SENATE

Tuesday, February 02, 2010

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Dr. Jennifer Jones Kernahan who is ill.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MR. KIRT CONRAD WALROND

WHEREAS Senator Dr. Jennifer Jones Kernahan is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, 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, KIRT CONRAD WALROND, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Dr. Jennifer Jones Kernahan.

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 1st day of February, 2010."

OATH OF ALLEGIANCE

Sen. Kirt Conrad Walrond took and subscribed the Oath of Allegiance as required by law.

SECURITIES BILL
JOINT SELECT COMMITTEE
(Appointment to)

Mr. President: Hon. Senators, I have received the following correspondence from the hon. Barendra Sinanan, Speaker of the House of Representatives:

"Hon. President,

Appointment of a Joint Select Committee

At a sitting held on Friday, January 29, 2010, the House of Representatives agreed to the following resolution:

Resolved:

That a Bill entitled, an Act to provide protection to investors from unfair, improper or fraudulent practices, foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to cooperate with other jurisdictions in the development of fair and efficient capital markets and for other related matters be referred to a Joint Select Committee comprising of six Members of the House together with an equal number from the Senate and that this Committee be empowered to discuss the general principles and merits of the Bill along with its details and be mandated to report by April 01, 2010.

Accordingly, I respectfully request that you cause this matter to be placed before the Senate at the earliest convenience.

Respectfully

The honourable Barendra Sinanan

MP, Speaker of the House

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, at the appropriate time in today's sitting, I propose to move a Motion in response to the resolution passed in the House of Representatives.

PAPERS LAID

1. Annual report of the Board of Film Censors for the period 2006—2008. [*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]

2. Annual report of the Protective Services Compensation Committee for the period January 01, 2007 to December 31, 2008. [*The Minister of National Security (Sen. The Hon. Martin Joseph)*]

3. Annual report of the Trinidad and Tobago Heritage and Stabilisation Fund for the year ended September 30, 2009. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Land Settlement Agency for the year ended December 31, 2001. [*Sen. The Hon. M. Browne*]

5. Audited financial statements of the Caribbean Airlines Limited for the financial year ended December 31, 2007. [*Sen. The Hon. M. Browne*]

6. Audited financial statements of the Caribbean Airlines Limited for the financial year ended December 31, 2008. [*Sen. The Hon. M. Browne*]

7. Financial Obligations Regulations, 2010. [*Sen. The Hon. M. Browne*]

Financial Obligations Regulations 2010

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, may I also advise that the Statutory Instruments Committee considered the Financial Obligations Regulations, 2010 and found that there was nothing to which the attention of the Senate should be specially drawn. The Minutes of the Committee were circulated to Senators.

SECURITIES BILL
JOINT SELECT COMMITTEE
(Appointment to)

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move the following Motion:

Be it resolved that the Senate appoint an equal number of members as that of the House of Representatives to a Joint Select Committee to consider a Bill entitled: An Act to provide protection to investors from unfair, improper or fraudulent practices, foster fair and efficient capital markets and confidence in

the capital markets in Trinidad and Tobago and to reduce systemic risk; to cooperate with other jurisdictions in the development of fair and efficient capital markets and for other related matters be referred to a Joint Select Committee comprising of six Members of the House of Representatives together with an equal number from the Senate and that this Committee be empowered to discuss the general principles and merits of the Bill along with its details and be mandated to report by April 01, 2010.

Agreed to.

Sen. The Hon. C. Enill: Mr. President, I beg to move the following Motion:

Be it resolved that the Senate appoint the following six Senators to serve with an equal number from the House of Representatives on a Joint Select Committee to consider a Bill entitled: An Act to provide protection to investors from unfair, improper or fraudulent practices; foster fair and efficient capital markets and confidence in the capital markets in Trinidad and Tobago and to reduce systemic risk; to co-operate with other jurisdictions in the development of fair and efficient capital markets and for other related matters.

The Members are:

Mr. Conrad Enill

Mr. John Jeremie SC

Mr. Mariano Browne

Mr. Wade Mark

Dr. Sharon-ann Gopaul-McNicol

Mr. Subhas Ramkhelawan

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Dr. Adesh Nanan:

Emission Reduction
(Record to Date)

8. Could the hon. Minister of Planning, Housing and the Environment indicate the record to date of emission reduction credits from 2002 to present on Government projects for either electricity savings or natural gas savings?

Vide end of sitting for written answer.

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, I beg to move,

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

The Supreme Court of Judicature (Amdt.) Bill, 2010, seeks to amend on the recommendation of the Hon. Chief Justice, the Supreme Court of Judicature Act, Chap. 4:01 to increase the number of High Court judges from 23 to 36 and the number of judges of the Court of Appeal from nine to 12. This increase is the largest in numerical and percentage terms to the Judiciary in this country since Independence.

I propose to refer to the Supreme Court of Judicature Act as the Act in my presentation. The Bill will accomplish the increase by amending sections 5(1) and 6(1) of the Act in relation to High Court judges and Justices of Appeal, respectively. These increases in the number of sitting High Court judges and Justices of Appeal of the Supreme Court of the Republic of Trinidad and Tobago reflect the Government's ongoing commitment to the ideals of Vision 2020. Although the increases in the number of judges in the Supreme Court would increase substantially the Government's annual recurrent expenditure, we on this side believe that it is critical that the Judiciary be given the necessary human resources and infrastructure to effectively reduce the backlog of cases in both the criminal and civil jurisdictions.

1.45 p.m.

The Government recognizes and would not shrink from its mandate to provide tangible relief to the citizens of this country and is committed to pursuing objectives that would not only enhance the quality of life of its citizens now, but also for future generations.

As a consequence, this Government is actually taking the necessary action to deal further with the generally accepted increase in crime and the criminal population and lawless elements in the society. We on this side recognize that delays in the justice system result in injustice and indirectly weaken respect for the rule of law.

Since independence, the number of judges in the Supreme Court has been increased over the years. Section 5(1) of the Act as it stands today provides that

there shall be no more than 23 judges of the High Court other than the Chief Justice. This number has progressively increased over the years as follows:

in 1964, the number was increased to 10 from between six and eight;

in 1968, that number was increased to 11;

in 1979, the number was increased to 12;

in 1980, 15;

in 1991, 16;

in 1996, there was a substantial increase to 20; and

in 2003, to 23.

The 2003 increase was made necessary by the increase in work caused by a direct consequence of the introduction of the Family Court Pilot Project.

Section 6(1) of the Act provides that the judges of the Court of Appeal shall be the Chief Justice, who shall be the President of the Court, and nine other Justices of Appeal. This number has increased over the years as follows:

in 1968 to four;

in 1979 to six;

in 1996 to nine.

Since 1996, however, the Judicial and Legal Services Commission has made a significant number of temporary appointments to the High Court Bench, as a result of which the Judiciary has been able to draw on a reservoir of talented and responsible attorneys at law who are willing to serve for limited periods of six months or sometimes more, but not on a permanent basis. Some of those who were appointed to act have subsequently offered themselves for permanent appointment and have been so appointed by the Judicial and Legal Service Commission. Since then, the Commission has continued to make a number of temporary appointments.

At present, there are 29 High Court judges, 23 of whom are permanent and six of whom are temporary. This, however, is inadequate for various reasons. Further, it is obviously more desirable to have a Bench that is fully staffed by permanent judges, but this can only be achieved at present by either increasing the maximum number of High Court judges fixed by the Act or by reducing the number of court sittings.

The dramatic increase in the court's workload over the last few years makes the second option of reducing the number of court sittings wholly inappropriate as it would further exacerbate the current situation that exists in the High Court.

In September 2005, the Judiciary implemented the new Civil Proceedings Rules. These new rules have marked a significant step in the administration of justice in Trinidad and Tobago. The rules represent an important departure from the manner in which civil litigation was undertaken in the past. The rules are designed to ensure that all parties are placed on an equal footing before the courts; that expenses are minimized and that cases are dealt with expeditiously. The benefits of the new rules are undeniable and litigants before the court can now attest to this. However, the rules have had a deleterious impact on the use of scarce resources in the Judiciary.

Since the introduction of the new rules, there has been a steady increase in the number of matters filed in each law term. These numbers have moved from 2,519 to 4,632 in the five short years between 2005 and today. That is almost 100 per cent increase.

Mr. President, a total of 15,725 new civil matters have been filed. During the same period 2005/2006 to 2008/2009 a total of 8,351 matters have been determined. There are still 7,374 matters to be determined. Despite these figures, however, performance under the new rules still surpasses that under the old. An increase in the number of High Court judges from 23 to 36 is drastic, but it is required to properly respond to the trends now to be seen in the civil area alone.

Since 2005, an examination of the requirement for additional High Court judges to facilitate the smooth operation of the new Civil Proceedings Rules has revealed that it has become necessary to create two additional offices of High Court Judge to deal with the substantial backlog of matters before the court under the old rules. The appointment of these additional judges is intended to alleviate the heavy workload with which judges already have to deal on a day-to-day basis and would redound to the benefit of citizens who patiently await justice in the overburdened court system.

The appointment of additional judges is also required for the Family Court. You may recall the launching of the now very successful Family Court Pilot Project, the legal basis of which is the Family Proceedings Act, No. 3 of 2004. In

2006, Cabinet approved a one-year extension of the project to facilitate, inter alia, preparation for the expansion of the Family Court throughout the country, initially to Arima and San Fernando. Since then, other extensions have been approved. It is expected that such an expansion would require at least six additional High Court judges for those two new courts alone.

In the criminal justice area, the degree and severity of the country's crime problem has taken a serious toll on the resources of the criminal court. The inadequacy of the current complement of judges therefore applies with perhaps as much virulence in the criminal jurisdiction as is evident by the increasing number of these matters in the criminal courts.

An expanded criminal court system must therefore be one of the steps Government must take to significantly combat crime. There are other steps, but this must be one of the foundational steps that the Government has to take.

An increase in judges in the criminal courts would, it is hoped, lead to the expeditious disposal of the backlog of criminal matters that now cripple the courts and to the reduction of criminal elements on the streets and in the pretrial system, as swifter justice is meted out to those who would engage in criminal and unlawful behaviour. It is well known that a significant proportion of criminal acts committed in this country are perpetrated by repeat offenders and persons with serious criminal matters pending before the courts who are out on bail.

The Government is committed to adopting measures to promote the rule of law, equity and justice to all citizens and to encourage public confidence in and adherence to the rule of law.

The expected rise in the completion rate of civil and criminal matters in the High Court that would occur due to an increase in the number of High Court judges would of necessity also require an increase in the number of Court of Appeal judges to deal in an expeditious manner with the consequential upsurge in appellate activity which will, as a consequence, automatically be generated.

In the Court of Appeal, since 2004/2005, the number of appeals filed has steadily increased from 575, reaching a total of 617 during the 2008/2009 law term. The number of appeals from the High Court increased from 215 to 352 during the period while those from the Magistrates' Court declined marginally from 360 to 265.

The number of appeals disposed of increased from 249 during the 2004/2005 law term to 430 during the 2008/2009 law term. That is an increase in itself of almost 100 per cent in a short four-year period. That relates to appeals disposed

of, so that our Court of Appeal judges are obviously working. This meant that for each year there were many appeals, however, which were not disposed of. The cumulative total of such appeals now outstanding stands at 986.

At a disposal rate of 400 appeals a year, it will take approximately seven years to deal with those matters alone. At present the sanctioned strength of the Court of Appeal is 10; made up of nine judges and the Chief Justice. Currently, three judges form the quorum for the hearing of appeal from the High Court. The Judiciary, therefore, needs an increase in the sanctioned strength by three appeal judges so that scheduling can accommodate alternate, simultaneous sittings of the court and the resultant speedier completion of judgments. An increase of this nature would also allow more sittings of the court in San Fernando and in Tobago.

The Government has, therefore, agreed to increase the number of Court of Appeal judges from a total of nine to 10; that is a one-third increase. It is expected that the increase in the number of judges in the Supreme Court would be complemented by an increase in the number of support staff.

Separate and apart from the administrative measures, the Bill is part of a package of legislative measures being proposed by this Government to implement needed reforms to the criminal justice system. These measures are intended to improve the ability of the State to deal with the criminal activity now taking place throughout this country. In fact, those who abuse technicalities and shun substance have now managed to shift balance between the rights of the individual and the rights of the society at large, and the Government properly foresaw the need for new legislative and administrative measures to recalibrate the balance of rights.

2.00 p.m.

Some of the pieces of legislation which the Government passed in recent times to do precisely this, includes the Evidence (Amdt.) Bill and the reforms to the Administration of Justice Act, which came in the last term.

Over the past five years, the Government has made it a priority to introduce numerous reforms throughout the criminal justice system. These range from the breathalyzer and DNA legislation, to assist the police in the fight against crime, to improved procedures to conduct preliminary enquiries. I have told the Senate that another important piece of legislation is coming to do away with preliminary enquiries in certain matters; all together, the admissibility of hearsay evidence in documentary form in criminal proceedings, including preliminary enquiries.

We also amended the Bail Act, to make the offences of kidnapping for ransom or knowingly negotiating to obtain a ransom under the Kidnapping Act, Chap. 11:26, non-bailable offences for a period of 60 days. We also made certain violent offences non-bailable offences, such as possession of a firearm or ammunition without licence; trafficking a dangerous drug, or being in possession of a dangerous drug for the purposes of trafficking under the Dangerous Drugs Act, Chap. 11:25; kidnapping at common law; and assault occasioning actual bodily harm. These are just a few of the measures that we have introduced over the years to combat the rising incidence of crime.

In the coming year, when the next legislative agenda is read, the Parliament will be apprised of further steps we intend to take, to continue to attack the scourge of violent crime in the country. Today, we on this side see the need for even wider-ranging reform of the criminal justice system, if we are to put a halt to those who would trample the law without consequence.

I wish to indicate that legislation will soon be introduced to expand the powers of the Director of Public Prosecutions to indict a person and move directly to the High Court in respect of certain serious offences. We have just amended the Evidence Act, to provide that the contents of a previous consistent statement made by a person are admissible in criminal proceedings, subject to certain safeguards and to make other provisions in relation to the law of evidence.

Similarly, in the other place, there is a Bill which we shall soon debate to amend the Criminal Procedure Act, Chap. 12:02, to introduce two significant changes to the conduct of criminal trials in the High Court. The first change would allow for some criminal trials in the High Court to be conducted without a jury in certain circumstances.

Mr. President, on an initiative from the Ministry of the Attorney General, a special criminal court committee was developed and appointed to expedite the process for dealing with serious criminal offences such as kidnapping, firearms, narcotics and other related drug offences. The Attorney General has accepted the recommendations of that committee, in respect of introducing a pilot special criminal court designed to deal with all kidnapping, firearms or narcotic trafficking offences. The proposed introduction of this court to deal with major criminal prosecutions will also require additional judicial resources.

Finally, public confidence in our system of criminal justice is being eroded daily and the system has been in need of reform for a long time. Legislative measures are necessary now, in order to strengthen the confidence of the public in the justice system in general and particularly at this time.

This Bill seeks to strengthen the rule of law and our justice system in general. I call upon hon. Senators to support the Bill in the interest of the country.

Mr. President, against the backdrop of the foregoing, the Government seeks the support of hon. Senators in making the proposed amendments to the Supreme Court of Judicature Act, by way of the amendments proposed in clauses 3 and 4 of the Supreme Court of Judicature (Amdt.) Bill, 2010, which is now before us. Mr. President, with those few words, I beg to move.

Question proposed.

Sen. Wade Mark: Thank you very much, Mr. President. It has been said that an independent, competent, efficient and effective Judiciary is indispensable for a flourishing democracy.

Judges constitute the virtual guardians of the rule of law and they are in fact the protectors of the constitutional rights of each citizen, as well as the integrity of the Constitution, according to a statement made by the Lord Chief Justice of England, Justice Igor Judge. According to the Constitution of the Republic of Trinidad and Tobago, Chapter 7, entitled "The Judicature", section 99 reads as follows.

"There shall be a Supreme Court of Judicature for Trinidad and Tobago…"

Sen. Jeremie SC: Section what?

Sen. W. Mark: Section 99 of the Republican Constitution reads as follows:

> "There shall be a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice…and a Court of Appeal with such jurisdiction and powers as are conferred on those Courts respectively by this Constitution or any other law."

The Bill before us, the Supreme Court of Judicature (Amdt.) Bill, 2010, seeks to amend section 5(1) of the Supreme Court of Judicature Act, to increase the number of puisne judges or what is called High Court judges, from 23 to 36. This cannot be an unwelcome development, having regard to the state of the criminal justice system in Trinidad and Tobago. The question however is: Why has it taken the Government so long? The last time I recalled, based on the research conducted, we had any increases in the number of High Court judges and not even the Court of Appeal judges, was in 2003. It has taken this Government almost six and one-half years to recognize that there is need to really increase the number of

High Court judges, as well as the number of Court of Appeal judges. That has certainly had a very negative impact on the access to justice and the delivery of justice in the country by our judges, due to no fault of theirs. The Executive fiddled while Trinidad and Tobago burnt.

The crime situation, as the hon. Attorney General has indicated, has become so uncontrollable, the Government has now been forced to recognize the importance of increasing the number of High Court judges from 23 to 36. The Attorney General has indicated that it is all part of the Government's effort to reduce the backlog and to reduce the delays in the system of justice at the level of the courts. It is also, as was indicated to us, an attempt by the Government to confront the crime scourge, because from the data presented, you would have noted that the criminal cases have escalated in this country by leaps and bounds. Therefore, it is a welcome development when the judges of our High Courts can be increased. We would want to say something as we proceed, on the issue of the appointment of temporary judges, as was alluded to by the Attorney General in his presentation.

The Government, for years, I do not know for what reason—there was a Bill, as you would recall, in this Parliament, which lapsed in the last Parliament of 2002—2007, which was supposed to have increased the number of judges by about three or six. The Bill was never piloted or presented by our Attorney General. I do not know if it had to do with the war that was taking place between the former Chief Justice and the then Executive and former Attorney General. Whatever the reason, the fact of the matter is that there was in fact a piece of legislation in this Parliament, to increase the number of High Court judges from 23 to about 28, or something like that. There is no explanation, because the crime situation was out of control, as it is out of control today. Why did the hon. Attorney General and the Executive not take action to improve the number of judges sitting on the Bench at the level of the High Court? I guess only the hon. Attorney General could answer that, in due course.

We know for a fact there have been excessive delays in the administration of justice. These delays serve to undermine the criminal justice in Trinidad and Tobago. Excessive delays also frustrate the criminal law and undermine the sentences of the courts of this Republic.

I want to just carry you back to the Gurley Report, which was commissioned by the PNM back in 1991, I think. The Gurley Report reported in July of 1992, that there was need to increase the number of judges in our country. That was in 1992.

It took some time. When we talk about the courts and the Judiciary, we cannot separate the Magistracy from the Judiciary, because they are two arms on the same body, in terms of carrying out justice in this country.

2.15 p.m.

Mr. President, we believe that the Judiciary which is a very important arm of the State as you are well aware, consists at this time of the Supreme Court of Judicature and the Magistracy in this country. Therefore, it is important for us to ensure that independence, integrity and justice constitute the hallmark of the system and the Judiciary.

As the hon. Attorney General has indicated, there are now 23 permanent judges on the High Court Bench of this country and there are some six temporary judges constituting a whole of 29 High Court judges in the country. As it deals with the Court of Appeal, we are happy also that the Government has seen the wisdom to increase the number of Court of Appeal judges from nine to 12. It will go a long way in dealing with the issue of delays in the criminal justice as well as the civil system.

Mr. President, I was fortunate to get a copy of the 2008/2009 report published by the Judiciary of the Republic of Trinidad and Tobago, a very comprehensive report and I must compliment the authors of this very comprehensive report. The data I was searching for, that I could not have located, I was able to find the details quite easily in the Appendices to this very comprehensive report.

As we seek to introduce or increase the number of High Court judges from 23 to 36 and the Court of Appeal judges from nine to 12, I would like to advise the Attorney General that when we are dealing with the criminal justice system we must look at it in a comprehensive and holistic manner. There are cogs or components that go to make up the criminal justice system in this country: The police is one element, the prosecuting authority is another, the Judiciary is another, and of course the prison system, which is the tail end of the criminal justice system, is also part of this criminal justice system. Therefore, as was indicated by a former chief justice of this country, there is need for the Executive and the Parliament, by extension, to look at this criminal justice system, not in isolation. We are going to increase the number of High Court judges today, which we will support; we are going to increase the number of Court of Appeal judges today, which we will also support.

Sen. Jeremie SC: You supporting it?

Sen. W. Mark: We are supporting that. We believe that it is something important for the system of justice in this country to speed up—[*Desk thumping*] We cannot be against increasing judges in the High Court. How can we? How can we be against that?

Sen. Joseph: We would see when the vote comes.

Sen. W. Mark: Therefore, I want to indicate to the Attorney General that as we seek to increase the number of High Court judges and the number of Court of Appeal judges, the Attorney General needs to pay attention to the Magistracy—we have about 49 magistrates in the country as we speak today, according to the latest report from the Judiciary, and we know that the backlog at the level of Magistracy is extremely huge. There has been some figure bandied around, and maybe either Sen. Seetahal SC, or when the Attorney General speaks he can probably correct me on it, but we understand overall there is a backlog in the system of close to 400,000 cases. If I am wrong on that, Mr. President, the hon. Attorney General would correct me—do you want to correct me on the number of backlog cases in the Magistrates' Court?

Sen. Jeremie SC: Sen. Mark, I specifically asked when I brought this Bill, what about the Magistracy and I have sent to confirm what I was told that there is no need at this time for an increase in complement in terms of the Magistracy. That is what I wish to say and the figure of 400,000, which I have heard bandied around from—not bandied around—mentioned by Sen. Mark—I do not know if that constitutes to being bandied around—is wrong.

Sen. W. Mark: Well, Mr. President, if that is wrong, what I can tell you is that the latest report from the Judiciary reveals that there were about 90,000-plus number of new cases that were filed at the level of the Magistrates' Court at the end of 2008/2009—if I am not mistaken—and in 2003/2004, it was around 79,000. So when you take an account of the number of new cases coming at the level of the Magistrates' Court, we realize that there has been an escalation in the number of cases before the Magistrates' Court.

