 129 is alterable by a simple majority—is it not? Section 129 is not one of those protected sections. Is that right? I mean, we have been at this now for 10 hours, amending the Constitution after 10 hours on the trot.

**Mr. Maharaj:** A simple majority.

**Sen. Daly:** A simple majority can alter section 129. Now, if that is right, and section 129 does not contain a prohibition against the committee enquiring into the validity of what the service commission has done, then what prevents the committee from saying that this section, at least impliedly, is at variance with the prohibition against validity?

**Mr. Maharaj:** But the committee merely has to report to the House on the administration.

**Sen. Daly:** But it might report that in its opinion, the service commission has not validly performed its function. I know it is merely a report. Then, we will have an amazing situation where the court cannot do something but a parliamentary committee can do it. I do not mean to cross you, Attorney General.

Again, I am thinking about this after 10 hours. I think we need to do something in section 129 to make it plain, to put it beyond doubt that the committees cannot enquire into the validity. I asked the question about section 54 because these are difficult problems. I do not want the committee, even arguably, to be able to do something that the court cannot do.

**Mr. Maharaj:** Sen. Daly, I do not think it arises, but if you feel you want to have it, we have looked at it and I do not think it arises, but in order to have give and take, if you feel you want it expressly stated, I would have to consider.

**Sen. Daly:** Well, I feel we have to amend section 129(2) to say:

> "…may not be enquired into any court or by any committee appointed under section 66A."

Otherwise we have a real kind of funny situation there.

**Sen. Prof. Spence:** Mr. Chairman, I support that. I think it is a simple amendment that we can do at the end.

**Sen. Daly:** We have to amend section 129(2) to say:

> "…may not be enquired into by any court or any committee established under 66A."

**Mr. Maharaj:** Is that "enquired into", or "the validity of".

**Sen. Daly:** Yes. You said it is not meant for that purpose, so let us make it plain.

**Sen. Prof. Ramchand:** Mr. Chairman, I want to support that because, in my contribution, I made a specific point of saying that I hope section 129 remains intact, so if legal opinion is that it may not be intact, I would like to support Sen. Daly's suggestion that we do put in an amendment there to make it absolutely clear.

**Mr. Maharaj:** Mr. Chairman, I do not have a problem. All I am saying is, in our view, it is very clear. If the Independent Senators feel that there is a legal problem and they want the amendment to make it expressly clear, I do not have a problem. I do not want to produce to you the legal opinions I have, but it is quite clear to us that this is the position. But, if Independent Senators have a problem with it, I have no problem in putting it.

**Sen. Prof. Spence:** Mr. Chairman, it is a simple amendment. If the Attorney General is in agreement, perhaps it could be drafted.

**Sen. Daly:** I am suggesting in section 129 put the words:

"or by any committee established under 66A."

**Mr. Maharaj:** What do you want to amend?

**Sen. Daly:** Section 129(3).

**Mr. Maharaj:** But why do we want to amend that section? Why do we not make it clear here?

**Sen. Daly:** I do not mind. I cannot draft after 10 hours of looking at this. I really understand, for the first time, why lawyers make so much money, now that I have seen how law is made. It is designed for mistakes from poor drafting.

**Sen. Prof. Spence:** Somehow, I beg to agree.

**Mr. Maharaj:** While it is drafted, could we go on?

**Sen. Daly:** Yes, certainly.

**Sen. Prof. Spence:** Mr. Chairman, before we go any further, I would like to make a suggestion for an amendment to (e). I am sorry that I did not bring it up earlier but the fact is that I was under a certain amount of pressure to try to get through in a short space of time.

**Mr. Chairman:** Is it (e), meaning the proposed amendment?

**Sen. Prof. Spence:** No. I am sorry. We have not finished yet.

**Mr. Chairman:** No, we have not. Because this has (b), (c), (e) and (f), then there is a (B) and a (C) to it. Now, we went down to service commissions but in respect of municipal corporations, enterprises owned and controlled by and on behalf of the state, we have not come to any decision or conclusion on those.

**Sen. Daly:** We had slipped into service commissions.

**Mr. Chairman:** We went straight to (f) without considering (c) and (e).

**Sen. Daly:** Sir, could we formally defer (f) while the draftspeople are working?

**Mr. Chairman:** Yes. It is agreed that we defer (f). Let us go back to (c). We did not touch municipal corporations. Sen. Dr. St. Cyr.

**Sen. Dr. St. Cyr:** Mr. Chairman, my difficulty is that the municipal corporations are democratically elected bodies and I wondered whether we would be working at cross purposes to allow them to be investigated or scrutinized by these parliamentary committees. So that as it were, the members of the

corporations are reporting both to their constituents and to the parliamentary committee.

**Sen. Kuei Tung:** Senator, as the Attorney General says, we have to amend the Standing Orders to allow these committees to operate. I will give an example and maybe you will understand what I am saying. I do not think that the people who will be called to account in terms of the municipal corporations will be necessarily the councillors and I will give you an example.

When the Public Accounts Committee was investigating, as we asked, the question of the Maritime transaction, I had never been called. Who were called were the public servants to account for policy and how they implemented policy, so you could see all the documents but the public servants would be the ones.