If we are being told that it takes about—at the level of the Magistrate's Court—four to five weeks to get a first hearing of a matter and at the level of the High Court it takes between six to eight weeks to get a first hearing, it is a bit difficult to believe that there is no need at this time for an increase in the number of magistrates. I am alarmed and amused at the same time that there is no need for an increase in the number of magistrates.

I would like to deal with the issue raised by the hon. Attorney General concerning the appointment of temporary judges. This matter of the appointment of temporary judges is one of grave concern to the national community in the Republic of Trinidad and Tobago and I really would like—I have looked at the Supreme Court of Judicature Act and I have not seen any provision that deals with the appointment of temporary judges to the Bench. I do not know if the word or the term "appointment" gives the Judicial and Legal Service Commission the flexibility in order to execute that kind of appointment. But the public is extremely concerned about these appointments of temporary judges to the Bench of this country.

If fact, I believe it is a scandalous affair in this country that needs urgent rectification. I believe that action should be taken by the Executive, as is being done today, as it seeks to increase the number of High Court judges to address the vacancies in the Judiciary and to take steps immediately to address this lacuna in the system. I think the concept of judicial officers acting in a temporary capacity on the Bench is almost anathema to the whole concept of an independent, fearless and impartial Judiciary.

I really believe that the Attorney General would want to take steps to bring an end to this scandal in the Judiciary which has generated a lot of concern and anxiety amongst the general population in this country. My information is that when one is appointed to the Bench—and I can be corrected, I am not a lawyer—as a High Court judge, you cannot after serving as a High Court judge go back into private practice until 10 years were to elapse. [*Interruption*] Therefore, I ask the simple question, how can it be fair for a judge of the High Court, with the greatest respect, to do public duty and public service for a number of years not be allowed under the law to practise under a 10-year period, but yet we can put a person on contract on a temporary basis for either a few months or maybe even a few years, and that person—and no aspersion is being cast on anyone—is able to sit on the Bench, make decisions and then within six months, 12 months or 18 months, leave the Bench, go back into private practice—

Sen. Seetahal SC: The next day.

Sen. W. Mark:—go back the next day into private practice, put on his or her résumé, "acting judge" [*Laughter*] and then be able—the possibility exists that you can have a situation where briefs are given to that very temporary judge and the client appears before that very temporary judge—I am not saying that the judge would not be fearless. I am saying that justice has to be seen to be done in instances like these. [*Interruption*] It must appear—

Sen. Jeremie SC: Sen. Mark, I am not following what you are saying. Are you saying that briefs are given to persons because they served as temporary judges?

Sen. W. Mark: No, I am not saying so. I am saying, Mr. President, hypothetically you can have a situation where somebody sits as a temporary judge and there is a real possibility that you can have a conflict of interest developing. All I am advancing is that we need to take care of this situation.

What I would like to suggest, is that I searched the law to see where this power is derived from to appoint temporary judges to the High Court and I was not able to find it. Maybe, as I said, when the Attorney General is winding up or Sen. Dana Seetahal SC is addressing this august body, she may be able to tell us where this power is derived from, because I am concerned. I do not support contract labour. I think contract labour is a dangerous tool that people use in order to get people to do their bidding, and that is why I believe in the security of tenure.

Sen. Jeremie SC: Sen. Mark, I want you to make the point when you are speaking about contract labour that judges are not appointed by the Executive. That applies also to temporary judges. We have had temporary judges over several years—since I can remember myself we have had judges serving on a temporary ad hoc basis for periods of time.

They are appointed by the Judicial and Legal Service Commission entirely outside and removed from the Executive. The Executive has nothing to do with that.

Sen. W. Mark: Mr. President, all I am saying is that we are the lawmakers of this country, and I am saying that there is a challenge that we have to address. Just as we have come here today to increase the number of judges from x number to y number, we must be able to ensure and to assure the population that the independence of the Judiciary will not be compromised.

I am saying that there is a tendency that that could take place because of this temporary arrangement that is effected, even not by you. I agree with you. It is not by the Executive, but it is being done. So all I am saying, I am putting on the Table, what is the basis for these temporary appointments when we could take action to fill the vacancy?

2.30 p.m.

If there is need to increase the number of judges, Mr. President, and an appeal is made to the hon. Attorney General, he would come here as he has come today, he would do the honourable thing, bring a Bill, let us increase, and let us fill those vacancies. But there should never arise in the future after today, where you will

have space to put a person to act on a temporary basis. We believe that is wrong. We believe that could create a situation that is not healthy for the system of justice, and it could contribute to a compromising of the independence of this important arm of the State. That is all we are advancing here as it relates to temporary judges. We believe that should not take place in a country and in a democracy that adheres to the rule of law as our country does. So I want to put that on the Table for the consideration of this honourable Senate, that in the future, we would not have to raise this issue in this honourable Parliament.

Mr. President, I also would like to deal with the issue of the delivery of justice.

Sen. Jeremie SC: Sen. Mark?

Sen. W. Mark: I think you should take some notes. You are wasting my time. Take notes, please!

Sen. Jeremie SC: I only want one minute. You said you had searched the law and could not find where these appointments were made, what was the basis. If you look at the Constitution that you cited, section 3(2)(a) of the Constitution says:

> "(a) a reference to an appointment to any office shall be construed as including a reference to the appointment of a person to act in or perform the functions of that office at any time when the office is vacant or the holder thereof is unable (whether by reason…) to perform the functions of that office;"

Sen. Seetahal SC: What section is that?

Sen. Jeremie SC: Section 3(2)(a) of the Constitution.

The point is that from time to time exigencies have arisen. When the new rules came into force, the Chief Justice at the time, the hon. Sat Sharma felt that he needed more hands on deck to deal with cases which were under the old rules. That is the reality of it.

We have had temporary judges—[*Interruption*]

Sen. W. Mark: I understand what the Attorney General is saying. All we are arguing or advancing on this side, is that there was a need—that is what the hon. Attorney General has said—and once the need arises, it should be incumbent upon whoever is in charge of the Judiciary, to meet with the Attorney General, and make an application to fill vacancies by bringing legislation to the Parliament, to have permanent judges appointed to the Bench. That is all we are saying.

I am saying it is a dangerous practice to continue. All I am saying, Mr. President, is that this should be the last time we are debating in this Parliament, any measure that could give the hint that right now in this country we have six temporary judges. I am saying that is wrong and we must discontinue that practice in this country. We want permanent, full-time, secured judges, so when they give decision, it is fearless. I am not saying that they are not doing it fearlessly. I am just saying there is a tendency that can arise and we need to safeguard the interest of the population, and wherever there is a possibility of an injustice being committed, we must plug that loophole. That is all I am saying. I am accusing nobody of anything. I am just saying justice needs to be transparent, open, swift and fair, and people must have security of tenure in delivering their judgment, and not have to look at whether they are going to extend your contract as what happened at the level of the Industrial Court.

I cannot understand right at the level of the Industrial Court, why you still have judges on contract—[*Interruption*]

Sen. Seetahal SC: Appointed by the Prime Minister and Cabinet.

Sen. W. Mark:—appointed by the Prime Minister and the Cabinet, and that is supposed to be a court of superior record? Why do you have that? I think the Attorney General should take measures to make these judges at the level of the Industrial Court, permanent, full-time, where there would be security of tenure and not be on contract. I just said that in passing.

Mr. President, another area of concern I would like to address as we deal with the issue of the Judiciary, is the whole issue of compensation. The cost of living has been escalating out of control in this land. We are Members of this Chamber, we work very hard, but as you know, because of economic circumstances brought about by squandermania, mismanagement, maladministration, we have to compromise through the SRC. No increases for public officers who fall within the purview of the SRC, including judges and magistrates. That is wrong. That is wrong because we want to attract the best judges, we want to attract the best magistrates to the Bench of this country, and I believe it is a disservice to have a situation where these persons who should be looking forward for an increase in their terms and conditions of employment every three years, were to be told by the SRC, "No increases for you". Because of what? Government mishandling of the economy of Trinidad and Tobago. That is unfair to them. I am making an appeal today, to the Government of Trinidad and Tobago, to intervene and send a note back to SRC.

Sen. Jeremie SC: What?

Sen. W. Mark: Send a note back to the SRC, to ensure that the judges and magistrates of this country are paid properly. Whilst some get $50,000 and $30,000 in Trinidad and Tobago today, I know of judges—in fact, it was raised by Sen. Basharat Ali, where you have judges who have retired from the Bench, who are living hand to mouth. That is unfair to people who have served this country for all these years, and we must do something about that. I am appealing today, Mr. President, through you, and through the hon. Attorney General, that there is need to intervene to ensure that the judges of this country are properly paid. I do not believe their salaries, perks and so on that they enjoy is adequate, given the circumstances of today's situation that we are faced with. Therefore, I call on the Attorney General to deal with that issue.

Mr. President, I would like to deal with the issue of delivery of justice. It is one thing to have more judges, which is very good, but the timely delivery of justice in terms of judgments, to my mind is very important. I understand what the Attorney General has said. You have had a number of civil and criminal matters brought to the High Court, and a large percentage of those matters have been disposed of and determined, but there are also a large number of matters that are still awaiting disposal and determination, and therefore, justice delayed is justice denied, and every citizen is entitled to swift, transparent and efficient delivery of justice.

I want to say, we should begin to provide the Judiciary with more resources. As the hon. Attorney General made statements earlier, I was a bit flabbergasted when he told us that the Government has seen the need to do what they are doing today, because it is imperative that we deal with the justice system, the delays and backlogs. How shortsighted, or is it a question about short memory?

The Judiciary in its reports for 2008 and 2009, have revealed that for two consecutive years this Government has reduced its allocation, both at the recurrent level and the development or capital level. The Chief Justice is on record as saying at the opening of the 2009/2010 Law Term, that they requested from this administration, that has spent on a stadium called Tarouba, close to $1 billion, 60 per cent complete today, cost overrun, mismanagement, misappropriation—do you know what they did according to the Chief Justice? They requested a capital development allocation of $393 million. Do you know what this regime gave to the Judiciary? Forty-two million dollars! Forty-two millions dollars, and you come here today crying crocodile tears, giving people the impression that you are so concerned about justice and the Judiciary, and when they asked for $393 million you only gave to these people, $42 million.

The year before, because of the collapse in oil prices, they reduced their allocation by $100 million in 2008/2009. So in two successive rounds, you reduced them by $100 million and by $353 million, close to about 450-something million—round it off to 500 million or half a billion—and you expect justice to be efficiently dispensed for the poor people of this country. Where is the Government's priority? You hold two Summits in one year, and not even the United States would be able to do that. You spent billions of dollars on two Summits, the Heads of the Commonwealth, and the Summit of the Americas. Billions of dollars, but you cannot give the Judiciary $455 million to do its work. I say it is a shame that this Government could be talking about the good working relationship between the Judiciary and the Executive, and have this same body coming, begging cap in hand for a little change that they are demanding. I do not know why this Government has failed to give—[*Interruption*] You will speak at the appropriate time.

I am saying, Mr. President, I want to appeal to this Government, to uphold the justice system in this country. The scales of justice in this country are not evenly balanced in favour of the poor people and the ordinary people. Too many adjournment after adjournment after adjournment in the court. I would like to ask the Attorney General when he is speaking whether he has done sufficient objective analysis of the case law distribution in this country. What is the percentage of cases now occupying the San Fernando courts as opposed to the courts in Port of Spain? When we talk about case management hearing, my information is that there is a bias towards Port of Spain. People leave Cedros and Point Fortin to come to a matter in Port of Spain. Do you know what it is for poor people to dip into their pockets where the price of transport is so high, to leave Point Fortin and Cedros to come into Port of Spain, and when you come to court it is adjourned? I believe that the courts must service the people, and not the people serve the court. [*Desk thumping*] The courts were established to serve the interest of the people, and there is something wrong in the justice system when ordinary people do not have easy access to the justice system.

Mr. President, it is our view on this side, that the courts should be as near as possible to where victims or citizens who run afoul of the law, they should be as close as possible to where they live.

Sen. Seetahal SC: Where is that?

Sen. W. Mark: I am saying it is a principle I am advancing. I am advancing a principle, that for instance, that should be the objective, that should be the ideal. I am saying that I hear too many cases involving ordinary citizens, where they have

to leave for instance so far, in order to travel, and they have to really find their way, pay their way, and as I said, you do not have any kind of—these cases are postponed over and over, and therefore, it is really a bit disturbing to say the least.

So it is clear to us that the courts of this country are under-resourced, they are overcrowded, Mr. President, and people in the Judiciary, personnel poorly remunerated as far as we are concerned.

2.45 p.m.

Therefore, I call on the Government to deal with the issue of the state of the Magistracy. I believe there are too many courts in this country, which is the first line of entry for ordinary people who come face to face with the law or who run afoul of the law. What we have witnessed is the dilapidated and scandalous conditions that exist at the level of our courts, particularly the Magistrates' Courts.

I cannot understand why the Government would want to deny the Judiciary of moneys to repair and upgrade these courts; that is what the capital budget is about. When they asked for the $393 million for capital development, part of that money was supposed to go towards the refurbishing, the rebuilding, the repairing of courthouses throughout the country. How could you really deliver justice in an environment where you have cockroaches running left, right and centre, where the air-condition does not work, where the magistrate is sweating while he is trying to listen to matters? How can you have justice in that kind of environment? I do not understand why the Government continues to ignore the cries and voices of the Judiciary when it comes to the question of providing them with the resources that they need. There is no excuse.

The Judiciary is the third arm of the State. The third highest office holder in the land is the Chief Justice; after the President and the Prime Minister is the Chief Justice, so you cannot be mamaguying the Chief Justice when it comes to resources. You must deal with him very seriously. He must not have to go to the opening of the law term to beg. He must not be begging; he is entitled. We are entitled to ensure that the resources they require are, in fact, provided to the Judiciary.

Sometimes when we think about Petrotrin—a cost overrun of billions of dollars; US $990 million cost overruns. That is about how many billions now? Over $5 billion in cost overruns, Petrotrin, and you cannot provide the Judiciary with $400 million? Where is the priority for justice in this country?

Mr. President, I want to tell you that the Government is really fiddling with the system of justice in this country and they are not really serious when it comes to the matters affecting the people of this country.

May I also inform you that the Attorney General needs to pay attention to some of the cries coming from the Judiciary. I have read Justice Hamel-Smith, the former Chief Justice of this country, I have read reports of Satnarine Sharma and I have read the two latest reports coming out from the current Chief Justice to free up the magistrates in two areas that they have been talking about, so that the system of justice could be more efficiently and effectively executed.

The first area they have asked the Government to address—this is an executive decision; they cannot take that decision, hon. Attorney General—the ticket system, which occupies 25 to 30 per cent of their space and their time, at the level of the Magistrates' Court, why do you not take that out of the system and put it into the hands of the transport authority? It is an administrative matter. You ticket somebody, you should not have to go to court for that, unless the person is not paying; but everything goes to court and clogs up the system of justice. All the former Chief Justices, along with the current one, have been appealing to the Attorney General and the Government to do something about the ticket system. Why have you not done something about the ticket system, Mr. President? [*Interruption*]

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. W. Mark: Mr. President, I am just trying to provide some answers and some solutions to the hon. Attorney General as we seek to promote greater efficiency, effectiveness and swiftness in the delivery of justice in our country. I appeal to the AG to take the advice and the recommendation coming out from former Chief Justices and the current one, to do something about the ticket system. Devolve that, delegate that, let some other body deal with that. That is an administrative matter that could easily be handled by the Transport Authority. Put your house in order and get that going.

The other thing that they have been appealing for is the liquor licence. They ask the question why the district revenue departments or offices cannot deal with it. Why do you want to burden the courts with a liquor licence? These are things

that the Attorney General, who wants to bring about swiftness and efficiency in the justice system, has to address. When you devolve or delegate those functions to other organizations, you free up the system, and serious matters that ought to be addressing the attention of the magistrates, would then be able to be dealt with more efficiently and not clog up the system.

I do not know if the Government and the Executive are sleeping, but these are recommendations that came right from 2004, 2005, 2006 and 2007, when this AG was here. This Attorney General, my honourable friend, was the Attorney General then. Maybe he was caught up so much in other activities, that he did not have time to focus on that. Now that you have freed yourself up and have returned from London, I implore you to really pay attention to the cry of the judges, the magistrates and the Chief Justice. Get rid of the ticket system and the liquor licence from the Magistrates' Courts. That is an administrative matter that you have to look into.

If we have to ensure the development of an efficient system of criminal justice in this land, I would like the Attorney General to tell us what has happened to the plea bargaining legislation. Where is that at the moment? We know there were some challenges and shortcomings; has the Attorney General sought to redress, amend, and remedy that? Mr. President, we are talking about the efficiency of the criminal justice system. Plea bargaining is a process that can contribute to the speeding up of the criminal justice system.

We passed the law back then in 1999. I do not know where it is now located. I know that there have been challenges toward that Act, but I believe that the Government needs to pay attention to that. What about the introduction of the drug court? That is a matter we have been talking to the Government about for years. Where is the drug court? Everything is tied up in the Magistrates' Court and in the High Court. Have a special court for drugs, because we are a major transshipment point for drugs. We need to give special attention to the drug court.

I also want to bring to your attention that we need to have a drug user court. Apart from the drug court, I am dealing with a drug users' court now. [*Laughter*] All right; you could probably combine both. You can have an element where persons who are users of drugs, not the peddlers of drugs, not the people who import drugs, but those who are victims of drugs do not have to be placed in remand yard to become hardened criminals. This is something that the Government should be paying attention to. The prison population is bursting, therefore, the Government needs to pay attention to that.

There has also been a proposal to have what is called the establishment of remand courts in or adjacent to prisons, to enable remand of prisoners in custody and the granting of bail, thereby avoiding the need to transport many prisoners across the country.

I know that there was some teleconferencing, some new technology that was introduced a year ago involving the prison authorities and the Judiciary. I think there is need for us to establish a remand court. This amount of money that Amalgamated, Justice on Wheels, takes every year from this country—we understand that for the last five years it was $90 million. That $90 million could have gone towards establishing remand courts in different parts of the country and you could have left those prisoners in prison and they do not have to come out. There could be another agenda why that is taking place.

Let me say finally, like the Chief Justice, if we do not have an independent Judiciary we could bring how many judges we want, we could increase the number of Court of Appeal judges, but if the Government and the Executive decide to encroach on the independence of the Judiciary, the rule of law would be compromised and democracy would not flourish any longer in this country of ours. Therefore, I want to warn this Government, this draft Constitution that they have produced where they want to establish a Ministry of Justice in order to give the administration of the court to the Minister and a permanent secretary—[*Interruption*]

Mr. President: Senator, nothing of that kind is before us at this point and, therefore, that is completely academic and is just wasting everybody's time to talk about that. Save that for the platform and talk about what is in front of us.

Sen. W. Mark: Mr. President, I know that is a very touchy subject for you, so I will refrain.

Mr. President: Senator, you do not know what I am touchy about and do not bring me into this debate. I am not in good humour this afternoon, so just do not go there.

Sen. W. Mark: I am in good humour, Sir. [*Crosstalk*] I could be put out right now.

Sen. Browne: Your own side would put you out. [*Laughter*]

Sen. W. Mark: The only way I am getting out—Mr. President, if I may tell my colleagues, that the only time I am leaving here is when I get there. [*Sen. Mark points to Government side*] [*Laughter*] I am telling you, you all are going to

be out just now; not me; "all yuh go be out." Do not worry about us. The PNM's days are numbered in Trinidad and Tobago; I want you to know that. Do not worry about us. We will be in; you would be out. [*Crosstalk*]

Unless and until we have a system of justice where the Judiciary remains fiercely independent and impartial and you have a system of integrity and honesty—the Executive must never interfere in the affairs of the Judiciary. Once we have that in place, we could rest assured that we would have a robust rule of law system in our country; we would allow democracy to flourish in this land and we would be able to have the rights of citizens being protected by the guardians of the Constitution and the protection of our constitutional rights, that is the Judiciary. We have all respect and give full support to the judges of the High Court. They do yeoman service to this country. We must provide them with all the resources that are necessary for them to continue to function effectively in carrying out their duties and responsibilities to the people of this great country of Trinidad and Tobago.

Therefore, I appeal to the Government, that in approaching this matter I call on them to look at the idea of establishing a central authority that could coordinate the activities of the police, of the prosecuting authority, the Judiciary and the prisons. When you talk about the criminal justice system, there is need for coordination and greater harmony.

These are not my words; these are the words of a former Chief Justice who appealed to this Government back in 2005 to establish a central authority to ensure that a common philosophy and a master plan was established, so we could have the exercising of joint leadership over the criminal justice system. Anytime there is a significant improvement in one sector, without having a similar improvement in another sector, which is dependent on the overall system, you are going to have challenges.

3.00 p.m.

And that is why I said earlier in my contribution that we must deal with this matter in a comprehensive and holistic manner if you want to address the criminal justice system in our country.

So I appeal to the Government to consider the establishment of a central authority where you would have the police, the prosecuting authority, the Judiciary as well as the prison involved in coordinating and having a collective approach to deal with the range of problems that we confront in this country.

So as I said, we on this side welcome this particular measure, we believe it is in the interest of the people of this country, we believe that more judges mean that you will be able to deal with the backlog and all the challenges and delays and, therefore, we call on Government to provide more resources as the hon. Attorney General said, to have more staff and we need more courts in the country.

The former Justice Hamel-Smith said that we need more Magistrates' Courts and High Courts in the country. Not just more judges, and, therefore, I call on the Attorney General not to come with just one component, you have to come with a comprehensive approach to deal with the justice system in our country.

This is only one arm, one leg in this whole approach you need to take and we are asking the Attorney General, through you, that whilst we are giving support to this measure, we want him to take on board the need to approach these matters in the future in a more comprehensive and holistic manner, taking into account all the components that make up the criminal justice system so when we tackle more judges, we will also tackle the need for more detection in the area of crime involving the police. We will be able to give the Director of Public Prosecutions (DPP) and his office more resources, pay those workers as State Counsels more money so they do not have to go to the private sector, and most importantly, bring about serious prison reform within the system so when sentences are handed down by the High Court, the people will not be treated in an inhumane fashion but as human beings doing their time and when they come out they can rejoin society, not as hardened criminals, but as human beings who can make a contribution to civilization and development.

Mr. President, I thank you very much.

Sen. Dana Seetahal SC: Thank you very much, Mr. President. I, in principle, support the Bill before us. I do not think anyone can reasonably say that they do not agree with the increase in the number in either the High Court, or the Court of Appeal judges. In one case it is just over 50 per cent increase and in the other it is one-third.

However, I have not heard anything from the Attorney General on the issue of other matters that will attract costs because of the increase. First of all, do we know or are we to assume that the Judicial and Legal Service Commission will move swiftly to appoint a further 13 judges—I do not know, but I imagine in conversation that the Attorney General had in relation to the request for the increase he would know whether or not, or he would have some information whether that is so—13 plus three, that means 16 judges.

This would necessitate an increase in the number of courts, certainly in the High Court and one has to look at the Hall of Justice only to realize the limitations of that building. Added to that, you are looking at a requirement for an increase in the number of Judges' Chambers and from my information, the available chambers in the Hall of Justice, everything has been used up, there are no available chambers at this point. You are talking about secretarial space, judicial support officers and all of the above. Perhaps we can have some indication.

It is not good enough for the Government to say that they are not the ones, it is a matter for the Judiciary that they have funding and so forth. Since funding comes through the Executive, I think we should be provided with some information as from where it is coming and the physical infrastructure that is going to support this measure if it is actually to become a reality.

[MR. VICE-PRESIDENT *in the Chair*]

Mr. Vice-President, in his presentation, the hon. Attorney General indicated that one of the reasons for the increased numbers is the backlog that presently exists in the system in terms of the Civil Courts in particular. I believe he alluded to those courts and, therefore, an increase in the number of Judges it is perceived will assist. We would be able to dispose of more cases obviously. That is what is suggested.

My information from practising in these courts is that that is not the only issue. It is not the number of cases per se but the length of time it takes to dispose of these cases. Still, a number of courts do not have the system for recording, the electronic audio system. Primarily in the Magistrates' Court we still have handwritten notes.

I use the Magistrates' Court and I can compare it with the High Court. In the Tunapuna Magistrates' Court which is the most modern, beautiful court in this country, the regular courtrooms are not fitted with the system. So while it has nice, long, mahogany desks that are really attractive, it does not have that modern system. So if you are cross-examining there, you will take forever because every two minutes you have to wait for the magistrate or the clerk who assists the magistrate to physically write down what you have said and, therefore, these cases take three or four times as long as they should.

That also occurs in the High Court presently. You might have the system, it is being taped but what used to happen, there existed those CAT Reporters who would be able to type the proceedings as you went along so the judges had easy access to those notes. Not now, there are very few of them and my understanding is that it is a matter of expense. Currently, in the High Court there are only three

of these CAT Reporters, I am told. The result is that you have to rely on the audio recording and, therefore, you have to wait until it is transcribed into notes. I do not know if persons in this Chamber know how long that can take, but I know in some cases we take months before we get that evidence.

So you find that judicial officers still have to record things by hand if they want to have access to the evidence as the case moves along, and it is defeating the whole purpose. Not having enough transcriptionists and the CAT Reporters, that in effect, and in essence, is what I say is causing the backlog and the delay in the hearing of cases primarily in the Magistrates' Court and in the High Court.

I am doing a case currently and it has gone over for the last two years and notes of evidence are not ready and the last time we had a witness was about two months ago and you still have to try to get one bundle per day months afterwards. So we have not gotten notes six months ago and some days are missing. So if the magistrate had not taken her own notes, how would she be able to make a decision?

So this might sound like something to resolve the backlog, but I do not know that it will be successful in the given system we have. My suggestion, of course, is that not only should the authorities ensure that all courts are fitted with the audio recording system but also enough transcriptionists are available and that area be expanded so you can get transcribed notes within a couple of days and that would assist in resolving the backlog.

[MR. PRESIDENT *in the Chair*]

Another matter that I have found, Mr. President, is that too often there are adjournments and delays and often they do not occur because of lawyers. Primarily, I think if you have a lawyer doing several cases, you may find that there is a request for an adjournment. In one matter I recall an attorney, who I knew, had to go 10 times for a decision of a judge.

Mr. President, there are two matters right now for a request for a judge's warrant. That is when there is a dismissal or discharge by a magistrate in relation to a matter heard before that magistrate which is indictable. There is no committal and we in this Parliament passed law that if that were to happen, then there existed the law that you could apply to a judge for a warrant of commitment. We passed law to permit an appeal to the Court of Appeal if a judge did not grant that warrant of committal and it sounds all well and good, but what is the purpose of having that law if a judge could delay 15 months in one case and over 18 months in another case not even giving a decision on the original application for a judge's

warrant? It makes a mockery of the system and that is the kind of thing you have with some judicial officers, very few I am sure, but this is why I say there should be a system of not only accountability but transparency in the selection of the judges and in the promotion of judges in general.

Meanwhile, what I suggest is that in relation not only to court decisions but of this type where judges are met with applications for certain things, there should be laid down stipulated time lines. For example, in Barbados, in relation to magistrates, if reasons are not given within a certain time, the Chief Justice can intervene and discipline that magistrate if he does not supply reasons.

In our statute there is a provision passed by this Parliament in 1986 which says that a magistrate should provide reasons within 60 days when there is an appeal. That is never obeyed, it is breached 99 per cent of the time and I am saying that in relation to judges there should be some provision and both sets of time lines should be adhered to. Some disciplinary action should be taken for judicial officers, and other people of course, but we are dealing with judges who do not obey the time lines they set.

I would suggest that the Chief Justice of this country be given that localized disciplinary power to deal with these kinds of delays otherwise they will continue. And currently, unless there is a report to the Judicial and Legal Service Commission and hardly likely there will be a report when a judge delays matters because you do not want to impeach the judge for that.

So unless that can happen, then no one will do anything and certain judges will continue to do what they like and they will give the majority of judges a bad name because they delay in a judge's warrant, they delay in other things and like some other judges who will, in public make statements disparaging to the Executive and other members of the Judiciary and do certain things which are not expected of a judge.

For example, the headline in Saturday’s newspapers January 30, this year: "Judge bans jury for 15 years". Now, if you read the content of that report you will see that a jury came back with a decision as is their right in a murder case. [*Interruption*] Whether it is unanimous—it has to be unanimous for a murder. The fact is they have a right; there is a separation of functions between the Judiciary and the judge and jury entirely.

3.15 p.m.

No judge has any right whether in statute or common law to ban a jury. A judge can permit a jury who sat in a very demanding case to be exempt should the juror wish or the entire jury, not to serve. That is a question of choice on the part of the jury or jurors. It is also a question of feeling that the jury has performed excessively. When you seek to punish a jury, what are you saying? That my decision would have been to convict and you did not do that. That is a usurpation of the function of the jury. It is improper. [*Desk thumping*]

These are matters into which the Chief Justice or somebody should look. We are talking about giving the Judiciary, and ultimately, the Judicial and Legal Service Commission, the power to appoint so many more judges. Therefore, we have a duty to the citizenry of the country to ensure that the selection process and the continuing disciplinary process are open and accountable. In fact, the selection should be accountable and transparent. I feel that the continuing operation of the Judiciary and the judges, once they are selected, should be open to scrutiny.

In relation to the question of temporary judges, Sen. Mark asked about the authority. While the Attorney General cited a section in the Constitution which deals with the power to appoint someone to act in a post, I think that the more specific provision is section 104(2)(d) of the Constitution which permits when the Chief Justice advises the President that the state of the business of the Court of Appeal or High Court so requires, then, the President may appoint a judge to act. Even though there are a certain number of judges, the Constitution allows the Chief Justice to advise the President that we need additional judges and therefore, you may appoint judges to act. There is the answer.

Whether it should continue in the way that it was done for these number of years is a moot point and something we should consider, it is another issue. I do not think that the institution of temporary judges should continue forever. I think that that was intended for a state of emergency, so to speak, or emergency within the Judiciary.

In talking about the selection of judges, which as I said, is something that we would be leading to now that we are to have the increase in the number of judges, we have to look at what we want from a judge. In considering the issue of the selection of judges in Australia, in a paper dated August 10, 2007, the hon. Sir Gerard Brennan AC KBE, had this to say:

> "What do judges do to maintain the rule of law and what are the qualities that are needed to do it? First, the duty of defining the law applicable to particular circumstances means that judges must be legally competent."

That seems self-evident and in general it is so. Most of the judges are competent when they sit in the particular courts to which they are assigned. Sometimes when you hear the judgments of the Court of Appeal, you may wonder whether in individual cases, a particular judge was at all competent in that area. It is said:

> "…judges need to be well versed in the law, especially the law to be applied in their particular court. And they need to have the ability to apply the law to the proceedings as they unfold before them. They must have an ability to listen but also to control effectively the conduct of the litigation."

That is the first requirement. Competence includes all these abilities as to listen to analyze and apply the law.

Secondly:

> "…a judge must have and exhibit a resolute strength of mind. When Sir Frank Kitto gave advice to his colleagues he wrote:
>
> > 'Every Judge worthy of the name recognizes that he must take each man's censure; he knows full well that as a Judge he is born to censure as the sparks fly upwards; but neither in preparing a judgment nor in retrospect may it weigh with him that the harvest he gleans is praise or blame, approval or scorn. He will reply to neither; he will defend himself not at all.'"

The point being that if I should get up here and criticize a judge or judges in general, in no way should that influence a judge who is worthy of his salt. If anyone should do that, whether it is in newspaper articles or in the course of a judgment, a competent judge or a judge who deserves to be a judge, may take it and listen, but not become partial as a result.

This brings me to one of the final points:

> "There are qualities of character and disposition to be desired in all judges. The supreme judicial virtue is impartiality. Both partiality and the appearance of partiality are incompatible with the proper exercise of judicial authority. The one poisons the stream of justice at its source; the other dries it up."

Those are the words of the Australian Senator, Sir Gerard Brennan AC KBE in talking about what we are looking for in a judge. I suggest that those are matters that our Judicial and Legal Service Commission will look for properly in the selection of the judges, that they would be entitled to make when we pass this legislation for the 13 High Court judges and the three Court of Appeal judges.

We need to consider whether our current system of selection of judges is adequate. Is it best for the country? In that very conservative country of England, in 2003, the Tony Blair Parliament amended the law. Over the course of three years, they changed their entire legal system of judges of the courts and appointments of judges. They have made it, what is claimed to be transparent, accountable and diverse, as distinct from being totally the opposite, closed and not accountable to anyone and homogenous. You know what that means.

In 2003, they introduced the Constitution (Parliamentary Reform) Act which to begin with, abolished the post of Lord Chancellor. As you probably know, the Lord Chancellor was the person who had one foot in everywhere. He was a member of the government, Parliament and head of the Judiciary. There was clearly, a breach of the separation. In England they abolished that. We do not have that. The only body that was seen as having that kind of influence, possibly, was the Attorney General. I do not mean the Attorney General today, I mean the post of. In Trinidad and Tobago we have been fortunate in having that clear separation, at least, on the books.

In England, since 2006, judicial appointments were transferred to an independent, non-governmental, judicial appointment commission. A colleague of mine who used to be a temporary judge here went back to England and informed me about the process which operates there and what he had to do. That included online application and subsequent tests that he had to do and more than one interview. You had to be shortlisted by the way. He attended a two-week course in order to prepare for the interview. It is a very demanding interview. It is designed to weed out the duff from the plums.

It is in keeping with the remit of the judicial appointments committee which is said to select candidates solely on merit. Surely, that is something that we can emulate. It is also to select only people of good character and to have regard for the need to encourage diversity in the range of persons available for judicial selection.

In Trinidad and Tobago we may think that we have that. Clearly, we do not have one major race as in England, but insofar as gender balance in the Judiciary is concerned, the upper Judiciary, meaning the judges, that is still something to be desired. We have not moved along with that. For instance, in the Court of Appeal there are only two out of the 10 persons who are female. I do not think that it has necessarily occurred over the years because of the lack of competence. I think that it is a profession that is so conservative as is politics by its very nature as well, it is seen as a man's world. That is why it is difficult to move up to the upper echelons of the Judiciary.

In England, they have made moves towards that. It is not only to diversify in terms of race and class, but also in terms of gender balance. All these moves in England arose out of intense criticism from within the system as to the selection process. The criticism ranged from insider preferences and cronyism. Surely, you know what insider preference is. It is when persons within the system suggest that their friends, partners, acquaintances and others like them belong to that august body. This was said to be the case in England. Also, of course, cronyism, you belong to that particular club, if not a club, but a group of persons.

In 2000, I appeared before a Commission of Enquiry into the Administration of Justice. I made the point that at that time it appeared that judges were selected from their membership of the Queen's Park Cricket Club. It appeared to me that there was some merit in it. I did not point out Judge A, B or C. At the time, if you knew what was going on in the legal system you would have understood what I meant. Of course, it was denied. It was true that at that time, quite a number of male judges—because women were not allowed to be members of that cricket club—were actual members of the club, as were persons in the Judicial and Legal Service Commission.

I cast no aspersions on anyone. I am merely pointing out that like the English there were accusations of cronyism. Subsequent to that, in Trinidad and Tobago, the system of appointment of judges became more open and people were encouraged to apply. Open in that sense, mind you, but after the application, no one knows what happened to it. You apply and that is it.

However, in England it is different. First of all, you are told what is being looked for. Transparency is the first matter, the first point of reference. This is where the process and criteria are open to view. Candidates are given reliable information about open positions. That is posted online and if you want you can go online to find it. You can find the criteria, what posts and how many posts.

3.30 p.m.

You have evaluation criteria stipulated and you can get individual feedback, if you write to them on how to improve your credentials if possible for future appointments. If you do not succeed at that time, you are told that you can work on this. That is transparency. They are transparent in what is there; what is available and what you need to have.

The second is accountability and this relates to the conduct of those responsible for vetting applicants and making appointment decisions. This is from an article by Fordham Urban Law Journal, English Reforms to judicial selection

comparative lessons for American states. They were studying the English reforms to see whether or not it was of value to American states. They recognized in the US that too many of their appointments were influenced by political circumstances.

It was said that the accountability principle expects that selections should have legitimacy both for individual appointments and overall array and, therefore, they considered a CJA, which is a commission for judicial appointments, which would be the watchdog for those appointed, and which would audit the appointment process and investigate complaints about the process and fairness.

Imagine having a body in Trinidad and Tobago that would audit the appointment process of judges and, if you were an unsuccessful applicant, you could complain about the fairness and they would investigate it. To me, that is more than First World and it is something we can consider.

The requirement for homogeneity in England arose from a recognition that judges do not live in vacuums and decide cases in that vacuum; that their performance is influenced by a contextualized understanding about society which includes class, gender and life experiences. Therefore, they thought they would widen the scope of who came into the Judiciary so that they could share those experiences, as well as there would not be an appearance of a judiciary that only represented one race and one class. That was one of the sweeping reforms in England.

Another thing that actually emerged—here you were having all of these: Who were the persons to pick the judges and who were the persons to pick those persons who would pick the judges? The issue of picking the pickers became relevant. First, you had a commission that was said to have been made up of 15 members, and half of those, nearly seven, would be lay persons who had not practised law. A couple of them would be appointed on the recommendation of the Bar Council.

How were they appointed? They were appointed by application—they applied to be appointed. Commissioners were selected through an open application process—and that is what happened after—according to the Noland Principles of Public Life, they were invited to apply and eventually selected. Other than persons who were ineligible to serve, each person was considered based on their qualifications and experience in each case.

How did they, having been appointed, go about inviting judges to apply? First, they used modern recruitment strategies, which was almost a headhunter approach. They also sent newsletters, more or less advertised the post, and they even targeted letters to eligible persons; their work shadowed individuals and

allowed persons to experience a day in the life of a judge so that they could determine whether they would be interested. There were assessment centres set up so that persons could demonstrate their qualifications through testing and then there was a campaign to encourage lawyers to seek part-time and then full-time judicial appointments for those who qualified and who had the merit and integrity.

England has moved on; Australia is looking at what it is doing and considering the system it should put in place. The world is moving away from the closed system of appointment that exists; from the politically influenced decision that used to happen in England and still happens in some countries, to a fair open system of judicial appointment. It seems to me, if we are going to have this large number of posts now available, we in Trinidad and Tobago need to be seen to be engaging in a transparent and accountable system of judicial selection.

Currently, we have a judicial and legal commission comprising five persons who are appointed; not on application and not on any openness, but one would have been a member of the Public Service Commission and automatically a member of the JLSC; one is the Chief Justice; and the other three appointed by the President in his wisdom.

That may be good on paper, but is it an open appointment process? No. If we are moving to be more sophisticated and to be an exemplar in terms of how we select our judges, then we need to get away from the system. We have to be revolutionary and to think how we are going to select the members of the Judicial and Legal Service Commission if we are going to keep them. We need to amend that part of the Constitution.

There is room for that because right now the membership comprises four lawyers, one judge, currently the Chief Justice and the others who were former judges or some senior lawyer. The only person who is not a lawyer is the chairman of the Public Service Commission. We may want to consider whether we should have more persons doing the selection and whether we should have more non-legal persons.

The point is that because of the close-knit nature of the group, the group itself may need to be diverse in terms of race or other things. I do not believe that in terms of gender or class it is sufficiently diverse. I do not think there is a system in place for that.

I mean no disrespect to the members of the commission; all of whom I know. I think they are, but for one who is a lady, all very nice gentlemen; but that has no point. It has nothing to do with the competence of the pickers of the judges. We need to have a better system. It is not satisfactory.

Many persons who sit on that commission depend on references. What do you have then? Cronyism and the like coming in. We need that independent system. We need active recruitment and that cannot be by merely saying: Apply, "nuh".

That is what I want to say in essence. We have legislation here that is very short, but the impact is much wider. Where will the money come from to fund the 16 posts in terms of everything that goes with it? Given the amount of power and influence that any single judge wields—and the entire Judiciary should wield—we should not continue to have that selection of judges in what appears to be a closed manner, unlike the election of Members of Parliament in the other place and the Senate which falls from that election.

If we are talking about the three estates, then we need to have a system in which all of them are balanced; all of them fair. I put the Executive and Parliament in one hand and the Judiciary in the other. That is my contribution.

Sen. Kirt Conrad Walrond: I thank you, Mr. President. Before I say anything else, if there is any doubt in your mind, I am indeed over the age of 25.

I am truly honoured and humbled to contribute to this debate on this Bill. I thank God first and foremost and the hon. Leader of the Opposition for giving me the opportunity to serve.

Having said that, I am mindful as I stand here of the words spoken by the late honourable Dr. Eric Williams on August 31, 1962, when he said:

> "The first responsibility that devolves upon you is the protection and promotion of your democracy. Democracy means more, much more, than the right to vote and one vote for every man and every woman of the prescribed age. Democracy means recognition of the rights of others…Democracy means the protection of the weak against the strong…
>
> Democracy means responsibility of the Government…from the exercise of arbitrary power"—to protect the people from that—"and the violation of human freedoms and fundamental rights."

Mr. President, I deliberately invoked this quotation for the purposes of this debate today. You cannot separate the court from our democracy. One hand cannot clap.

In saying so, we have for a long time had a system of democracy in many countries where the courts form the basis, the cornerstone, of where we are as a people. For the record, I do indeed support this Bill because I see that there is

merit in increasing the number of judges to the Bench, both in the High Court and in the Court of Appeal, but in keeping with the theme of democracy and linking it with the courts, one cannot exclude the human face that hides behind the veil of justice.

There are people in this land who, at this hour, on this day, cry out for justice because their perception of our judicial system is such that they do not believe that justice is seen to be done.

We claim to live in a democracy and to have a rule of law, but through you I say to the hon. Members of this Senate that we cannot attain a true democratic society unless we truly and firmly meet the needs of the people and ensure that justice is seen to be done.

3.45 p.m.

In keeping with that, what this Bill is seeking to do, as I pointed out earlier, is increase the number of judges to the Bench and quite rightly so, but there are issues that we, the servants of the people, cannot and ought not to exclude. There are the voices of people that we have to listen to.

Now, in saying so, I am mindful of a report of October 19, 2009, in the *Guardian* newspaper. I do not know if you would recall the family of Jameel and Kadir Ali. They were two gardeners who were burnt to death in a tragic car accident. The driver of the vehicle that is alleged to have caused the accident was the son of a businessman, according to this report. The relatives of the victim of the accident, for a long time, cried out for justice. They did not think they were going to get justice, because the police officers who were investigating the matter were basically spinning top in mud. Quite frankly, they were not doing the job they were supposed to do, which is to protect and serve. In a case like that, they sought recourse to justice. They sought recourse to the court. They hired a lawyer. Every lawyer is an officer of the court. It is through that attorney-at-law, they were able to at least start to see the wheels of justice turn. I invoked that scenario because the police service in this country forms part and parcel of our justice system.

Yes, the Bill talks about increasing the number of judges to the Bench. In order for us to be holistic and comprehensive, and in order for us to truly serve, we must go to the ground and we must look the people in the eye and ask them: "What are your needs? How are you suffering? What can we do to help you?"

Again, there is another scenario that I think the Senate needs to know about. In the year 2006, a three-year-old boy by the name of Jordan Bailey was crushed to death by a van that sped into his Laventille home. He was playing in his yard and when the van sped, it hit him, he was crushed and unfortunately he died. To this very day, his mother, Jordan Bailey's mother, cannot get justice. She cannot! I am sorry, but I have to ask the question: Why? She said the reason she could not get justice is because the police who had the file in the first place, all of a sudden said: "Yuh know, we cyah find de file." Do you know what they did? The Magistrates' Court threw out the case, because there was no file from which they could work. There was nothing to go on. "All of ah sudden, poof, went the file," nothing was there and justice was denied. To this very day, she still cannot get answers. No one can account for it. No one can tell her what has happened. She continues to suffer. She bears the pain of having lost her child. I mean, nobody could really ever compensate for that; no amount of money can compensate for that. Nothing can bring back a child to one's mother. I cannot even dare to put myself in her place to understand the pain that she is going through.