So, I would imagine that in the case of the municipal corporations, you will not call the councillors here. I mean, that would not be fair to them. You would call instead the Chief Executive Officer and the staff to ask what decisions were made and how they were implemented and stuff like that and, again, without making a judgement, a parliamentary committee, in my view, would merely be gathering the information to satisfy itself and prepare a report that says that the thing was done properly or not done properly, but they cannot make a judgement. And I do not see the parliamentary committee sitting in judgement of them like a court. That is why I could understand the Attorney General's comment with respect to that section 129, because this would not be a court as such. As we keep saying, this will be to scrutinize and ensure.

One of the reasons I want to pursue this line, to end by saying one thing. I am very much in favour of this type of parliamentary committee because I feel that Parliament approves public funding and you have to be satisfied that the funding has been spent in accordance with your wishes. That is the basis and may be the common thread that is running through all these things.

**Sen. Dr. St. Cyr:** Some of those comments have me gravely concerned because, from reports, I glean that the present executive officers in a number of corporations do not report to the elected members properly, but report directly to the Minister and I really think we need to sort this out.

**Sen. Prof. Ramchand:** Mr. Chairman, on the municipal corporations, I wonder if there is a possibility that this could be used to make conflict between central government and local government, or whether there might even be a perception that this could be so.

**Mr. Maharaj:** Mr. Chairman, let me see if I could take this. It depends also on: what do we want? Let us say, for example, a corporation—whichever corporation—was involved in this alleged incident about the paving of the Savannah. At the present time, what happens? Nothing. You depend on a statement from the Minister, or a motion is filed and you get an answer.

**8.00 p.m.**

If you had a committee—either the paving of the Savannah or the flooding that was raised today—the committee could have called the persons involved to find out who did what, *et cetera*, and have a report. I am sure in the Standing Orders that we are formulating, there will be a report. You do not have to wait three months to get a report. You could sit in emergency, call the people, send for the papers or send for the books. You will have it there and you could present a report, and it is public.

**Sen. Daly:** What are the formalities in the relationship between the municipal corporations and the central government? Do you assign funds to them through this budgetary—

**Sen. Kuei Tung:** Through the budget.

**Sen. Daly:** When they get their funds, does the central government have any other formal control over them?

**Sen. Kuei Tung:** The question of disbursement of public funds has some very clear rules and regulations under both the Constitution and the Exchequer and Audit Act and so forth. It does not matter, to be quite frank, that is why I answered the question in the other place about it. There are always rules and regulations that deal with the disbursement and accountability of funds.

Part of the problem has been that some of these municipal corporations and, maybe, even the Tobago House of Assembly, the rules tend to be vague and people interpret the absence of rules. Because there is absolutely no Exchequer and Audit Act that regulates, in detail, the municipal corporations and the Tobago House of Assembly. In the case of the Tobago House of Assembly, Act No. 40 says that there will be special financial rules and regulations. It does not mean that in the absence of that, there are no finance rules and regulations, similarly under the Municipal Corporations Act. I would imagine, for argument sake, if a municipal corporation—if the corporation as a corporation, for example the Port of Spain Corporation—had given a contract to pave the Savannah under "questionable causes", there is absolutely no way you can get any parliamentary

accountability or any parliamentary scrutiny, because it just floats off and becomes something—You rely upon other things. For example, after the fact, you may have the Auditor General reporting that procedures were adequate or that she is satisfied that the bills and the vouchers—that tends to be fairly long after the fact. Therefore you are getting accountability kicking in long afterwards.

As a matter of fact, one of the big problems with matters like that is sometimes these corporation accounts come here 10 years later. By which case parliamentary committees, the Public Accounts Committee and so forth, really become useless—maybe not useless, but reduced to merely—I do not know. I have never served on a Public Accounts Committee so I really do not know. I do not know how they feel. I would feel odd if I got a 1981 account—which I have seen. I have seen it done recently.

I have presented Siparia and Penal Corporations for 1992 and 1993. I do not know what you do with it. When it comes to me and I look at it, I see all sorts of funny things being said, but there is absolutely nothing you can do. The period has gone and they have changed administration. I would imagine that this form of scrutiny—I want to use the Attorney General's words forcefully—gives you a little better hold. At least you can then say we, as a Parliament, can address the way the funds that you approve—remember we approve the budget, the Appropriation Bill, and you want to make sure that money is being spent in the best interest of the public.

**Mr. Maharaj:** In the way the Parliament intended.

**Sen. Kuei Tung:** In the way the Parliament intended.

**Sen. Dr. St. Cyr:** One final comment, Sir. I am bothered by the trend towards centralization. I think, in the winding up, we are reminded that there is substantial executive control over the Parliament. So what I am seeing is the municipal corporations which represent a trend towards decentralization being brought back into the direct—

*Power failure.*

*[Off the record discussions]*

**Mr. Chairman:** Hon. Senators, for security reasons, we have been advised to vacate the building as soon as possible.

*Motion made and question proposed,* That the honourable Senate do now adjourn to Saturday, September 04, 1999 at 10.30 a.m**.** *[Hon. B. Kuei Tung]*

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 8.26 p.m.*