I bring this up, because the cries and pains of our people, if we are looking to drastically improve the system of justice in this country, must not be unheard. We must, as the servants of the people, tackle this Bill with a responsibility and a mindset that the people's needs come first.

In so doing and in highlighting those issues, I would like to make one or two recommendations of my own. I have seen on the television, one of the foreign stations, that there is a programme where a judge goes on the street. You file your normal claims in the courts and it goes before the judge in his chambers. But instead of the people going to the judge, do you know what happens? The judge goes to the people. He goes to their homes. Arrangements are made to call both parties in civil matters, for example, together, and they are able to deliver the kind of justice in civil matters. Quite frankly, this may revolutionize the justice system in this country. It is an idea I hope hon. Senators on the other side could think of, if they are willing to go further in the Bill. Maybe what we should do is have that kind of system in place. I do not know if they are amenable to that. I do hope they would think about it and maybe improve on the idea. It is food for thought. If something of that sort is implemented in this country, I dare say, we can lead the world or by extension, if we want to narrow it down, the Commonwealth Caribbean. We can be the first in the Commonwealth Caribbean to have that kind of system in place and we can feel proud of that as well.

Mr. President, it is no secret that many of our people, the poor and the downtrodden, are able to access justice much more easily through the Magistrates' Court. As a matter of fact, the Magistrates' Court, where criminal justice is concerned, is the vehicle through which the poor can go to say: Look, someone did me wrong and I want justice done.

That brings me to another article that Sen. Seetahal SC wrote in the *Guardian* published November 01, 2009. In this article, Sen. Seetahal SC highlighted certain elements or problems that we face in the Magistracy today. Quite rightly, she said, 95 per cent of all criminal cases are indeed resolved in this court. What this does, is if you have 95 per cent of the criminal justice system being dealt with in the Magistrates' Court obviously, what will happen is that the public's perception of justice will start there. If the public's perception of justice begins there, then we have to ensure that our Magistracy works. In order for us to ensure that our Magistracy works, we have to ensure that we are serious about implementing measures that can ensure that our people, those on the ground, get the kind of justice that they deserve.

Sen. Seetahal SC also made reference in this article to, I have highlighted three or so for the purpose of this debate, three key areas of weaknesses, if I may, in the Magistrates' Court. The first that I would highlight is that you would have a situation where there are many dismissals in the Magistrates' Court. Quite frankly, if I could put it as bluntly as this, if you do not have money then, excuse the expression, "crapaud smoke yuh pipe." That is a fact. If I am lying, say so. But that is a fact. You can ask anyone about that. It is true and if we are honest with ourselves we would know that as well.

The second thing highlighted in this article by Sen. Seetahal SC is that there are magistrates who can apply the law arbitrarily, whether that is due to the lack of experience as an attorney-at-law for a number of years on their part, I do not know, but that too is something that we can address. We could probably look at extending the number of years that it would take an attorney-at-law to qualify to be a magistrate. Maybe we could probably look at that seriously and that may quell any doubts people might have about the way in which magistrates actually apply the law. It is important for all judicial officers, regardless of what position they hold, to show the people that, yes, justice is transparent, I know the law, I am fair and I am without bias.

Finally, the third most pertinent argument made by Sen. Seetahal SC in this article is that you will have a situation where some magistrates just cannot go to court on a particular day, either through illness or maybe because they have an

appointment or business, I do not know. But if they are unable to attend, there would have to be another magistrate to jump in to fill his shoes. Maybe that magistrate may not be prepared to handle that particular matter or deal with that particular court, in addition to the burden of already having to deal with matters that are coming before his or her own court. Why should we have a system that burdens magistrates like this? Why can we not—I know that this Bill is focusing on amendments to the upper Judiciary, the High Court.

As Sen. Mark rightly said, there are two arms of justice, the Magistracy and the Supreme Court, and you cannot have one without the other. On that basis, that is why I am saying if we could probably look at—I know the hon. Attorney General made mention of the fact that there would be no increase in the number of magistrates that are appointed. With all due respect, it is incumbent upon me to say that I think that there may be no better time than now for us to do that. If I may go so far as to suggest to the hon. Attorney General, through you, Mr. President, that a system of a night court be developed. Why not think about it? It is just an idea, food for thought again; turning the Magistrates' Court at some point in time, into a night court. You could increase the number of judges that would be able to hear these cases in the night. In that way, you can probably alleviate the kind of backlog that magistrates face and have to deal with, that "counsels" face and have to deal with and clerks face and have to deal with on a daily basis.

Sen. Jeremie SC: Counsel, counsel.

Sen. K. C. Walrond: I am guided by my learned friend. Thank you.

With that in mind, all of this will not bear fruit unless, we the servants of the people, get serious. I said it and I would reiterate again, I do support this Bill because I think that it is a step in the right direction, but you cannot be serious about the administration of justice and you cannot be serious about ensuring that people's, particularly the poor, voices are heard, if you do not address these critical issues.

Mr. President, there are people out there who are hurting. They need us. That is what we are here for. I am young and I know I have a lot to learn. I have come today to add my voice to what I think is a very sterling debate. I am honoured to be among people who are privileged to be in a seat of power. I am here to say that it is time for someone to speak truth to power and unless and until that is done, we as a nation will not grow and that in the end would not hurt us. It will hurt the people, because they are the ones that matter the most.

For this opportunity, I thank you.

Mr. President: Hon. Senators, that was the maiden contribution of Sen. Walrond, so we should congratulate him. I think he did very well, right up until his last sentence. [*Interruption*] You caught that too. Senator, we always speak the truth in this Chamber. We are required to do so by the oath that we take.

Sen. Walrond: I was being rhetorical.

Mr. President: You cannot be so whimsical on your legs.

4.00 p.m.

Sen. Prof. Ramesh Deosaran: Let me first of all, Mr. President, follow that honourable tradition and compliment the Senator for his maiden contribution—I assume he is a lawyer, and if he is, he has demonstrated the kind of passion and the kind of forthrightness that is needed in your profession.

So I wish to welcome you and join with the President in wishing you well. I hope you have a long stay here by the way. [*Laughter*]

I wish to note, however, in the beginning that this is a quantum leap in the administration of justice, and the Executive should be commended for taking the step at this time, especially since we have been faced with some harsh economic times, relatively speaking. It is a bold decision, long in coming, but the Executive ought to be congratulated in giving this kind of support, as Sen. Mark himself admitted, to the Judiciary.

Overall and briefly, the figures are, that it moved in the High Court from 23 to 36 now, and from nine to 12 in the Appeal Court. That is a movement from a total of 32 judges, of both levels, to 48, and that is, if you look at the percentage, a 50 per cent increase overall, and that is a quantum leap, especially when you consider the financial implications.

The other issue raised, however, is the financial support given to the Judiciary over the years, compelling the taxpayer to ask, are we getting value for our money in terms of the delivery of justice? The figures are also phenomenal in terms of the increase. Whilst you can consider only the development programme, you also have to consider the expenditure for recurrent programmes. If you do that briefly—once again to put this serious matter into a broader perspective, between the years of 2000—2010, you have an actual increase of 300 per cent, an increase in expenditure, both for recurrent and development.

The moneys for the development programme might have been a bit up and down, especially down in recent times, but as a total, so we are speaking about an amount of money and a number of judges. But it is necessary to reaffirm the point made. The protector of our democracy is not the Executive, and increasingly so,

the frontline protector of our democracy is not even the Parliament. The protection of the Constitution on our democracy lies clearly and firmly in the bosom of the Judiciary. That has been seen increasingly so when you look at the Anti-terrorism Bill coming before us, and when you hear about the other Bills coming before us in terms of the Evidence (Amdt.) Bill, possibly telephone tapping—so you need a certain calibre of judges, not only in terms of numbers. You need also a quality type of selection. So the numbers are convincing, but I am still reserved on the point of the quality, especially when we examine the current selection process. I hope the advice given on that point would be well taken.

Judges must be, for example, politically sensitive but not politically biased. They must be aware of the political uncertainties floating around in the country, because many of the judgments that they are about to deliver, increasingly so, have some political implications. In fact there is a case, without going too far into it, where one of the allegations is a judge had written a number of columns which conveyed some particular bias, and that is an element presented before the court. So judges must be very careful about what they are saying, where they go and what they do.

Without that firm and clear commitment by judges: impartiality, courage, independence; the whole governance issue will be a myth. More so, if you look ahead in the future with the possible weakening of the service commissions, the role of the Judiciary in terms of judicial review becomes increasingly critical.

In fact, that particular point was mentioned by the Chief Justice in his last opening of the term address, and that reflects the kind of courage, boldness and commitment to fairness that we expect in support of our democracy. Because judges must be given support, but they must not feel obligated to the Executive which conveys that, because that support, in dollars and cents primarily and as a physical infrastructure is really on behalf of the taxpayers. So judges must remain insulated, and that is why this debate is so critical for the public benefit.

But as I listened to the debate and I examined the parent Act—Supreme Court of Judicature Act, Chap. 4:01—I am again convinced of the enormous amount of responsibility and duties that judges have. I make the point because some people feel judges earn relatively large salaries; it is tax-free and so on, but I do believe, in the view that the duties that they have to perform, are quite extensive and really demanding, and they really ought to be treated well. I need to get that clear because I have some other reservations that I wish to put on the record about the administration of justice and the selection process.

But it seems to me as we are putting so much emphasis on the Judiciary, the increased number of judges with the additional expenditure, a 50 per cent increase in the size of the Judiciary, in one stroke, it is a mighty powerful contribution by the Executive. But what about what I would call—and I will tell you why I am raising this connection—what seems to be the forgotten child in the administration of justice? Because before matters reach the Judiciary, before matters reach before a judge, you must have proper evidence, you must have a strong prosecution system. So what about the office of the Director of Public Prosecutions? If you do not have the strength coming from there, it would be like a vehicle with a good driver but with no gas. You have a very nice driver, real nourished, well trained, ready to serve but before him is the kind of evidence and prosecution capability which makes his function almost useless, if you look at the outcome expected by the taxpayer. So what I am suggesting quite clearly and I hope it falls on keen ears, is pay urgent attention as well to the office of the Director of Public Prosecutions.

Mr. President, we want to make sure that judges who will be appointed soon enough will be well served in the public interest by a capable prosecution input in cases coming before them. We have seen how many cases are crumbling out of court for inefficient evidence, presentation and for other weaknesses on the prosecution side, and I am hoping in the very near future—and knowing him as I do, I am sure he will take up the challenge of securing more stability and strength in the Director of Public Prosecution's office.

Sen. Jeremie SC: Thank you, Senator. Cabinet has agreed to 100 per cent increase in the numbers in terms of the staff in the office of the Director of Public Prosecutions, and it is my hope that the Judicial and Legal Service Commission will move swiftly, I have every hope that they will move swiftly to appoint a director—not an acting director—within the very near future.

Sen. Prof. R. Deosaran: Thank you very much, Sir, and I think the public will be quite enamoured by that intervention.

But you have left out something that I was anxiously awaiting to hear you add to the equation. The conditions of service must be such that people will not come one day into the office of the DPP or in that department and jump out next day to go either into private practice or want to go somewhere else, otherwise the decision by the Executive will be really halfway there.

It is not to blame those who seek such mobility. Not at all. But it is, for example, to make a condition of the DPP almost equal, if not equal to that of a High Court judge in terms of tenure and in terms of basic conditions. So people

would feel that is a career path for permanence and public service, rather than looking at it as a window of further opportunity. And the Attorney General, when you make the appropriate presentation I would also hope that the matters of terms and conditions of service be also looked at, because you would have a fractured office in the DPP, continuously so.

But as I listened to the debate again, my mind went back to the 90's, about 15 years ago or thereabout, when there was an Ellis Clarke Committee looking at the Magistracy, and several of the issues raised here about the Judiciary were well examined, with appropriate recommendations made by that Ellis Clarke Committee on the Magistracy. It was set up by the Prime Minister, Hon. Patrick Manning, around that era, and you had Mr. Frank Mouttet, Mrs. Guya Persaud, Mr. David, the principal of the law school, the then Commissioner of Police, Mr. Bernard and myself on that committee.

Most of the problems raised here—a serious issue in governance in this country—this is not the first time these issues have been coming about, what to do with the Magistracy, the gaps in terms of case backlog, case management and physical facilities. I remember the comment—Sir. Ellis asked me to go and sit in the Magistrates' Court and see actually what happens. For a period I went, took notes and I reported to the committee and they accepted the recommendations to have a better system of Magistracy. Nothing was done, just like the Gurley Report. We have all of these reports coming before us time and time again only to wait until there is a serious backlog or an imminent crisis upon ourself. So that while we are happy that there is a glimmer of hope—and we must commend the Executive for making the additional manpower to the Judiciary.

But the question of selection, if I should rush into it and if I should first of all commend the current Chief Justice for a very valuable and informative annual report from the Judiciary. It is really unprecedented in terms of the information, in terms of the analysis, except for one or two points, perhaps they have an over-enthusiastic statistician with graphs and charts that is very difficult to read, only the sophisticated eye could perhaps make some meaning of it, but we need this for the public benefit.

4.15 p.m.

It should be simpler and it could be simpler. So merely as a helpful suggestion in the context of my overall commendation, that the next annual report, in terms of these graphs, charts and so on, could be made simpler for the public's benefit.

On the question of public confidence, and on page 55 in the Chief Justice's annual report, it says how the public is really satisfied with the role of the Judiciary and matters of that kind, except that they did not tell us the figures. Is it 80 per cent satisfaction, and who has conducted this consumer survey? I hope these are points that we could attend to next time, because without public confidence in the Judiciary, overall, the Magistracy and the higher Judiciary, I think, the expenditures incurred by the Executive would not be as satisfactory as expected.

On a preceding 2007 report—that was a different Chief Justice—they were dealing with the procedure for appointments to the Judiciary on page 4, and without reciting all the conditions, these procedures looked too vague, wishy-washy and too slack. It tells you that anyone who has been considered for an appointment will be interviewed, but it does not tell you how the applicants come to be invited. It does not tell you how the selection process is actually invoked. They put something in the *Gazette*, but I would like to see the criteria for appointment clearly stated in the daily newspapers as well. Very clear to us. They said that they consult with the President of the Law Association, that is all right; the President of the Criminal Bar Association—well then, if you are going that way, what about the Southern Assembly of Lawyers and one or two NGOs?

Sen. Mark made an important point. We get the feeling that the courts are made for lawyers and lawyers only, and I cannot help but have a great concern over that, because much of the issues in terms of backlogs and adjournment and so on, are more often not the fault of lawyers. We have a file called the "Economics of Crime", that is, clippings, articles, information that suggest what contributes to delays and undue additional expenditure by the courts. We have found that the adjournments and simple things that happened in the administration of justice, contribute. So the point I am making is to affirm what Sen. Mark said, that the impression must not be given that the courts are only for the convenience of lawyers, because related to that point, it is something that I had referred to before and resurrected by Sen. Mark.

The question of having people from Cedros and different parts, far out country areas, having to come to Port of Spain, whilst the incident that caused the matter to go before the court happened far from Port of Spain, what do you do? You inconvenience the witnesses, you inconvenience the victim. Sometimes with broken legs or they are sick, they have to take a taxi to come to Port of Spain,

only to find out that the case has been adjourned and adjourned and adjourned. These stories of misery must be stopped. If not completely, but the public must see some effort being made to remedy these public grievances at the hands of the administration of justice. The reverse happens.

An incident happened in Port of Spain and I know of it. It is a matter that I am going to follow up because it gives me an opportunity to see in the depths and the bowels of the administration of justice, the perversities that occur in terms of procedural justice. Not the verdict, but the procedures used to arrive at a verdict. The incident happened near Port of Spain on the Priority Bus Route—an accident—but there are so-called consultants who intervened. They hired a lawyer and the matter went to San Fernando. The matter was sent to the San Fernando court because it appears that there is some collusion in the underground, and when you checked with the insurance companies—this is where public confidence in the Judiciary comes in, because these are the elements that contribute to the lack of, or the development of public confidence in the Judiciary, and this is a matter that the Chief Justice should look at.

There has been a pattern as the insurance companies disclosed, for such—I do not want to use too strong a word—abortions to take place. Irregularities! You know the saying, justice must not only be done, it must be seen to be done, and this is an example of the transgressions that happen and are allowed to continue. Why must you have a victim running down to San Fernando court, when the accident happened near Port of Spain? Why must you allow the witnesses who are eager to serve justice, rush down to San Fernando in these days of heavy traffic and then have to come back, especially when the case has been adjourned so many times. But is it only for the convenience of the lawyer? Are all the good lawyers in San Fernando? Is that the question, or is that some kind of apparent conspiracy that needs to be checked in some cases? There is a pattern. When you check the document in the courts and from the insurance companies who are involved, they tell you exactly which lawyer will fight the case. I do not want to talk about which judge will hear the case, I want to leave that out for now. That will come later on.

Sen. Mark is right. It is not a political point. For too often and for too far in this country, we have seen the courts operating only for the convenience, or mainly for the convenience of lawyers; put some soul in the administration of justice, put some feeling and put some sensitivity in the administration of justice. [*Desk thumping*] This is an opportunity that when you are increasing the numbers, you should increase the amount of compassion in the administration of justice as well.

In the *Newsday*, dated January 31, 2010, on page 7, you have a judge saying "Criminal justice system slowly grinding to a halt". I hope the additional judges now procured, would assist in speeding up the system, rather than having it continue to grind to a halt. That of course, is Justice Herbert Volney. Again, he was pointing out in that same story, because he had reasons, the Judiciary is a place, like in some professions where you have to restrain yourself from saying certain things out of decorum, you want to look professionally respectable, you do not want to complain about your peers, but sometimes, how else would you know what is in the shadows and affecting the public's interest.

So when Justice Volney tells you that there are over 100,000 warrants out, but yet not one arrest made, he suggests what is happening in the police service, and that is the point I am making. I am connecting the prosecution capability which starts with the police investigation, to the presence of these additional judges. You must bring something to the judges for them to determine, and what you bring to them should be a case in the public interest from the State side, from the prosecution side, that the evidence is strong enough as presented by the police and by the DPP office for the judges to make a decision. The point is quite relevant because the Attorney General told us quite clearly that the additional judges will be used to help to reduce crime and convict persons committing crimes. So how can you convict somebody as a judge when you have no proper evidence before them? That is the point about the value of these additional judges.

The Attorney General tells us he wants to stop the rate of recidivism because people are coming out of jail and going back, but a judge cannot by magic convict, a judge cannot by magic sentence, he would not be worthy of the name of a judge. I know many judges expressed regret to me privately, and I will come to a documented case just now, where he is sure, circumstantially, that the person was guilty, but the evidence faltered because of the weakness of the presentation from the police side. So integrity should not be the monopoly of the Judiciary. It should be richly present from the police to the Department of Public Prosecutions, if you want the Attorney General's promise of better justice for the public fulfilled.

Justice Volney did express some serious concern about juries, but this is not the first time the role of juries has been brought up in this Parliament. The Attorney General was gracious enough, was kind enough, to refer to a book I wrote in 1985, on *Trial by Jury*, and I say so with all typical modesty because I had about 40 recommendations then to help improve the Judiciary system. But we are going to wait. I had joined with Sir Ellis Clarke to make some

recommendations about the Magistracy, but to no avail. So, maybe I have to do like Shadow and ask the question: "Why nobody taking me on? Am I ugly or what?" [*Laughter*] Something must be wrong! Maybe I have to change my looks! But the Chief Justice, as head of the Judiciary, must invoke an examination of the jury system.

There are too many irregularities going on in the system, and because you cannot disclose certain things about juries, they remain secret and quiet. Since I am on that vein, when Chief Justice Sharma was Chief Justice, I wrote him a letter—I should have brought the letter with me—pleading with him, privately, but I have to disclose it now because it looks as though nobody is taking on these thing when you do it properly, respectfully and with good manners. You have to wave and shout, and perhaps that is why Sen. Mark—anyhow—quite properly, asking him and pointing out the reasons why the jury system should be examined as an enquiry, and improved or modified in whatever way. But to no avail, so I have to ask the Shadow question.

So when Justice Volney says he bans these jurors for 15 years, of course, the happiest persons there would be the jurors themselves. [*Laughter*] He has done them a great favour. So maybe he ought to polish his sense of punishment a little bit, because he has done the apparent guilty ones a great favour.

Then you have the Stanley John issue coming from the Judiciary itself. It tells you again, before Justice John left for another West Indian country. We are friends, he came to see me and he explained a number of things to me which are really heartbreaking about the Judiciary. He told me why he had to leave. It reminded me of the song from Salick, "Radica, why you had to leave". Well, Stanley John felt he had to leave, and the reasons why it broke my heart because he was in my view, an intelligent, well-serving judge. Whatever problems they might have had been between himself and the other judges, he was courageous and quite impartial.

The criteria for selecting judges, just like the criteria for selecting your jurors, must also be re-examined. The Judicial and Legal Service Commission claims to have four key criteria: integrity, professional competence, temperament and experience. I think among these, temperament surprisingly is a key one. A judge must not be sluggish, must not be arrogant and other such personal qualities.

Mr. President: Hon. Senators, it is now 4.30 p.m., so we will take the tea break at this point and we will come back at 5.00 p.m.

4.30 p.m.: *Sitting suspended*.

5.00 p.m.: *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

Sen. Prof. R. Deosaran: Mr. Vice-President, I was on a fundamental point in the democratization of the administration of justice, not because the taxpayers pay for it, but without public confidence in the Judiciary, you would not get witnesses going as they should go; you would not get the police performing as they should. In other words, you would not have the kind of accountability and transparency under the glare of public scrutiny, and that would be a fatal defect.

When you examine the system—and I would invite the hon. Attorney General to pay a close look at this, not as a lawyer, an attorney, but as an Attorney General in the cause of justice in the public interest. I have seen too often, I would not call names, Attorneys General acting as if they are still practising lawyers, defending the practices of the legal profession, more than looking to see whether the public interest is served through those practices.

You have the Legal Professions Act with a code of ethics at the back, but judges also have common law jurisdiction over the behaviour of lawyers. This latter facility is not acted upon enough to have lawyers help the Judiciary perform with the efficiency that the Executive would wish, especially in this case when they are adding so many judges on the Bench.

When you examine it, when the Chef Justice and his team were trying to solve a problem of prolongation of cases, extensive arguments, when they tried to introduce skeletal arguments, do you know who provided the greatest resistance? Not the churches, not the victims, not the unions, not the businessmen; it was the lawyers, the legal profession. When you are trying to do something for the benefit of the public interest and, regretfully, you have to say so, if you want the things to be recognized for correction, it is the legal profession.

When you wanted to move away preliminary enquiries to facilitate speedier justice for the public benefit, with the Executive combining with the Chief Justice, seeking to do something like this for the public benefit, do you know who objected or who tried to frustrate the process? Guess who?

In this case management exercise, again, you try to fix certain cases in certain places and to fast track, do you know where the voices of protest came from by somebody saying, "Well, I have to do this; I cannot go there today; tomorrow I have to do this"? Guess who? What it means is that the Executive and the Chief

Justice must take the courage in their hands to do what is right and not what is convenient to the legal profession. That is the stage we have reached. That was what my colleague, Sen. Seetahal SC, alluded to when she made her point.

This is nothing personal, I must tell you, to alleviate any fears; most of my friends belong to the legal profession; it has always been so, perhaps because I teach subjects related to the legal profession, but they are very close friends. They would tell you that they try to manipulate the system; they see a loophole there and they try to use it for their client's benefit, but the AG must rise above that. His position is too sacred; it is a public trust position as Attorney General. That is why the country looks forward to this particular Attorney General for such public service.

The point made by Justice Volney is well taken, you ought to reform the jury system in many ways, because this whole question of freedom of the press is involved in terms of what you can and cannot publish. I am afraid that we put too much emphasis on the possibility of prejudice in the jurors' minds; too much emphasis and having the stage go that way. That is another area, without going far into that, for reform, and to help ensure that the additional judges do the work that they are expected to do, because the public glare is on the Magistracy too. You cannot escape that. It is not that we want to have a debate on the Magistracy, but we speak of the Judiciary, cases come from the Magistrates' Court to the Judiciary. If they come with a certain measure and configuration of efficiency, so too would the performance by the judges be efficient.

You have in some courts the half-day syndrome; when you have in some Magistrates' Court, again, regretfully and sadly to say, the half day syndrome, with some Magistrates' Courts closing down half day. I have evidence about the Magistrates' Courts in Port of Spain, as soon as it is after lunch, the clerks take off. If a magistrate decides to hold session after lunch, as he is duly entitled to, he gains the resentment of the administrative staff.

You see the kind of problems that are not visible, but they do affect the administration of justice. Just as when the annual reports put out by the Judiciary tell you that they have to wait so long for confirmation of certain things in order to fast track their appointment, something similar to what Sen. Enill complains about, the supporting administration is defective, but we only see the problems at the top and, quite unfairly sometimes, we blame those at the top.

I have been trying my hardest to get a solution by pointing out those who are incompetent, inefficient, so you would increase the culture of productivity and performance by so naming and possibly shaming. Other people have a different

view; they feel it is a secret. You must keep those who are incompetent a secret; keep it quiet. Well if you want to take the blame, take the blame, but in the annual report by the Judiciary they are telling you quite clearly that there are certain administrative arms in the public service not doing their jobs and thereby consequently affecting the performance of the Judicial and Legal Service Commission and, by implication, the Judiciary.

This matter of transferring cases belongs to case management. I want, again, to emphasize the point that under case management procedures the Chief Justice or his appointees must make sure that the witnesses, the offenders and the victims, especially the victims, must not be doubly inconvenienced by having to come from all parts of the country or to travel long, long distances, away from where the real incident happened. That is not fair. Is that justice? Certainly not.

Whilst there is judicial bias or apparent bias, there could also be system bias and this is a case of system bias, where the system is working in a biased way for those actively involved and those who have been victims having to suffer doubly so, in the ways that I have just pointed out.

Judges themselves must be held accountable, in such respects. Judges do differ. I made the point previously, and I wish to emphasize it, that it is time we get some other mechanism, either through the Judicial and Legal Service Commission or some mechanism, to question judges more closely as to their views on certain sensitive controversial issues. I think it is time to ask judges, before appointment, their view on the death penalty. I think it would put a judge who is against the death penalty, he is an abolitionist or have all kinds of philosophical or religious reasons, if there is a murder accused in front of him, how would he instruct the jury if he has such cherished views against the death penalty, whereas it is law that the death penalty be implemented?

This has nothing to do with whether you are an abolitionist or supporter of the death penalty. I am talking about the judge being responsible for carrying out the law. We must ensure that he does so without expressing his personal feelings, especially in the context of instructions to the jury.

I have had cause to read instructions given to juries and you could see the slant. I did so in one case, I think it was the Abu Bakr case. You could see the direction the judge was trying to steer the jury. The matter has been brought up with the Privy Council. So there is a case to examine more closely the views of judges before you put them on the Bench, or if they have to be on the Bench, through case management or the Chief Justice's discretion, put them on certain cases that they would not fall to temptation.

There was a recent case in the United States, a signal case on election financing, where the Supreme Court of the United States ruled to free up corporate spending. They said that the corporations could spend a lot more money than they were before allowed to do by judicial restriction. Do you know what the judgment came out as? Five for and four against; so you have nine judges on one Bench and five went one way and four went the other way on the same issue, so there is a very strong case to examine the views of judges in particular contexts, especially when you have one judge sitting.

So with judges and their role—not only appointments and increasing the number and hoping everything would happen that is nice, hunky-dory; the thing now start in the delivering of services. I do not think judges invoke their common law jurisdiction enough to have proper order and to protect witnesses. There is a clamour all over the place that the police especially want witnesses, they want people to come and give evidence, but do you know what happens when the witnesses appear before the court? Some lawyers bull rag these witnesses to the point that the witnesses get so desperate and frustrated that they say anything. They are harassed. It is called the "lawyers battering syndrome" now, LBS in England. In England they stopped these things.

Judges must invoke their powers to preserve the integrity of their courts. This is another way in so doing. Protect your witnesses. A lawyer could ask a question, but ask it respectfully because you want the truth; that is what you want. Use the logic; pose the question in a dutifully respectful way, but not so—They make all kinds of insulting remarks and call people “inveterate liars”. "I am putting it to you that you are a liar." Why are you putting it to the person that he is a liar? You should prove that he or she is a liar.

I am making these points in such detail because it is preventing witnesses from going to court and giving evidence. They turn a blind eye, rather than going and face this barrage of insults and intimidation, just because they want to serve justice as a witness. So judges must play a rightful role; they are not passive; they should not be passive in the courts, whether it is in the tradition of the British Judiciary or not. They have to be a defender of the truth and a protector of witnesses.

5.15 p.m.

We went to a conference in Barcelona and another in Atlanta and the role of judges has become a serious issue for scrutiny now. All over the world there is an increased amount of scrutiny on the role and the responsibility of judges and we

too must follow suit. That point has been made by both Sen. Mark and my colleague Sen. Seetahal SC to the point where in some courts they say they are appointing judges who are Liberals, and they appoint another group who are Conservatives because they know by their ideologies and views they will determine things one way or another, not in the sense of absolute truth.

I always wonder if we get such annual reports from the Judicial and Legal Service Commission. We get annual reports from the service commissions and from the ministries, could we not develop some mechanism—

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. Prof. R. Deosaran: Thank you, Mr. Vice-President. I thought I was completely deserted, but—I want to make a suggestion for the Executive that since we have this Annual Report by the Judicial and Legal Service Commission it should not just lie there. It should not just be dropped here and remain, it must be awakened, it must be brought to life, it must serve a purpose, when the representatives of the people, the honourable Upper House and the Lower House could have a view and consider this to the point where they could explain their concerns and make suggestions to the Judiciary. How do we do this? Not in public glare, not in political controversy, but in quiet deliberation in the public's interest. Have some system where Parliament can sit in chamber, a committee chamber with representatives from the Judiciary and speak to this report. Bring it to life rather than having it placed on our record.

I am quite sure the Chief Justice would not be hesitant because that would be a route for him to express his own concerns too. Rather than waiting solely on the opening of law term address, he has a more dynamic opportunity to tell the Ministers and other Members of Parliament what his concerns are, such as the ones that I have just raised. I would like to feel this is a constructive point that the Executive especially the Leader of Government Business—I hope he takes this question seriously.

I use a lot of judgments from the High Court in my teaching at the university, meaning that the role of judges could be used to train our leaders for the future. I have used a judgment on discrimination by a former Chief Justice Clinton Bernard, I think it was *L. J. Williams v the Attorney General* to see how the

judges think about an intensely controversial, sociological issue. I also used one more recently by Justice Peter Jamadhar on the *Ken Gordon v Panday* case on what is pseudo racism, to see how the courts determine, define and judge on what is controversially known as racial discrimination. I am using one now by Justice V. Kokaram on how a judge can be biased and how he can seem to be apparently biased, and how judges look at these subtle nuances that complicate our everyday lives.

Even the past Chief Justice Sharma, we used his judgment from the Appeal Court on a Muslimeen matter. So there should be that reciprocity between the Judiciary, the Executive, the general public and the university. That is what makes the role of a judge so very important to our democracy, as I said earlier on. It helps us think and see the light, not only convicting people, but there is a wisdom in the Judiciary that we should all enjoy and I am suggesting one or two ways where that could manifest.

Reciprocally again, there are many suggestions made for reform by Parliament to the Judiciary. The Judiciary had asked us to reform the prisons; in several judgments it had asked us to reform the ID parade. This is another reason why witnesses do not appear. People who see crimes say they have not seen at all because if you really know how the ID parade operates, it is a nightmare for a naive witness to point out and touch and whatever things you have to do. In this day and age, it would be a dangerous adventure. Judges have spoken about this, calling for some reform in the public interest. Are we listening?

I have suggested, because you can see how the different streams in the administration of justice need to converge into one larger stream, I have asked the Attorney General for a White Paper on legal and judicial reform where he can put all these things together now: the Director of Public Prosecutions (DPP), sentencing, the jury system, a number of things, the mechanism for transparency in the selection process of judges and so forth. I hope that is another issue that if ever he leaves that can be a feather in his cap, I am quite sure.

As I come to the end, I want to express my commendation to the current Chief Justice once again, because I see in him a higher order of diligence and commitment and maybe that is why there is merit in his relative youthfulness, that he has a rather long time to contribute, stabilize and strengthen the Judiciary. I see evidence in one or two places, but more relevant in the annual report that he has produced; quite informative.

Before we used to get the same thing; what the Constitution says—we know that already. They quote the Constitution a couple times, a few tables in the back,

a few nice, glossy pictures and that is it. He has made an improvement and I really want to put it on record that I hope the Parliament itself is satisfied with that.

Coming back to my public accountability issue again, do you know what I think we can use in this country now because there are too many hushed complaints? There are too many whispers of resentment about the Judiciary, about jurors coming to Port of Spain; you would not believe. If you were a juror, you would get so disgusted.

Every Monday morning they come only to be sent back home and you know how travelling is these days. So have a little mercy, please. Have some compassion, because when a juror comes before a case disgruntled and unhappy, he wants to finish that case right away, and he will not have the patience to deliberate or sift the evidence. It presents a psychological problem.

So are these complaints reaching the right ear? They cannot because there are so many barriers. Even to make a complaint against a lawyer, you ask the ordinary person in the street where to get a form, you just want to get a form and you do not know where to get it. There is a bureaucracy that is thick with resistance. To whom do you complain about these things? I suggest—and you really need a brave Attorney General to spearhead this one, the others are easy, but this one you need the kind of fortitude they talk about. You need a very courageous one—a judicial ombudsman. You need a referee there on behalf of the public's interest with an office, staff, and accessibility so you know where to go with your grievance, whether it is right or wrong, but it will be sifted and adjudicated upon and that will raise public confidence in the Government, the Executive and the Judiciary. You can win votes by that too.

Another suggestion, because I do not want people to say I am only criticizing, I like to be helpful, why do you have to have the retiring age at 65? A lot of us here and in the Lower House too are over 65 and look how strong we are looking. [*Laughter*] [*Desk thumping*] You have a wisdom that has germinated over the years; the distillation of ideas, the refined quest for balance, the capability of judging demeanour; you could smell a lie from a mile after that wisdom and years of experience. When that ripe age of wisdom comes you are asking the person to retire? Something needs to be done. It will also help cure the malaise about temporary judges, you would have them there for a longer period.

Let me say, as well, that four years ago I had objected to the system of temporary judges in this same Parliament and the then Attorney General, Mrs. Glenda Morean said she had no problem with that, but we are having a problem

now. So we made the suggestion already, and I have to ask myself again the Shadow question: "Am I ugly or what?" Something is wrong, but that point has been made already. So all in all, my contribution has really been on behalf of the aggrieved citizens of this country. I have given you a poor man's contribution, the suffering people at the hands of the Judiciary. There are ways to cure these maladies and we have made several suggestions and I hope the Government, the Executive in particular, and the Chief Justice as well, pick up on these ideas to make the Judiciary a place we can all respect and continue to support.

Thank you.

Sen. Dr. Sharon-ann Gopaul-McNicol: Thank you, Mr. Vice-President, for giving me the opportunity to contribute to this debate on the Supreme Court of Judicature (Amdt.) Bill. I do not think one has to be of a sound legal mind to recognize the importance of increasing judges in our system. I think there is no question that our judicial system is experiencing what some may term a crisis, others, a disaster, others may term it an apocalypse. I am just here to recognize that there is indeed a worsening of our criminal justice system, primarily of course, in the context of this debate, we can attribute it to this situation of not enough judges.

Certainly our former Justice Stanley John, gave us his reason for quitting the system when he spoke of it as a failed justice system sometime last year. Chief Justice Ivor Archie himself recognized that the system is on the verge of burnout, in his words, and went on to explain that a superhuman effort would be needed to rectify this situation of the judges.

He went on to say, in his words, that it is a pace that cannot be maintained indefinitely without additional help. So there is no argument here. The Mackay Commission of Enquiry also reiterated the same situation with the magistrates, recognized the importance of the burnout effect in the massive overload; recognizing the result, of course, is a delay in the justice system; the frustration of the police and prisoners; emboldening of offenders; and a virtual collapse of the system itself.

So with that in mind, when we examine clause 3 and clause 4 in this Bill in the context of increasing the number of judges in the High Court and Court of Appeal from 23 to 36 and in the case of the Justices of Appeal from 9 to 12, certainly there is enough justification, one would argue, just looking at the pending cases alone.

In my case, when I think of the ordinary man-in-the-street who will hardly be able to get justice in this system for years on end because economically he cannot afford to fast-track the system in any way, to say the least, we recognize the importance of increasing judges. When I think also, in terms of the issue of a judicial independence, that is a major concern and I think it has some kind of relation if you were to look at it in terms of the backlog of cases.

5.30 p.m.

In fact, about a year ago, between 2008 and 2009, a global competitiveness report was done looking at judicial independence. The question was asked: Is your country independent from political interference of members of government, citizens and firms? Trinidad and Tobago was ranked 79 with a score of 3.6; one, of course, being the worst and 7 being the best with a mean of 4.1. Barbados came in the top 20. Actually, Jamaica came higher than us. Countries like Ghana, Libya and Syria came higher than us.

I reiterate the point that was made by my colleague, Sen. Prof. Deosaran when he made reference to the importance of the judges being independent at this particular time. It is not just competent judges we are looking at, but judges who could be independent of the political interference and of course, the Government of Trinidad and Tobago. Looking back, I recall living abroad and the installation or the appointment of the Supreme Court judges in the United States. It was such an interesting process. It required a tremendous amount of transparency, vetting and screening of the judges. I hope that we could introduce that kind of system here if we deem it necessary. I think that it is, considering the lack of independence of judges. The pattern is clear. There is much control of the Judiciary at any cost and in a sense that can frustrate the process and certainly, result in a backlog of cases at which we are looking.

Another thing I would like to consider is what adjustments we would have to make in terms of bringing about an increase in judges. What about the Caribbean Court of Justice? I wish the Attorney General was here. I think that it is about 30 per cent we contributed to the Caribbean Court of Justice. I remember when Justice David Hayton commented on the fact that he was underworked; he had so much time to relax, play golf, tennis and squash. Desmond Allum SC made reference to the fact that we have a backlog of cases in our local court system and the Caribbean Court of Justice where we spent so much money, they seemed to have so much latitude at that point with a relaxed process. Here we are talking about the need to redirect our funds. Maybe, we should redirect our funds from the Caribbean Court of Justice to our local court system in the hope that this would help to improve the situation with the judges being overworked and overstressed.

Another matter that I am told contributes to the backlog of cases is the audio digital court recording system which I understand is not available in many of our courts with the largest amount of backlog. I would think that in the 21st Century while we are talking about Vision 2020, every court should have this audio digital court recording system as opposed to the handwritten witness testimony that seems to prevail in many of our courts. I think that this is a bit outdated. I am told by many of my colleagues in the legal system that in the course of a day, it takes so long to get through this handwritten system as opposed to the digital court recording. I hope we would look at that.

I want to make a few recommendations. Another justification for increasing the number of judges is that we have recognized the flaws within the Witness Protection Programme and the backlog of cases because of the constant adjournment, some cases being thrown out and some people leaving the country. We have witnessed the gunning down of several of our witnesses. One we recall so vividly is Alicia Kizzie Mc Kenzie when she and others were gunned down. We need to look at how we can improve the Witness Protection Programme, as well, which has contributed significantly to the backlog of cases in this country.

So much was said by colleagues, Sen. Mark and Sen. Seetahal SC, so I do not need to repeat what was said in the interest of time. We have to modernize and speed up the whole administration. In the interest of the fact that there is so much of a backlog, not just in the High Court and Court of Appeal, but even in the Magistrates' Courts even though the Attorney General seemed to have differed on that point. The research seems to support quite a bit of backlog. We need to have an increase in judges. I hope that we will upgrade our court recording system.

I agree with Sen. Walrond when he spoke of the night court. I remember so clearly, how exciting a period it was in the United States at the time I was living there, when about 20 years ago, they introduced a night court system because of the backlog of cases and the tremendous amount of crime that was taking place. They had no way of addressing it other than to introduce the night court system. This proved to be so good and served as a catalyst in the reduction of crime in New York City. I think that it is something from which we can benefit, no doubt.

I agree with my colleague, Sen. Mark when he spoke about setting up a remand court at Golden Grove. Right now, as it stands, transporting prisoners on a daily basis has cost as much as $4 million a month. If we can look at setting up a remand court at Golden Grove, for instance, this would contribute to extra funds which could be redirected into hiring more judges than we are doing now.

We need to look at creating a young offenders court which would take away the stress at the Magistrates' Courts and reduce the backlog. It is important to have a young offenders court. It is good to have young offenders treated differently and separately from the adult offenders.

I hope that we could look at establishing a land court to deal with petty matters involving land disputes among family members, neighbours and so on. This would certainly alleviate the stress at the Magistrates' Courts. This is where most of the backlog seems to come.

From a psychological standpoint, I would like to make some suggestions that are more socially based and sensitive. I would like us to consider very strongly, more community service sentencing. This works very effectively in developed countries. It is like an alternative to small jail term fines. The philosophy behind this alternative sentencing is that it benefits the community and society; people are integrated in the community and are able to make their contributions in a constructive way, whilst simultaneously, punishing the offenders. This is a good idea that could work alongside alternative dispute type of resolution and citizen friendly mediation type of systems. If we could set up that alternative dispute kind of system instead of everything going to court, this alternative system would reduce some of the legal bills and take away much time from the judicial system. We could look at that to reduce the backlog of cases in our Magistrates' Courts.

Along this line in terms of social base, I would like us to think of programmes for rehabilitation of criminals to prevent reoffending. Recidivism is very high in our country and this is one way if we could introduce these reform types of programmes that are social and educational in nature, we would see a reduction in terms of the recidivism rate of prison offenders and reduce the backlog of cases. As I mentioned before, I would like to see a separation of the wings that exist between the young offenders and the adult hardened criminals. I hope that this would take priority.

Certainly, a new prison system in Tobago to replace the present dilapidated structure is necessary. Right now, you hear of so many complaints about the prison system in Tobago. I think that we need to address that. I hope that we will be aggressive in computerizing the entire system of the criminal database, so at the touch of a button police officers can easily identify any criminal element that they encounter. This would help in the backlog of cases.

I also hope that we could widen the wardens in the system of local government. It would help to deal with nuisance crimes like littering, vandalism, graffiti, traffic violations and so on. If we could take that into consideration, this

would help with the backlog of cases. Many cases will not be referred to the Magistrates' Courts. There is no question at this point that we would agree that there is a need to increase the number of judges.

I commend the persons for bringing this Bill forward. It is indeed necessary. It should have happened a long time, but it is never too late. It is important for us to recognize that unless this is done among other recommendations that were made by my colleagues and me; we would have a continued worsening of our criminal justice system. The idea of bringing this Bill forward, I hope that it would be implemented and proclaimed very quickly because it is absolutely necessary given the situation that we are encountering.

Thank you. [*Desk thumping*]

Sen. Helen Drayton: Mr. President, in giving my wholehearted support to this Bill, I am mindful of the fact that of critical importance is an efficient functioning judicial system in the orderly development of society. Indeed, we are dealing with the major instrument of social control. I feel that the moment cannot pass without saying a few words. Of course, some of what I have to say has already been said, but given the times that we are living in where we have close to 50 murders that ushered in the new year, I do not believe that anyone could overemphasize the need for efficient and effective systems and procedures that facilitate social order and economic and political development.

Why do I support this Bill? A lot of statistics have been mentioned and it is my understanding that the average judge has a current workload of approximately 1,000 or over 1,000 cases. When one takes into consideration, vacation, public holidays, down time for training, conferencing, sick leave, et cetera, I think that one would come to the realization that it is virtually an impossible task to get rid of the backlog and to be more expeditious in handling the numerous cases that are coming forward. According to the annual report for the past year, the Judiciary and the Magistrates' Courts have a profile of about 79,200 cases for the period. The number that was actually filed was over 90,000 and in the High Court, 4,950 filings. I made note of the other statistics that the hon. Attorney General mentioned.

These statistics are necessary to demonstrate the tremendous burden on judicial officers which has resulted in the culture of adjournment and also to show that while it is necessary—I think that this is very important—to appoint additional judges to improve the overall administration of justice, the need for

better infrastructure cannot be underestimated. Indeed, I have always been of the view that to pour bodies on system's problems only creates more bottlenecks and actually postpones the inevitable, which is a collapse of the systems because now you are putting more pressure on systems that are already very weak.

This is why I think that it was so regrettable that the actual budget granted to the Supreme Court was far short of what was proposed. I recall then, that what the Executive had said was the fact that economic circumstances being what they are, or what they were predicted to be, it was necessary to cut the budgets for all departments.

5.45 p.m.

I need to make an observation. I saw the hon. Attorney General shaking his head and saying that was for the jurisdiction of the JLSC. Let me observe that the Government has the purse and how it dispenses funds will affect the capacity of the Chief Justice to deal effectively with the reforms that are absolutely necessary. Let us face it. The major problem facing our society today is crime. It is security and there has to be a very strong correlation between the high incidence of crime and the failure to deal expeditiously with criminal cases before the courts.

Further, the type of fear that is engendered among citizens; not only with the high incidence of crime, but in the way it is reported and the fact that the public is aware that there are serious issues in the judicial system, places a tremendous burden on the emotional well-being of our society and consequently on doing business and the cost of living. To my mind, there should be no comparison with other departments.

It will be unfortunate if the critical infrastructural projects that would alleviate the current bottlenecks and backlog of cases have to be postponed because of the budget limitations. So, enabling infrastructure is critical in getting rid of the backlogs.

It is well to say that we are increasing the number of judges, but we have to be aware of the need for facilities of judicial standards to house those very judges and their staff. The need for the modernization of the system—and that has been mentioned; the need for further decentralization of the Magistracy; and just to give an example, in a high population area such as Diego Martin, the highest density in Trinidad and Tobago, one should well consider the need for a Magistrates' Court in that area. So excessive delays in obtaining judgments can certainly pose human rights issues. It is not conducive to a positive environment for business development.

With the increase in the number of judges, maybe the Supreme Court ought to consider the system of administration where some down time, through proper scheduling, is provided every two months for judges to have at least two weeks to write up their cases and dispense with matters. The very vision statement of the court speaks to accountability, timeliness and efficiency as hallmarks.

We have heard here today that there is a dire need to deal with the shortage of judges. When we speak of enabling infrastructure, we must speak of the human infrastructure. It is not just a question of numbers, but the underlying structures that support them.

[MR. PRESIDENT *in the Chair*]

We follow the British tradition whereby judges cannot practise when they retire and the merits of this are very evident. But why should a judge retire at age 65 when they can go on to make outstanding contributions well above age 65, as we have evidently seen judges who have retired making a very meaningful contribution to society. When you consider the age of retirement for the CCJ is 75 years, I do not understand why, given the dearth of competent resources, they are forced to retire at 65. We need to reconsider this.

Much has been said about compensation. I am not going to go into the details, but more so the emphasis has been on pension. You cannot address pension outside of basic salaries, and a fundamental issue remains basic salaries with respect to attracting talent. The old notion that persons in national life do not operate on the same motive as those in the private sector, which is the profit motive, is a thought we need to perish because, in the final analysis, when it comes to basic needs and retirement, we all want to retire with dignity.

The legal luminaries in private practice have tremendous earning capacity and when you consider that the highest position in the Judiciary is probably paid less than 50 per cent of the minimum that could be earned in private practice, then there are a number of consequences.

I recognize the tax-free status. I recognize that they retire on last salary as well, but there are no medical plans at an age when medical costs go up and there is no room to manoeuvre with respect to critical positions and you then have to resort to either temporary filling, as the case is now, or contract positions, which throw out its own issues.

There are learned, outstanding and competent persons of integrity; people with the capacity, who are independent minded, in private practice; with the knowledge and skill, not only in terms of law, but they are running a private

practice which means that they are dealing with leadership and, very importantly, management and are used to the rigours of having to live within tight deadlines. So while money is not the only motivating factor in modern day management, good compensation is a strategic tool in strengthening capacity, otherwise you are automatically—I have heard a lot of discussion with respect to the selection of the judges—excluding some of your most experienced, competent and talented individuals.

Undoubtedly, compensation and pension impact the pool of qualified and experienced judicial officers available to serve on the Supreme Court and, in increasing the complement of judges, I hope this matter is not ignored and that it means there will be some immediate action.

Speaking of national life generally, I think that Russian roulette is played with the pensions of persons in public life where no provision is made; it comes from a consolidated fund. The economy takes a huge nose dive for whatever reason; there is no provision per se, so that there needs to be some provision, some proper actuarial valuation and one of the best solutions is to have a parallel system with a contributory plan.

There is a critical mass that could represent a large block of funds, which, well invested, could cushion for inflation at the time of retirement. That is not rocket science. There are instruments that are utilized and it is well worth thinking about.

In the present predicament of retired judges, some adjustment has merit. It was brought to my attention that in the current system, judges who previously served as public servants, former magistrates and officers in the DPP's and Solicitor General's department, who became judges after 20 years and received their pensions as judges, their pension for the prior service is deducted. This, to me, seems not a progressive way of treating people who have served this country with such distinction.

In closing, I urge that serious consideration be given to the underlying infrastructure that supports the efficient administration of justice.

I thank you.

Sen. Mohammed Faisal Rahman: Thank you very much, Mr. President. I am very grateful for the opportunity to contribute to the Supreme Court of Judicature (Amdt.) Bill.

Much has been said and you may wonder what else there is to add by way of contribution. I think I have a few perspectives to offer which will throw a different light on the Bill. First, let me say that we support the Bill. The need to

increase the number of judges from 23 to 36 in the case of the High Court and, in the case of the Appeal Court, from nine to 12 is very clear. We have no argument with that, but I believe that comments need to flow regarding this measure which the Government has decided to take.

I was very happy to hear the Attorney General link this issue with crime. It is in the hope of dealing with the crime situation that this measure is being implemented. It was tied, in that the Chief Justice has asked for this and the objective is to deal with the—

Sen. Jeremie SC: I want to be clear. It is not in itself a crime-fighting measure. Of course, if you give the Judiciary additional resources, they will be able to dedicate some of those resources to the criminal justice system and that should have an effect on the crime situation.

Sen. M. F. Rahman: In a sense it is linked with crime and dealing with crime. I thank you for confirming my point. My point is that the sequence of priorities, had we been looking at the management of crime, when the criminal situation started to explode, we may not have been faced with this compounding of the problems of the Judiciary resulting in the backlogs we have today.

I am relieved that the Government has finally agreed to recognize the role that crime plays in the consequential development of our systems. This is not a crime debate. The Government has for a long time tried to suppress crime debates, but it is very interesting that crime is the instigator of this issue.

What is very interesting is that increasing the number of judges will do nothing to stem the incidence of crime. In the holistic governance and management of crime, as has been pointed out by almost everybody, we have the police service, the DPP, the judicature and what else. To start with, unless we increase the police service to deal with crime, we will produce, by way of not having a deterrent for that, a consequential need for constantly increasing the handling capacity as the issue develops. You have to go to the cause of the problem and not the symptom that develops as a result of the problem.

6:00 p.m.

Now, what is interesting too is, I do not know if this is a sudden Bill, because it was only a few months ago that the Government reduced the budget for the Judicature. Here we have a situation where we are suddenly being told that we are going to face up to the additional cost. I cannot help but believe and want to think that this is an overnight decision. Whilst I thought it may be, it does reveal a lack of foresight on the part of the Government. [*Interruption*]

Sen. Jeremie SC: I rise to correct that assertion that you made; that this is an overnight decision. This particular Bill—

Sen. M. F. Rahman: It appears to be.

Sen. Jeremie SC: Thanks for the correction that it appears to be an overnight decision. This particular Bill has been languishing on the Order Paper for, I think, about eight months. So that—

Sen. M. F. Rahman: That is terrible.

Sen. Jeremie SC: It might be terrible, but it certainly is not consistent with the statement that you have made; that it is an overnight Bill.

Sen. M. F. Rahman: If this was languishing, as you admit, for such a long time, you purposefully reduced the budget for the Judiciary; because of the lack of funds. It says that you were impelled into this direction overnight. You might have been languishing the procrastination or the deferral—[*Interruption*]

Sen. Jeremie SC: I give up.

Sen. M. F. Rahman: Thank you, Sir. I am obliged. The further point I am making is—[*Interruption*]

Sen. Jeremie SC: Because Kamla win.

Sen. M. F. Rahman: Celebrate! I am going further, Sir. I am making the point that, for the last year or two, we have been having Bills brought to this Senate—thank you, I have your attention—that have been criminalizing in an increasing way, several formerly innocuous and permissible activities. I am talking about the Tobacco Bill and I am also alluding to the Copyright Bill. We have been saying, at this end, that you are straining the resources of the State. You are not going to be able to produce enough customs officers or TTRA members. You are not going to be able to provide enough police officers and now we are seeing that we are a far cry from being able to produce the required number of judicial officers. While you may be seeking to deal with the present production of crime as a consequence of the society, you have added tremendously to the list, so that very soon—what is the number now—36 may very well prove to be very inadequate for the additional crimes that we have caused to come into being. We are looking at a very interesting situation.

Now we have a compounding of a situation where we are going from 23 to 36; more than 50 per cent. We already heard it admitted that we do not have the courthouses, we do not have the chambers, we do not have the CAT—

[*Interruption*] I want to detail some of them, if you do not mind—Reporters and we are sure we do not have the infrastructure to implement the installation of 50 per cent more judges. I am asking the Attorney General: Is this an increase that is planned on a phased basis? This is a straightforward question. If you cannot accommodate—I take it that the Government is asking for a maximum increase of up to 36, but you intend to implement it along the way, because the infrastructure is not there? Are you planning to put more funds to develop the infrastructure simultaneously? You have not told us this.

Sen. Jeremie SC: My understanding is that these numbers represent what the Judiciary needs, that is to say they need a 50 per cent increase, in terms of their manpower. It is not going to happen overnight. It is not going to take place in the next month or the next two months. It is going to take place incrementally.

I am told that arrangements are being made to move some of the administrative functions which are now housed in the Hall of Justice, out of the Hall of Justice, so that there will be the creation of space within the Hall of Justice, for judges chambers and so on. I hope that meets with your approval.

Sen. M. F. Rahman: Well, the way that you have been going about it, you are telling me that this is a possibility. You are not telling me that the Government is planning to do this. You are saying that this is a possibility. [*Interruption*] I would not want you to respond to everything I say at this point, if you do not mind, because you would only give me more grist for the mill and, of course, I give up my time to you.

The point I am making is this: Here we have presented to the public, through the Senate, a 50 per cent increase that really has no hope of seeing the light of day. All of the lovely anticipations that have taken place here today are ill-founded, a pie in the sky, because you are not going to get more than two or three. At the most, you might get six, which would represent the number of temporary judges. Presumably, we would be able to accommodate them. But, we are really setting out to keep the CJ happy and say: "Okay, you want 36, we would give you 36. You would not get it in a while anyhow, but take it." I do not know what that is really doing. I do not know if that is a very straightforward way to handle it.

Until I raised this point, the Attorney General did not address this issue at all. We are coming to—it is like when you come to ask for an allocation and you say: We are looking for the money to spend over a period of time. We can understand that, but when you come to increasing it to 36 judges, everybody feels, okay, big problems will be solved overnight. It is not so. This is really a measure that will

be implemented over a period of time. I do not have a problem with that, because it is the only way to do it. You already do not have the infrastructure and you have admitted it.

I raised the point, as the public is going to say: "Ah ha, now we are going to have the criminal system under control." It is not so because you still have not added to the police force. You are still undermanned and the Attorney General very nicely and very happily advised us that a DPP is about to be recommended. I tossed the question across to him, which was not taken on, but I say it now whilst I am on my feet. Perhaps we need for the JLSC to appoint a DPP, after consultation with the Prime Minister, because the Prime Minister always has the right of veto and he also has to be credited with the best of reasons—you said this in the House before—for withholding his approval. If at every turn we have a police commissioner appointed and the Government has its reservations, we have a DPP appointed and the Government has its reservations and we have a Solicitor General not being appointed, why does the Government not come right out and say: "We want to appoint them" and be done with it? In the meantime, you have nobody to fill the positions in the justice system. You are being unjust— [*Interruption*]

I really would like to accommodate you. I have done this four or five times already. You must forgive me, I want to make the point that the whole system is as if I am giving you—do you know the theological question about free will and destiny? It is either one or the other. You cannot have partial free will. [*Interruption*]

Sen. Browne: What do you have?

Sen. M. F. Rahman: I belief in destiny absolute. Everything I say here is destined; you better believe it. Coming back to the issue, the Government is saying: "We cannot do it, you have to do it, but whenever you do it, we do not approve it." At the end of the day, come right out and say: "We will do it" and let us establish—at least we are going to have—it and there may be an autocratic system. The people have their business to look after. If you in your conscience feel that such and such a person is the best DPP and such and such a person is the best commissioner of police, or such and such a person will make the best parliamentary counsel or solicitor general, appoint them. But why do we have this ongoing situation?

We have the syndrome of appointing acting judges. Both the Attorney General and Sen. Seetahal SC justified it under different aspects of the Constitution sections. Sir, if there is a prohibition against a judge returning to private practice,

that automatically puts a spanner—in other words, if you are going under a certain section in the Constitution, the Constitution does not remove the prohibition from going back to private practice. That part of the restriction against a temporary judge should automatically kick in and make the exercise a null and void one, unless the attorney is prepared to give up his private practice for 10 years. I think, with this issue about increasing the judges, we should immediately put a full stop to the matter of appointing temporary judges, because temporary judges violate that aspect of the law that makes it mandatory for them not to practise.

I remember Justice Sonny Maharaj had a big problem. I do not know how he got over it. The fact of the matter is that we cannot continue to let the rules be bent for one sector and then judges today, who have retired and who went to the President to ask his intervention and for whom the President presented a case at the opening of the Parliament, should be allowed to go back into private practice. If you cannot see your way to increase their pensions or to index it to the cost of living, as it ought to, or to give some sort of consideration for that, at least open the way for them to earn some money to be able to meet their expenses, because they are suffering as a result of the erosion of their pension through the inflation and increased cost of living that has taken place cumulatively over the several years.

Here we are dealing with an issue about judges and we are going to increase the number of judges. I want to know, which successful attorney? You say some people have applied. If you are going to take successful attorneys and put them as judges, we do not know what calibre of judges you are really going to be appointing. If you expect a successful attorney, competent in his craft, to give up his lucrative profession and enter the ranks of the judges and in 10 or 15 years find that he is living on starvation wages, because it is going to happen, well I do not know how wise a move that good attorney is going to be making.

Let us go further, we have had, in recent months, seven appointments of a few temporary judges. One of the things that were mentioned about qualification of the judges is temperament. A judge—I think the expression "sober as a judge", connotes the character of a judge—is not only sober in that he is not inebriated; a judge is reflective, a judge thinks, a judge considers, a judge does not sit in a studio and answer questions like that and give judgments like that; a judge premeditatedly forms his judgment after considering the law properly; not after only remembering the cases that he knows about after doing the research.

When we go about appointing permanent judges—I do not know if the people I am thinking about, I do not want to call names, were appointed permanently or

acting, but I have a grave suspicion that on the matter of the selection of judges, which came up here—

Sen. Seetahal SC mentioned the British system and I think Sen. Dr. Gopaul-Mc Nicol mentioned the American system. Our system appointing judges—justice is not a cloistered virtue—is a cloistered system. We have had—I think it was Justice Stanley John who had complained very bitterly about not being in the club and, of course—[*Interruption*]

Hon. Senators: Volney.

Sen. M. F. Rahman: Volney is the one who said about not being in the club?

Sen. Mark: Yes.

Sen. Seetahal SC: Words to that effect.

Sen. M. F. Rahman: Who is the one who banned the jurors?

Hon. Senators: Volney.

Sen. M. F. Rahman: I thought he left. All right, that is very interesting. I stand corrected.

6.15 p.m.

But here we have a situation where a judge reflects upon his own colleagues, I found that very peculiar—I do not want to say distasteful, I have just said it—

Sen. Seetahal SC: Say distasteful.

Sen. M. F. Rahman: Okay, with your permission, it is distasteful, I mean that is real washing your dirty linen in the public, but the point I am making, Sir—[*Interruption*] I am dealing with the judges—

Mr. President: I just want to let you know that we do have Standing Orders which you are required to abide by and you should not listen to some of the comments from other directions. Accept my directions to what you ought to make your comments to say. The reflection on the comments you have to the judges is contrary to the Standing Orders. Now I have given you a fair amount of leeway also and you have managed to repeat a lot of arguments that have already been dealt with, and you have indicated that you are going to support this piece of legislation, yet it does not reinforce the knowledge of it in terms of legislation and research, so I would ask you to try and come back to your original argument.

Sen. M. F. Rahman: Yes, Sir, I apologize if I was reflecting upon the judges. What I said was, the judge was reflecting upon his own reflection—that is where I used the word "reflecting", I did not reflect upon it at all. Am I out of order here, Sir? [*Interruption*]

Mr. President: Do not debate my ruling. You indicated an adjective ascribed to the judges, so that is when I stopped you.

Sen. M. F. Rahman: I am further guided, Sir.

Sen. Dr. Saith: Find another argument.

Sen. M. F. Rahman: No, when you push me at the edge of a precipice, I have to jump off and I am justified to jump off. [*Laughter*] So we have got to the point where we must support the increase of judges, because if we do not we would be irresponsible. [*Inaudible*] But of course. Does the Government really expect me to stand here and say, "You are doing a great job, you are doing it in the nick of time and you are doing it just at the right moment"?

Hon. Senator: No.

Sen. M. F. Rahman: Well, thank you. Permit me to point out the things I am pointing out. All I am saying is that we have been nurturing a criminal society, we have been criminalizing innocent activity and here we are now taking a measure that we cannot implement in the manner in which we might have expected, and therefore an expression that Sen. Walrond used "we seem to be spinning top in mud".

Surely we are going to support the piece of legislation. We cannot help but do it. But, Sir, I would like to think that while I might have repeated some of the points that were made, I tried to put a different facet to it. [*Interruption*] A different face to it.

Hon. Senator: A different spin.

Sen. M. F. Rahman: Did you say spin, perhaps—but the point is this, that the purpose of the debate is to embellish a presentation in such a way that it will become palatable for the listening people. So what you are saying makes sense in a better way.

The transparency that should be included in the selection of judges should be increased in our country. I do not think anybody dealt with transparency before, but the point is this, we ought to introduce a system where the appointment of judges has that aspect to it. Because at the present time—and I was making the point earlier—the temperament of judges—and this is the point I was about to develop—you know we have in the Family Court matter, attorneys who are supposed to be officers of the court must be temperamentally suited for the job

that they are doing. The judges should be temperamentally suited to be judges. A judge—[*Inaudible*] This is very interesting, how do you decide that? I do not know if we can ask police officers to subject themselves to certain tests, why we cannot ask for an evaluation of a judge, a candidate judge, so that we can have his temperament, we can have his feelings on certain matters, because somebody made the point about somebody being against the death penalty, how do you get them to implement the death penalty and to obey the law?

PROCEDURAL MOTION

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. In accordance with Standing Order 98, I beg to move that the Senate continues to sit until the conclusion of the debate on this Bill.

Question put and agreed to.

SUPREME COURT OF JUDICATURE (AMDT.) BILL

Sen. M. F. Rahman: Yes, Sir, thank you. We have the case of Justice Volney not agreeing with the jury. I would like to suggest, that we could look at—I do not know if our law demands a trial by jury, but since we have appeals being heard by judges, and in cases where there is a question of emotion coming into play with jurors and also the question of fiddling with jurors in terms of bribery cheques and so on, because, fortunately, judges are arms-length away from the general public, and this is one of the good points of our judges being arms-length away, they are not affected by the things that might affect the jurors.

So I am suggesting, Sir, that we look at the law with a view to certain cases being tried by a panel of more than one judge so we would obviate or circumvent the problem that arises when we have a jury likely to become tampered with by, either emotion, not understanding the law or being bribed, being affected in one way or the other. I would like to put that forward as one of my very distinct suggestions that we go to that sort of court where these cases are heard.

Another thing I would like to say, Sir, is that where we have—and this is very unusual. The Attorney General mentioned recently in a particular case that had gone to the Privy Council, and the Government appealed and it was heard by an expanded Privy Council panel—

Sen. Jeremie SC: Matthews.

Sen. M. F. Rahman: Matthews, is it? Yes, but the principle of the matter is what I am going to look at here now. We have a situation where we go to the Privy Council and we incur a tremendous amount of expense to people who

sometimes cannot afford it, I am wanting to recommend that we consider having a higher court of appeal, where a greater panel of judges can reopen an issue that is deemed to be worthy of going to the Privy Council.

This is one of the new suggestions I am making—[*Inaudible*] I do not know what you call leave application. What I am saying is rather than going to the Privy Council you ask for a wider Appeal Court to hear your case in Trinidad.

Sen. Seetahal SC: [*Inaudible*]

Sen. M. F. Rahman: Well, that could be made an alternative final Court of Appeal.

Sen. Seetahal SC: We had five the other day in—[*Inaudible*]

Sen. M. F. Rahman: That took place?

Sen. Seetahal SC: Yes—[*Inaudible*]

Sen. M. F. Rahman: Then the precedent is there. So we can have very important cases to speed up our justice that such a case could take place in Trinidad with an expanded panel of judges.

One of the points that was made is that the courts could be located in a wider area throughout the country, but as I understand it, Sir, a cause of several of the deferrals, or postponement of cases, or extended cases awaiting judgments is that judges do not always expeditiously produce the judgment. I believe time limits should be—I do not know if there are already time limits—placed upon judges to produce their judgments so that justice is not delayed; justice delayed is justice denied, and I think that is one of the areas that we need to look at.

One of the interesting things is that we have been looking at the percentage increase in the number of judges, but I wonder if we can have a look at the percentage increase in murders and the percentage increase in crime and we would see that this is a measure, while it is going to be swamped with the additional cases and while it is going to be phased in on a gradual basis, you would find that there has been a crying need for an increase in the Judiciary and an increase in the allocations to the Judiciary for quite a while now.

Here again, as the Attorney General admitted, this matter has been languishing in the Government's lap and I would like to say—[*Inaudible*] In your lap. [*Inaudible*] Well, it has been "languishing", in your words, not by us—this is a poor reflection on the Government.

Now, the question about the integrity of judges, this is a major national problem. We cannot appoint an Integrity Commission for any number of reasons. Integrity is a problem with the country. Now I would want to say that this is an area where the methodology for selecting the judges, screening them and making appointments—definitely, I am not making any recommendations, but I invite the Government to really look in that direction. Because, I will tell you something, when a judge can look forward to having a hard time down the line after he retires because his income is not going to be adequate and he is not allowed to work, you are compromising his integrity in the beginning, you are putting him in an invidious position, so it is in your interest and our interest to ensure that they are treated better.

Mr. President, I think I have covered the major points I wanted to make. [*Laughter*] I could go on if I look at my notes more carefully. [*Interruption*] But I believe I have said enough, you agree with me—

Hon. Senator: Yes.

Sen. M. F. Rahman:—and you understood my points and they are all taken.

Thank you very much indeed. I would like to conclude, Sir.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Thank you, Mr. President. I rise to add my support to this Bill and perhaps to respond to a couple of points which have been made by Members of the Opposition of a financial nature. So my purpose is not to bring any new thoughts with regard to the legalities contained in the Bill or the reason for it being brought to Parliament, simply to say and to correct a couple of the ideas that have been put in the public domain.

Perhaps I can start with one of the points which was made by Sen. Dr. Sharon-ann Gopaul-McNicol, when she commented from the World Economic Forum and the recent study which was published dealing with global competitiveness. I have made this point in the Senate before, but I think it bears repetition, that the competitive index is made up of approximately—70 per cent of it is based upon surveys; surveys from which the respondents are required to give an opinion on a rating of one to five; one being low, five being high, and what we would call a mixture of hard and soft data. The perceptual data points will be soft data and the hard data points would be those pieces of data which are covered or are encompassed by things like the World Bank reports, the ILO reports, the IMF reports, and so on.

It is important to know that Trinidad and Tobago has always scored very well in the hard data. It is when we come to the issue of the perceptual data, in terms of how we see ourselves, that there is always difficulty. And the point that was made with respect to the judicial independence is one of those points which has to do with soft data. In other words, it has to do with how the respondents and the business community determine whether it could place any trust in it. So in other words, the responses are perceptual in nature, and I might add that most of the areas in which Trinidad scored badly were of a perceptual nature. It is how we saw ourselves, to the point to which when I made that point at a forum talking about the issue of corruption as a percentage, as an index point, it had to do with how we perceive ourselves as being able to respond to, what we would call pure data and we did not see ourselves well.

6.30 p.m.

The press reported that I said that the business community was suffering from low self-esteem. I meant no such thing. One of the critical differences between ourselves in Trinidad and Tobago, for example, and how the survey was administered in Barbados, and in fact how Barbadians see themselves, as well as in Jamaica, where they scored themselves very highly. In other words, they had a sense of belief in their institutions. So that is the substantial difference, the concept of belief. I feel comfortable with it, and therefore, I score it highly. I do not feel comfortable with it, I do not see myself as being able to command it, so therefore, I score it low.

So one of the specific difficulties here are perceptual issues, and it turns out that in perceptual issues that Trinidad and Tobago does not always treat with its institutions well. We have several diverse examples over the course of the year, in terms of how we perceive people who are not merely in government, but people who hold official offices, and we do not respond well. A specific case I remember in Barbados—and of course, Barbados is close to me, so I always draw from these experiences in terms of the difference between Trinidad and Tobago and Barbados—has to do with the appointment of a Chief Justice. The then sitting Attorney General, David Simmons who was the Attorney General under the Barbados Labour Party administration was appointed to the position of Chief Justice, and it is noteworthy that the Opposition criticized it and criticized it, until it happened. The day he was appointed to the position of Chief Justice, he was then the Chief Justice and the criticism ceased, stopped, did not continue, because to criticize the position was not merely to criticize the man, it was to criticize the institution. It is a distinction that we fail to make in Trinidad and Tobago on an

ongoing basis, and underlies the difficulty that we have when we talk about perceptual issues. We fail to make the understanding, or to cross the critical gap that when we criticize people in positions, we are criticizing the office and we do ourselves no favours by doing that—fundamental perceptual issues and we need to bear that in mind when we make criticisms and make them lightly here, in this House.

The same goes of course, for the criticism that would apply to anybody in the Judiciary and I fully understand now, why the Standing Orders were written in that particular fashion to prohibit criticism of the Judiciary. I was also interested in the comments made with the issue of the Caribbean Court of Justice. That is an aside. They have time, because we ourselves from the perceptual point of view, we need to make the critical break. We have been told very clearly by the Privy Council that we need to carry our business elsewhere. The only people who do not seem to understand it, are ourselves, and I have to say I need the Opposition to understand that at some stage of the game, you will have to change your position on that particular matter and welcome the realities of the independence in an interdependent world in which we must live and we must create our space.

Sen. Jeremie SC: [*Inaudible*]

Sen. The Hon. M. Browne: Yes. I am being reminded here by the Attorney General, that sometimes other countries seem to understand our capacity to contribute to the developmental system, to the extent to which we have West Indian Attorneys General in more than one country.

Sen. Jeremie SC: In the United Kingdom.

Sen. The Hon. M. Browne: In the United Kingdom, as well as in New York if I am not mistaken, and in the US. Sorry, the US. That is correct, the US. In the case of New York, I think there is also a governor of Barbadian ancestry as well.

With respect to a point which was made by Sen. Mark, and this goes to the points that I really wanted to speak on, the issue of independence to the Judiciary and the control of financing. When the Opposition Senator tells me that, he should say that with a little tongue in cheek, because I do recall not too long ago a conversation between an Attorney General and a former Chief Justice, and it was not under this administration, that had to do with the allocation of funds.

The point to be made with respect to how we spent our money as indicating our priorities and that we spent billions of dollars on the Fifth Summit of the Americas and the Commonwealth Heads of Government, I take that with some sensitivity, in as much as, we probably did exceed the budget for both the Fifth

Summit and the Commonwealth Heads of Government. The original budget for hosting the Conference was set at $652 million odd, and there were some areas in which we did go above, and that is to deal with the expenses of the Conference and hosting it. But by the same token, there are benefits which will come to us in the future.

Not to speak specifically in terms of the comparison of the numbers which were spent on the Judiciary and with the comment which was made by the Chief Justice, with the fact, I think the real comment he was trying to say is that his budget was cut without consultation. That was my interpretation of what he said. In fact, he also made a very positive comment, and the positive comment was that there is an area in which the Ministry of Justice may in fact bring very positive benefits to the Judiciary. I am going to use some examples as to why he said that. That is one of the points that he made. It may have had some other points that he made.

Now, the issue about starving the Judiciary of resources, or not having financial resources to present to them, the reality is that the total amount allocated in the financial year ending 2007, for both the recurrent and for the development programme and the IDF programme amounted to $295 million. The total amount spent in 2007, amounted to $272 million. In other words, they did not spend all of the allocation. They spent approximately 90 per cent of it. Ten per cent of it was not spent for one reason or the other.

In 2008, the total amount allocated, which was a 20 per cent increase, $354,559,444. The total amount spent was $302 million. In other words, they only used 85 per cent of the allocation. They did increase the total amount spent by about $30 million, but the allocation had increased by approximately $60 million. So they only spent 50 per cent of the increase.

In 2009, the total amount allocated, initially—remember 2009 was the year in which gas and oil prices fell, as a result of which we had to review the budget—the allocation was $405 million. In other words, another 20 per cent increase. In other words, the allocations that were initially given in 2008 and 2009 represented 20 per cent increases on the allocation which had been made in the previous year.

Unfortunately, as you are all aware, because of the changes in our economic circumstances, the total amount allocated to all ministries was cut, and the Judiciary is no different in that regard. The total amount that was allocated to the Judiciary initially, was $405 million, and was cut from $405 million to $316 million. I might add that when these allocations and reductions take place, it is

done on the basis of line items. In other words, one does not just rub off a percentage, they actually walk through the programmes to try to pick the areas which we figure you will not do, or you do not necessarily need to do this year. So it is not that the Judiciary went into—they were not able to conduct their programmes. In other words, you look at the areas of increments, the areas of change, and determine whether the organization has the capacity to execute, or alternatively, we could actually do without doing it this year. Given the fact that we were all in reduced circumstances, then that was a change that was required to be done, not merely by the Judiciary, but by every ministry. That is the reality.

So that allocation was increased in the previous year by another $60 million approximately, from $354 million to $406 million. It was eventually cut, and the final allocation ended up $316 million, which would have been below the amount which was allocated in 2008, $354 million. The total spent in that year was $288 million. In fact, $38 million was not spent. So, one cannot say that the Judiciary was starved of resources.

The total allocation for 2010, a year in which we had agreed to deficit financing, agreed that we would ensure that we maintain the level of economic activity in the system, the actual amount which was allocated to the Judiciary increased from $316 million to $341 million. It increased. It did not stay the same, it did not go down, it was increased. It was increased by a total of $25 million. Of course, I cannot give you expenditure figures to date because we are still in the course of the year, but I expect that the Judiciary will not spend all of the $341 million which is allocated. Typically, the historical pattern over the last five years, is that the Judiciary would spend somewhere in the high 80s, early 90s, of the total budget which is allocated.

Now the specific request for increases in the Judiciary allocation is an area in which the Judiciary has not performed well, and I say that without fear of contradiction. You could try to contradict me if you want.

In 2007, under the development programme or the infrastructure development programme, the amount requested by the Judiciary was $159 million—this is really for construction development. The total amount that was actually allocated that year was $44 million, and they spent $39 million. The amount that they requested in the following year, 2008, was $407 million. That is a little more than twice, a little more than 200 per cent increase. The amount that was allocated was $68 million. A 50 per cent increase from the allocation from the previous year and the Judiciary spent approximately $48 million of that amount, or 85 per cent of the amount allocated.

In 2009, a year of difficulty, the amount that the Judiciary requested under the heading, once again under the development programme, went up from $407 million to $473 million. In other words, between 2007 and 2009, the total allocation requested for development increased by more than 250 per cent.

Now, the reality is that the Judiciary does not have a good record in construction. If you want, you could look at the San Fernando court, which the Opposition sometimes hurls in the face of Government Benches in terms of our capacity to execute those projects. Well, the answer is not that the Government is not executing those projects, the Judiciary is. If you want the most egregious example of failure, that will be the Chaguanas court, for which several comments have been made and we on this side have to stand up and give a response, but we ultimately are not responsible for it.

So the reality is that, that is an area in which the Judiciary has not done very well, and it is a matter which the Chief Justice himself has recognized, when he made the comment that this is probably an area in which the Ministry of Justice can make a contribution. That is the reality.

So, one has to be very careful when one makes these statements that the Government is starving the Judiciary of resources. Remember that those statements feed back into the public domain, and I go back to the example I gave, that when we are "loosey-goosey" with the truth and make those types of comments, in a sense we are creating a stick that undermines the institutions which are required to make this society strong and that is a very, very important point and it requires us to exercise a certain amount of forebearance or patience in the exercise of winning if you want, and scoring political points.

At the end of the day, what is the benefit of scoring political points if it undermines the very institutions which seek to make our democracy strong? Who will win? How will Trinidad and Tobago progress? I could do no better that to go back to that sterling example of the appointment and the movement of an Attorney General in the case of Barbados, a politician, moving from the Attorney General's position to the Chief Justice. Of course it was roundly criticized; of course, they had everything to say about it; of course they did not like it. The day he became Chief Justice, criticism ceased. It is an example that we would do well to emulate.

So the point I wish to make is that the Judiciary has not been starved of financial resources. It has not been.

Thank you very much, Ladies and Gentlemen. [*Desk thumping*]

6.45 p.m.

Sen. Subhas Ramkhelawan: Mr. President, as I rise to participate in this debate, I am reminded, returning from Singapore a couple days ago, of that famous Chinese saying that a journey of 1,000 miles begins with a single step. Whether late or not, it is better late than never to be able to expand the number of judges from 23 to 36 and the Appeal Court from 9 to 12.

Let me digress a bit to address my good friend, the hon. Minister in the Ministry of Finance. I think he made two points, one about perception and the other, that chilled my bones, in that, I would shudder to think that our hon. Attorney General would move one day from that hallowed position to the position of Chief Justice in our society. Our honourable friend, the Minister in the Ministry of Finance, suggested and spoke to perceptions. I wish to remind him that perception is about 90 per cent of reality, or so it is said. Therefore, I think what we need to do is not to bludgeon people to tell them they must change their perception, but find a way to help them change their perception based on how they think and how they behave.

Let me leave that aside; that is the hon. Minister in the Ministry of Finance's perception.

There are two points I would like to make; the first really has to do with an area that has not been addressed in this particular debate. My friends and colleagues in this honourable Senate have spoken to the idea of the expansion of the number of judges particularly in the area of criminal action, that is, that would require police apprehension, that would require the Director of Public Prosecutions (DPP) prosecution before it goes to a judge.

One of the areas that, to me, has been sadly lacking in terms of efficiency and effectiveness, is that of civil action. We are aware that in a society that is about the rule of law and about property rights, if somebody were to squat on your land, it would take you much, much longer to get them off that land than if you go through the courts in any criminal action. So I would want to appeal to the Attorney General, even though it might not be directly within his remit, that we should focus on expanding our effectiveness in that area, because our effectiveness in that area speaks to economic efficiency in certain areas that are very important. So that when we go through the score card—and my honourable friend, the Minister in the Ministry of Finance spoke to perception—if there is efficiency in that particular area of civil action, I think the perceptions of Trinidad and Tobago would, indeed, rise.

The second point I would make is about the question of compensation for judges. In my own interaction with persons who are interested in investment, I come across persons from time to time whose main concern for judges is not so much the overall compensation when they sit on the Bench, but it is that most of this compensation takes the form of allowances. Once they leave the Bench, these allowances fall aside and the pension is now dependent or is a function of a basic salary. Therefore, what happens is that there is a significant come down from while sitting on the Bench to leaving the Bench. Maybe it is something that could be addressed in terms of essentially putting all these allowances together as part of a basic salary upon which pensions could be determined.

I think if that matter is resolved, it would go a long way, because you are asking someone who has, in fact, excelled in his profession—he might be 40 or 45 years—at the peak of his profession, at the peak of his earning capacity, to shift gears from that of an advocate to that of a judge, let us say. When that shift takes place, in most cases it is actually a come down or a levelling off.

Persons who stay in private practice actually build up their practice and probably earn more when they get to the 60 or 65 area, and that is not the case for judges. So my appeal is to have a closer look at the whole area of the lumping of the benefits and making sure that those benefits which accrue, while a judge is on the Bench, would be reflected in a pensionable salary; so that come down in terms of income would not be so significant and there is some sort of cushion.

At the end of the day, while we create additional positions, that does not necessarily mean that we are going to find persons of calibre who would want to sit in those positions if they feel that the level of compensation would not sufficiently address their particular need, not only during the period in which they sit on the Bench, but thereafter.

These are the two areas that I would like the Attorney General to have a much closer look at. The intention is to improve effectiveness and these are two areas I thought were not sufficiently touched upon.

In conclusion, I am a strong supporter of this expansion of the number of positions on the Bench. I am a strong supporter, because even though it does not resolve the entire problem, at least we must work towards solving the problem from an incremental perspective, to make sure that we complete this journey of 1,000 miles, step by step and not, as some persons would think, that it could be made in one great leap.

I thank you, Mr. President.

Sen. Dr. Adesh Nanan: Mr. President, I rise to make a contribution on this Bill.

The Minister in the Ministry of Finance made reference to indices, but I want to remind him that he cannot defend the indefensible, in terms of the indices, the competitive index and the corruption index.

Sen. Piggott: Where is the manifesto? [*Laughter*] [*Crosstalk*]

Sen. Dr. A. Nanan: The competitive index and the corruption index reflect—Mr. President, I do not want to be labelled as blacklisting Trinidad and Tobago, because we have had an island paradise under the UNC. [*Crosstalk*] [*Laughter*] [*Desk thumping*] That leads me to the UNC Manifesto of 2000 on page 39, I read:

"The UNC Government:

- Increased by 25%..."

I listened to the Attorney General when he gave his figures which reflected—I will quote the Attorney General, he could correct me if I am wrong—from the year 1964, 10; 1968, 11; 1979, 12; 1980, 15; 1991, 16; 1996, 20. With respect to the other areas: 1968, 4; 1979, 6 and 1996, 9. Those figures took me to the manifesto.

The UNC government increased by 25 under the distinguished leadership of the hon. Basdeo Panday, former Prime Minister:

"The UNC Government

- Increased by 25% the numbers of High Court Judges - from 16 to 20."

Sen. Jeremie SC: We did twice what you did.

Sen. Dr. A. Nanan: We also:

- "Increased by 50% the number of Court of Appeal Judges - from 6 to 9.
- Provided 12 more magistrates."

On page 40:

- "Increased the administrative and support staff of the Judiciary and Magistracy
- Initiated a Court Administrative Department to assist the Chief Justice."

So in terms of the island paradise, I wrote something; when the Attorney General is speaking I always write something of importance. It goes like this:

"The insecurity that grips the nation now is without parallel and without precedent."

Sen. Jeremie SC: Who are you quoting from?

Sen. Dr. A. Nanan: Myself. [*Laughter*]

"Two to three persons live in fear of being victims of crime. The aspect of law enforcement has not, however, been a pressing concern of the present administration."

I base this fact on the reduced allocation to the Judiciary.

Sen. Browne: [*Inaudible*]

Sen. Dr. A. Nanan: I will deal with Sen. Browne now; I will respond to what he said.

The Minister in the Ministry of Finance intervened in this debate to clarify certain issues. He gave us figures with respect to the actual allocations to the Judiciary. He would correct me if I am wrong in my transcription.

The Minister said that in 2008 there was an allocation of $351 million of which the Judiciary spent $302 million. He said there was performance in terms of 85 per cent.

In 2009 the Minister said that there was a $405 million allocation which was reduced to $316 million and eventually they spent $288 million. In 2010 there was an allocation of $341 million, but he went on to talk about the development programme; I think that was where he tripped up; that was where he put his foot in his mouth, so to speak.

I have the actual address by the hon. Chief Justice Ivor Archie at the opening of the 2009/2010 law term. I quote from page 9:

"Unfortunately the fact that capital allocations in this year's budget have been further reduced will have a crippling effect on our development plans. We requested $393 million for the development program for 2009/2010. Our budget allocation was $42.5 million." [*Interruption*]

Sen. Mark: What did Browne say?

Sen. Browne: Senator, just to point out that there are two aspects to the development programme, one, and the IDF funded programmes. The joint amount for the two figures for 2009 was $473 million. That was the amount requested.

Sen. Dr. A. Nanan: I want to go on to the last part of what the Chief Justice said:

"But we never cry over spilt milk, we will just do the best we can, as always."

7.00 p.m.

I congratulate the Chief Justice because he has been able to utilize whatever minimal allocation given by the Government to do great work and I will demonstrate that in terms of the construction that is taking place in the various courts in the country, but I want to deal with that specific allocation issue because the Minister in the Ministry of Finance talked about "loosey-goosey" in his contribution and scoring political points.

This debate is not to score political points; it is to ensure that we have a criminal justice system that is working. [*Desk thumping*] That is what it is about and that is why we are supporting the increase in the number of judges.

Sen. Browne: We agree with that.

Sen. Dr. A. Nanan: Mr. President, when I was preparing for this particular debate, it took me to the various aspects of the manifesto because much work had been done in building the criminal justice system. But when I look at the actual performance of the Judiciary in terms of technology, we have to compliment the Judiciary.

I did not hear that from the Government, because if we look at the percentage allocation in terms of the Government to the Judiciary, we will see a small contribution actually went into technology and I think the Government should take another look.

Yes, you try to defend your summits which you have no reward so far in terms of any benefits to the country and millions of dollars spent. But if you have any heart, Minister, look again at the Judiciary allocation especially in the field of technology, and I will tell you why.

Yesterday I was driving along Cipero Road going onto the Sir Solomon Hochoy Highway and at around 5.30 p.m. I heard the police siren approaching from a distance and when I looked in my rearview mirror I saw the two vehicles; Justice on Time or Justice on Wheels.

Sen. Seetahal SC: It is Justice on Time.

Sen. Dr. A. Nanan: But we call it Justice on Wheels. I was driving, they were behind and I continued because there was no way I could pull off to give them room because it is a very narrow area. I drove along until I could find a suitable spot to pull aside so they could pass. As I drove along, I looked at the vehicles that were aligned on either side of the road and the people were shell-shocked, nobody moved. That is the kind of situation we have in this country, that traumatic situation of this police vehicle and two prison vans coming through at tremendous speed.

The reason I brought this up in this debate, the persons in those vehicles were totally shell-shocked and traumatized and those things can easily lead to accidents. This is to show how we can use technology. Probably the Minister in the Ministry of Finance needs to consult the Minister of National Security.

I do not know if he is aware that the Port of Spain Prison has introduced technology to a limited extent, it has video conferencing and in terms of the remand situation, about which Sen. Mark spoke, they have been able to do on a pilot project, that video conferencing exchange programme which they can utilize to have that kind of court atmosphere and move away from the transportation of prisoners which is traumatizing the nation every time these vehicles are on the road whether in the morning or the evening. So it is this use of technology to which I am pointing.

It is the Judiciary's effort despite the Government's allocation that it has been able to utilize this technology and it is a pilot project. What is also interesting is that the Attorney General pointed to the Family Court in his presentation. I thought he would have stayed away from that.

Sen. Jeremie SC: Why?

Sen. Dr. A. Nanan: Because the allocation in terms—I need to read this particular article with your leave, Mr. President.

> "Unfortunately the fact that capital allocations in this year's budget have been further reduced will have a crippling effect on our development plans. We requested $393 million for the development program for 2009/2010. Our budget allocation was $42.5 million. That means there will be no Family Court roll out this year without a significant supplementary appropriation and our ability to deliver on the refurbishment of physical facilities especially in the magistrates' courts is severely restricted."

I just want to point that out, Mr. President, in terms of the situation with the Family Court and for your information Attorney General. I do not know why you cut the programme because it was a success.

Sen. Jeremie SC: I cut it?

Sen. Dr. A. Nanan: Well, the budget allocation was reduced. Probably you need to inform the Minister in the Ministry of Finance that it was a successful programme which was started under the United National Congress.

Let us go back to the transportation and security of prisoners because I talked about the situation of the prisons in Port of Spain. The relevance of this debate is that these judges would have to be either in Siparia—because they will be rotating based on the geographical situation—Scarborough, Rio Claro, Point Fortin and even Couva and if we are dealing with the prisons in terms of the Port of Spain Prison and even in Scarborough they have used the video conferencing capability.

So there is the situation with the Prisons in Port of Spain, the Remand Yard and male and female at Golden Grove, Arouca. The Scarborough Magistrates' Court allows private discussion between the inmates and the legal counsel right now. The point is that the judges who will be appointed to these various courts would have this new technology to utilize so they would have to be trained.

When I was looking at this concept in terms of this video conferencing capability and this new aspect to court administration and these judges who will have to be trained in the use of video conferencing technology, it goes even further in terms of voice recognition software.

I do not know how many of them are aware of the utilization of voice recognition software because that can speed up the time with respect to actually typing. I saw something to the effect that five hours of typing is one hour of video recording in terms of the software. I am sure that Members know that this software is not something new, it has just been out a long time and just been modified to some extent.

So these judges would have to have that kind of technology skills. What is also important is the new Ethernet that has been put together by the Judiciary in spite of the reduced allocation by the Government. There is an Ethernet that has been put in place by the Judiciary that is linking all the various courts. So there is linking taking place, and all these judges now would have a more modern system.

If we go back to the Government's track record, the Minister in his contribution talked about the Judiciary having a poor record with respect to infrastructure upgrade. We have to ask the Minister in the Ministry of Finance, with respect to the Couva Magistrates' Court, the Point Fortin Magistrates' Court and the Rio Claro Magistrates' Court in terms of the situation of 2002 to present—because the UNC manifesto pointed to the building of more Magistrates' Courts and we have seen that kind of tardiness on the part of the Government.

To hear the Minister in the Ministry of Finance attack the Judiciary, he attacked the Judiciary in terms of its infrastructure record.

Sen. Jeremie SC: Would you allow me to clear the record? I sat next to the Minister and I heard no such attacks. I also sat in close proximity to the hon. Chief Justice when he delivered his speech and I heard him say that one of the areas in which the Judiciary has not performed as well as it could have, was in the area of court infrastructure. I heard those words.

As a matter of fact, while disagreeing in principle, and disagreeing fundamentally with the idea of a Ministry of Justice, he was careful to say apart from court buildings there is nothing else that he could see a Ministry of Justice doing. And that in itself is a recognition to me of the fact that certainly insofar as court buildings go, that matter has not been done as efficiently as it could have been by the Judiciary.

There was no attack on this side, what we do is point out the facts and these are facts which the Chief Justice recommends.

Mr. President: While we are all here listening, and while there are no specific Standing Orders to challenge what a person says as being misleading, while we all heard what was said, it is misleading of you to suggest that the Minister attacked the Judiciary because I certainly did not hear that either. It is an unfair statement and I do not think that should be allowed, so temper your language please.

Sen. Dr. A. Nanan: Mr. President, why did the Minister intervene in this debate? He did so to defend the Government against the poor with the reduced allocation to the Judiciary. That is why he intervened in this debate, and I am saying that he intervened for that reason and pointed to these allocations and I pointed to a reduced budgetary allocation and I said the only reason the Minister could come up with is in respect of poor infrastructure; the poor performance of the Judiciary and to defend the Government. That is what I said.

Sen. Joseph: No, you said he attacked the Judiciary.

Sen. Dr. A. Nanan: I am hearing mumblings from the Minister of National Security. I can go into that debate this evening, but I would not, I would leave that for another time.

Mr. President, from 2002 in the Ministry of National Security—not under my colleague Minister Martin Joseph. It is a good thing you interrupted me, Minister, 2002 will go down in history as the nine-month blunder under the former Minister of National Security, Howard Chin Lee. The appointment came as a virtual slap in the face of the people of Trinidad and Tobago and we have seen that appointment reflected—[*Interruption*] I wrote that also. [*Laughter*]

Sen. Jeremie SC: I want to know if you are reading; you said you wrote that, I want to know if you are reading?

Sen. Rahman: If he wants to quote himself, he has to read it, he cannot remember what he wrote.

Sen. Dr. A. Nanan: Mr. President, I notice that the Attorney General is getting very nervous, and also the Minister of National Security.

Sen. Mark: "The reshuffle coming."

Sen. Dr. A. Nanan: Yes, I think so. I will be very careful at the next Cabinet meeting.

Mr. President, I also want to go on to compare judicial appointments in Canada with that of Trinidad and Tobago because it is important. The system in Canada is a little different from that in Trinidad with respect to the Governor General. What happened in Canada with respect to the Provincial Courts in Canada, the appointment was found to be very political in terms of the Minister of Justice getting involved in the various provinces. In fact, each province has its procedure for appointment to its provincial court. The body reported to the appropriate Minister of Justice or the Attorney General. This is on the subject of transparency that was part of this debate.

7.15 p.m.

It was found that without any input from the parliament or opposition political parties, the prime minister stacked the court with ideologically like-minded individuals. I forgot something to which I need to make reference. The Minister in the Ministry of Finance talked about perception when he was dealing with the various indices, the comparative index and the corruption index. May I remind the Minister in the Ministry of Finance that in terms of perceptual ability, it is the

ability to see in a three dimensional concept. I do not know if the Minister in the Ministry of Finance is aware of that kind of perceptual ability. Most of the architectural designs are created based on perceptual ability. When you speak about perceptual ability be very careful in what context you speak, Minister in the Ministry of Finance.

In terms of stacking the courts with ideologically like-minded individuals based on the actual Prime Minister's selection, there was objection. They changed the process slightly in 2004. The reason I point to that is I would go to the Constitution later to the appointment of these judges. [*Interruption*] Of Trinidad and Tobago. I was drawing reference to the two. He indicated his intention to appoint a special parliamentary committee to screen the new nominees. That is something we may consider. It may require constitutional reform with respect to this particular proposal to have a special parliamentary committee to have that kind of transparency.

At that time, it was found that that was not good enough. If you have a situation developing where an election is called—in April 2005, there was another situation developing where an advisory committee was set up to reduce the number of candidates. They had a small number of candidates to select. If we go to the Constitution, section 100(1) states:

> "The Judges of the High Court shall be the Chief Justice, who shall be *ex officio* a Judge of that Court, and such number of Puisne Judges as may be prescribed."

This is interesting because I need some clarification from the Attorney General. Section 101(1) states:

> "The Judges of the Court of Appeal shall be the Chief Justice, who shall be the President of the Court of Appeal, and such number of Justices of Appeal.
>
> (2) The Court of Appeal shall be a superior court of record and, save as otherwise provided by Parliament, shall have all the powers of such a court."

The question I want to raise with the Attorney General is if these judges are to be appointed in this particular amendment, what would be the locus standi with respect to the Environmental Commission which is a superior court of record? The only difference is that the Environmental Commission reports to the Minister of Planning, Housing and the Environment. That might be a discrepancy that you need to look at.

Sen. Jeremie SC: It is the same like the Industrial Court.

Sen. Dr. A. Nanan: That is why we need constitutional reform.

Sen. Jeremie SC: That is not the reason for constitutional reform.

Sen. Dr. A. Nanan: You may need to look at that abnormality. When we summon the Environmental Commission we get the statement that they are a superior court of record and they are not coming to the joint select committee.

Sen. Jeremie SC: They say that they do not come. They slap you away.

Sen. Dr. A. Nanan: Yes. Probably, they need to go under the Attorney General's jurisdiction. Section 104(1) states:

"The Judges, other than the Chief Justice, shall be appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.

(2) Where—

(a) the office of any such Judge is vacant;

(b) any such Judge is for any reason unable to perform the functions of his office;

(c) any such Judge is acting as Chief Justice or a Puisne Judge is acting as a Justice of Appeal; or

(d) the Chief Justice advises the President that the state of business of the Court of Appeal or the High Court so requires,

the President, acting in accordance with the advice of the Judicial and Legal Service Commission—

(i) may appoint a person to act in the office of Justice of Appeal or Puisne Judge, as the case may require;"

We need to amend that part of the Constitution and remove that part of acting. It continues:

"(ii) may, notwithstanding section 136, appoint a person who has held office as a Judge and who has attained the age of sixty-five to be temporarily a Puisne Judge for a fixed period of not more than two years."

My question to the Attorney General in terms of retired judges is: Do they get paid when they go on these commissions of enquiry? I want to get this clarification but I am not getting it. I will move on.

Another area of interest is in terms of the new cases and what happens. There was a report which showed that because of the situation with crime there are so many cases clogging the system. There is a situation where on one side you are trying to clear but so many cases are coming that there is a backlog. This compromised situation with the Judiciary in terms of not having cases heard on a regular basis is allowing the criminals to have the upper hand.

In terms of putting more judges into the system, we need to control it because we would have to be adding more and more judges. This would be a perpetual cycle. If the crime rate is spiralling out of control and there are more cases we would need more judges. We need to have the Ministry of Health in terms of primary and secondary care. We need to control the situation with crime. It does not matter how many judges we put we would always want more and more judges to deal with this particular issue.

It brings me to the situation in Tobago. If one of these judges that we are going to appoint is going to work in Tobago, because of the rising crime in Tobago, we may need to look at a more sophisticated court system for Tobago. It points to the fact that we are now seeing criminals leaving Trinidad and hiding out in Tobago. There are reports like that. We do not want our sister isle to have that stigma that is now being attached to Antigua. It is very important to look at the Antiguan situation right now. One murder in Antigua and they have removed their cruise ships calling in Antigua. In terms of the crime situation we do not want our sister island to be blacklisted and a crisis developing in the tourism sector.

A number of incidents are not being reported because tourists are leaving the island. There is not that facility. In my research I saw that the Scarborough Court from where these judges will operate, they have run a pilot project in terms of video conferencing. They may be able to use this video conferencing to assist with the incidents because tourists are coming, they are being victims of crime, leaving and not coming back to be witnesses. That is the situation with the Scarborough Magistrates' Court and the introduction of technology to assist in reducing the incidence of crime. Once the perpetrators are aware that they will be caught and there would be a speedy trial, the crime situation may be suppressed in Tobago. We have to look at that situation. That could be a pilot for Trinidad in terms of how we handle that situation and the judges in that jurisdiction operate as compared to the Trinidad scenario.

I have a few more points but if you want me to sit—I want to do the matter which the Attorney General spoke about at the end of his presentation in terms of the breathalyzer legislation, the Bail Act, the possession of firearm and

trafficking, the Evidence Act and all the legislation that he brought forward to deal with crime. The mere fact that the crime rate is escalating out of control, shows that all these legislative measures are not having the effect that probably the Government was hoping for, or is it a smokescreen? I do not know.

I could go into another debate but I will not go there. Is it a smokescreen? On one hand the Government is fuelling the situation on crime to some extent by ghost gangs as we have been hearing and reading about in terms of reports. We would not go there today, probably the next debate.

7.30 p.m.

I want to make a point with respect to all these legislative measures and more to come and the situation with public confidence. The Attorney General talked about building confidence in a strong criminal justice system. We want to see public confidence in the criminal justice system. If this is one small measure to build confidence in the criminal justice system, we will support it. But we still have to ask several questions with respect to the poor infrastructure on the ground of the various courts where all the judges that we are appointing now have to go in these conditions. We have seen it in other ministries with respect to performance and the lack of air condition units.

In fact, when we were reading this particular issue, I did not even know that the Supreme Court did not have elevators. It is only now they are going to put elevators in the Port of Spain court. There have been a lot of inefficiencies on the part of the Government. We cannot hide behind the Judiciary.

As I wind up, I urge the Government to deal with the situation of crime. I said in my opening remarks that two out of three people in this country are afraid and we have to come back to an island paradise. This can only be under a United National Congress Government and not the PNM.

The Attorney General (Sen. The Hon. John Jeremie SC): Mr. President, this is one of those very rare occasions in which we seem to have—I say seem to have because we have not reached committee stage and I do not know what position the Opposition will take then. This is one of those rare occasions that we seem to have unanimity in the Senate.

I have heard from every person who has spoken today and, at least on the general principles, there is support for the Bill itself. A number of questions have been asked about the Magistracy, the JLSC, the ability of the Judiciary to execute projects, particularly building projects. Those are important questions, but they do not speak to the Bill before us.

The Bill comprises all of four clauses and, as my friend the Minister of Trade and Industry and Minister in the Ministry of Finance reminded me, comprises 63 words. It may be a short Bill; it may comprise 63 words, but it is a very powerful piece of legislation.

This Bill seeks to increase our complement of judicial officers in this country by 50 per cent. It is the largest percentage increase of judicial officers since independence; both as a percentage and in real terms. It comes at a critical juncture in the history of this country.

As we seek to increase the number of judges, we do not at the same time, and we cannot, tell the Judiciary how to use the resources we are giving them. We hope that the measure we pass today will go some way toward improving the ability of the Judiciary to treat with the scourge of criminal activity the country faces. But as Sen. Ramkhelawan reminded us, there is another important aspect to the Judiciary's functions and that relates to their civil jurisdiction, and it is hoped that the measure will also allow the Judiciary to devote the resources to the civil side of its work, which we note to be critical and to be in need of some attention.

The issues arose outside the context of the Bill—because I have said that we all agree on the general merits, principles and purposes of the Bill—so that the discussion we had this afternoon really centred on matters which were not integral to the legislation.

A question was asked about the Magistracy—I cannot recall which Senator raised it—and about the adequacy of its resources. Two years ago, when I was Attorney General, I believe, the numbers in the Magistracy were increased. I am told that the numbers are adequate at this time to treat with the problems on the ground in the summary jurisdiction. Of course, the Judiciary is monitoring its resources and if there is a need to increase the strength and numbers in the Magistracy, I expect that will be made known to the Executive and appropriate steps taken.

A related question was raised by Sen. Seetahal SC who spoke about the audio digital recording system and that, notwithstanding the introduction of what is known as ADCR in some of the Magistrates' Courts, there was still a significant delay in terms of the getting of reasons and notes of evidence from the Magistracy. That is a real problem. The Judiciary continues to work on it and is actively seeking resources to allow them to meet that need.

Another question was raised and this perhaps was the most insidious part of our discussion this afternoon on the operations of the JLSC. The comments I heard related to the appointment of judges. Thankfully, no one was specified, but the

general point which was made by a few Senators was that the operations of the JLSC are clothed in secrecy and that some questionable appointments had been made. A related concern dealt with the appointment of judges on a temporary basis.

Those are really matters which are not within the remit of the Executive, but I wish to put it on record that I interface with the Judiciary; not the Judicial and Legal Service Commission, and I am confident that the JLSC is one of the pillars of the democracy we have in this country. It is a credit to them that the operations of the Judiciary, which they staff, man and which they oversee, is in itself a reflection of the independence required of the third branch of government, the guardian of our rights.

The other two points which were made largely by Independents related to retirement age which, of course, is now 65. I heard Sen. Drayton remark on the discrepancy between the retirement age for the Court of Appeal judges and that of the Caribbean Court of Justice, which, I believe, is 72. Of course, in the United States, judges hold indefinite tenure so they go until they are not able to work. They can go to age 90 or 91, and that has happened. That is a matter we can look at going forward. There are arguments on both sides of the coin; but it is something we can agree as a responsible Parliament to look at in future.

I thank, very sincerely—

Sen. Mark: Mr. President, is it the intention of the Executive to consider removing that burden that is currently placed on the court regarding tickets as well as liquor licences? Will the Government have that removed from the Magistrates' Courts and have either the Licensing Authority or the District Revenue Office address those mundane matters?

Sen. The Hon. J. Jeremie SC: I had forgotten that very sensible contribution which was made by you and which was first made in the Gurley Report. It is something we need to look at and I give you the assurance that we will look at it.

As you rose to speak, I was reminded of something that Sen. Rahman said which required a response but, unfortunately, he did not allow me to respond at the time. It relates to the appointment—of course, it does not relate to anything in the Bill; we have said most of our discussions did not centre on the four clauses of the Bill, which we have all agreed on.

Sen. Rahman asked about the appointment of the DPP and said that I gave an assurance that a DPP would be appointed in short order. I did no such thing. I said it is my expectation. That is a hope; it is aspirational. That might be lost on Sen.

Rahman. I know that it is a point not lost on you and I know it will not be lost on Sen. Mark and on Sen. Rahman's colleagues. There is a subtle distinction there, but an important one that needs to be made. It is my hope that a Director of Public Prosecutions will be appointed in relatively short order.

I thank sincerely all Senators, including those on the Opposition Bench for a change. It is very rare that I have the opportunity to thank the Opposition for its contributions. Perhaps this is a new beginning. Perhaps change is coming on the Opposition Bench. I thank them sincerely for agreeing to this measure so far because we still have committee stage to go to. Of course, I thank the Independents as usual, who have acquitted themselves with the usual distinction they display.

I thank all Senators—the Independents without qualification; the Opposition, I hesitate, but so far I thank them for their contributions. I thank all of us for the moderation, in relative terms, in which we have conducted this type of debate in respect of this important institution of our democracy.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

7.45 p.m.

Senate in committee.

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

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

Senate resumed.

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

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Thank you, Mr. President. Let me also echo the sentiments of the hon. Attorney General in expressing my thanks for the manner in which this particular debate was conducted. It was one that could have gone a different route.

Mr. President, I beg to move that the Senate do now adjourn to Tuesday, February 09, 2010, at 1.30 p.m., where it is our intention to complete the Bill to amend the Evidence Act, Chap. 7:02 and to debate, if time permits, the Civil Aviation Authority Bill that was presented.

Sen. Mark: Through you, Mr. President, may I ask the hon. Attorney General whether there are amendments to the Evidence (Amdt.) Bill, and if it is possible, you can have it circulated before, so that we can study those amendments, so when we come next Tuesday, rather than us referring to amendments that are not properly before us, we can deal with them collectively when we intervene and make our contributions?

Sen. Jeremie SC: Mr. President, there will be amendments to the Evidence (Amdt.) Bill. As long as they are finalized in time, I will circulate them.

Mr. President: Hon. Senators, before I put the question, once again I would just like to welcome Sen. Walrond to the Senate. Perhaps, it was his youth that brought some agreement to our proceedings here this afternoon; a sign of the future.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.51 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Dr. Adesh Nanan:

Emission Reduction
(Record to Date)

8. Could the hon. Minister of Planning, Housing and the Environment indicate the record to date of emission reduction credits from 2002 to present on Government projects for either electricity savings or natural gas savings?

The following reply was circulated to Members of the Senate:

The Minister of Planning, Housing and Environment (Sen. The Hon. Dr. Emily Dick-Forde):

Emission reduction credits can be accrued either through:

i. a domestic carbon trading system designed to limit carbon emissions domestically in order to meet domestic requirements and/or to satisfy international obligations of carbon reduction under the Kyoto Protocol, which obligations apply only to developed countries; or

ii. the internationally established carbon trading schemes under the Kyoto Protocol of which only the Clean Development Mechanism (CDM) can be utilised by developing countries such as Trinidad and Tobago.

The Kyoto Protocol includes three market based mechanisms; Emissions Trading only by developed countries, Clean Development Mechanism by developing and developed countries and Joint Implementation only by developed countries. Trinidad and Tobago as a developing country, can only participate in the CDM under the Kyoto Protocol to which it is a ratified signatory.

Under the CDM, emission reductions are expressed and measured as Certified Emission Reduction (CER) units. The CDM allows emission-reduction (or emission removal) projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of CO_2. The credits generated under a CDM project can be traded through an international broker for purchase by a developed country and can then be used to offset its domestic targets in further fulfilment of its international obligations. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction limitation targets.

Under the CDM, projects must qualify through a rigorous public registration and issuance process designed to ensure real, measurable and verifiable emission reductions that are additional to what would have occurred without the project. The mechanism is overseen by the CDM

Executive Board, answerable ultimately to the countries that have ratified the Kyoto Protocol. In order to be considered for registration, a project must first be approved by the Designated National Authority (DNA). Trinidad and Tobago's DNA is the Permanent Secretary of the Ministry of Planning, Housing and the Environment, although it is envisaged that the Multilateral Environmental Agreements Unit will assume full responsibility for this function. CDM projects are normally funded by the international private sector and the quantum of the scale of reduction is often a criteria in determining project feasibility. Small island developing states generally do not offer the economies of scale to attract major CDM investments.

Trinidad and Tobago already generates electricity utilising natural gas, the most carbon lean and cleanest fossil fuel. The next step in carbon emission reduction would be the employment of renewable energy such as solar but this technology is not yet fully developed. In this regard, the Government of Trinidad and Tobago has established a Cabinet appointed committee to develop a renewable energy policy and is exploring the feasibility of the CDM potential for renewable energy projects as well as the capturing of natural gas using non-flare technology. At present there have been no reduction credits on government projects for either electricity savings or natural gas savings.

The Government of Trinidad and Tobago is implementing a project in collaboration with the World Bank, to restore the Nariva Swamp through, inter alia, the afforestation and reforestation of degraded areas caused by illegal rice farming. The project is expected to generate a minimum of 193,952 tonnes of carbon dioxide equivalent in emission reductions by 2017 under the Clean Development Mechanism (CDM). This would be done through the afforestation of 1,160 hectares and will be implemented by the Environmental Management Authority (EMA) with the technical assistance of the Trinidad and Tobago Forestry Division of the Ministry of Agriculture, Land and Marine Resources. The necessary documentation for registration of the project with the CDM Executive Board has been completed and endorsed by the Designated National Authority (DNA). Before any carbon credits can be sold it must undergo an internationally approved rigorous independent audit to be certified.