
THE SENATE DEBATES

(UNOFFICIAL REPORT)

PARLIAMENT 2003 – 2008

THE SENATE

Wednesday, April 13, 2005

The Senate met in the Senate Chamber, Parliament

Buildings on Wednesday, April 13, 2005, at 11.15
a.m.

PRESENT

Her Honour Senator Dame PATRICIA
SYMMONDS, D.B.E., G.C.M., B.A. (Hons.) (P.G., C.E.),
(Deputy President)

Senator the Hon. ERSKINE R. GRIFFITH, G.C.M,
J.P. (Minister of Agriculture and Rural Development
(Leader of the Senate)

Senator the Hon. JOHN E. D. WILLIAMS, B.Sc.,
(Hon.), M.Sc., MBA, J.P. (Minister of State, Prime
Minister's Office and Ministry of the Civil Service)

Senator Sir ROY TROTMAN, K.A., M.A.

Senator Sir JOHN STANLEY GODDARD, K.A.,
G.C.M., B.Com., F.C.A. (Hons.), LL.D. (Hons.)(U.W.I.)

Senator RUDY W. GRANT, B.A., J.P.,(Econ.)
(Parliamentary Secretary, Ministry of Tourism and
International Transport)

Senator the Hon. Miss LYNETTE V. EASTMOND,
LL.B., (Hons.), LL.M.(Minister of Commerce, Consumer
Affairs and Business Development)

Senator IVAN ST.C. LINTON

Senator GREGORY P. B. NICHOLLS, B.Sc.,
(Hons.), LL.B. (Hons.)

Senator Miss PATRICIA E. PARRIS, J.P.

Senator G. P. IAN GOODING-EDGHILL

Senator Miss SANDRA C. V. HUSBANDS, B.A.,
(Hons.)

Senator FREUNDEL J. STUART, B.A., LL.M.

Senator Dr. DENIS S. LOWE, Ph.D, Dip. Theology,
B.A., MED, ED.D.

Senator the Very Reverend HAROLD E.
CRICHLow, G.C.M., B.A. (Hons.) (Dunelm)

Senator Dr. FRANCES L. CHANDLER, Ph.D.,
B.Sc., (Hons.).

Senator Sir A. C. FIELDS, KCMG.

Senator RASHID O. MARVILLE, B.A. (Hons.),
M.A. African Studies, M.B.A.

Prayers were led by Father E. Massiah.

MADAME DEPUTY PRESIDENT: This Senate is
in Session.

MESSAGES

MADAME DEPUTY PRESIDENT: I have a letter
from His Excellency the Governor-General dated 4th April,
2005.

Dear Mr. President,

I shall be away from the island in the United
Kingdom during the period 5th to 19th April, 2005, to
attend the Service of Prayer and Dedication following the
marriage of His Royal Highness, The Prince of Wales and
Mrs. Camilla Parker-Bowles, and a Reception given by The
Queen and The Duke of Edinburgh on Saturday 9th April
2005. I also propose to attend an investiture at Kensington
Palace following on my admission on 29th March 2004 as
a Knight of Grace in the Order of St. John.

In accordance with the provisions of section 29(1) of
the Constitution, the President of the Senate, His Honour
Sir Fred W. Gollop K.A., will perform the functions of the
Office of Governor-General during my absence.

As the Honourable The Senate will not be meeting
prior to my departure, it will not be possible for the usual
formal Message to be sent down to your Chamber. Will
you, therefore, please bring my absence formally to the
attention of The Honourable The Senate when next it
meets.

I have the honour to be

Yours faithfully

C. STRAUGHN HUSBANDS

Governor-General

ANNOUNCEMENTS

MADAME DEPUTY PRESIDENT: I have apologies for absences from Senator Newton and Senator Barker, who is out of the island.

PAPERS

SENATOR the Hon. E. R. GRIFFITH: Madame Deputy President, I am commanded to lay the following documents:

1. Duties Taxes and Other Payment(Exemption) (Coronation International Golf Club Limited) Order, 2005.
2. Special Development Area (St. Lawrence Beach Corp.) Notice, 2005.
3. Annual Report and Financial Statement of the CRL Limited for the Fiscal Year January 01 to December 31, 2003.
4. Telecommunications (Transition Timetable: Phase III) Order, 2005.
5. Telecommunications (Delegation of Powers and Duties) Order, 2004.
6. Annual Report of the National Petroleum Corporation for the Financial Year ended March 31, 2003.
7. Annual Report for the Barbados Tourism Investment Inc., for the Year 2003.
8. Audited Financial Statements of the Grantley Adams International Airport (GAIA) Inc. for the Year ended June 30th 2004.

SUSPENSION OF STANDING ORDERS

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I beg to move that Standing Orders Nos. 22(1) and 45(2) be suspended for the remainder of this Sitting.

The question was put to the Senate and agreed to.

SENATOR the Hon. E. R. GRIFFITH: Madame Deputy President, in view of the fact that you are presiding over this Sitting, I think that it is necessary for us, on this occasion, to appoint an Acting Deputy President and Chairman of Committees, so that our business can continue to be conducted in the usual smooth and efficient manner.

In that context, I beg to propose that Senator The Very Reverend H. E. Crichlow, be appointed to act as Deputy President and Chairman of Committees for this Sitting.

The question was put to the Senate and agreed to.

Accordingly, SENATOR The Very Reverend H. CRICHLOW was appointed to perform the function of Chairman of Committees.

INTRODUCTION OF BILLS

SENATOR the Hon. E. R. GRIFFITH: Madame Deputy President, I beg to give notice of the following Bills:

1. Caribbean Court of Justice (Amendment) Bill, 2005.
2. Constitutional (Amendment) Bill, 2005.
3. Caribbean Community (Amendment) Bill, 2005.

I beg to move that these Bills be read a first time.

The question was put to the Senate and agreed to.

PUBLIC BUSINESS

THE CARIBBEAN COURT OF JUSTICE (AMENDMENT) BILL, 2005.

SENATOR the Hon. E. R. GRIFFITH: Madame Deputy President, the three Bills which are before us today deal in essence with the same subject, that is the functioning of the Caribbean Court of Justice. I would, therefore, respectfully suggest to this Honourable Chamber that we could have one discussion instead of having three separate discussion, even though in the end we would have to pass the Bills separately.

Madame Deputy President, this matter before us, from all evidence, is not a contentious one, as is the case in some of the other countries in the region. It is clear to me that Barbadians across all sections of this community have accepted the need for a court functioning in the manner proposed for the Caribbean Court of Justice, and are convinced beyond a doubt that we have reached the stage of maturity where we can take care of our business just as efficiently, or perhaps even more efficiently, than those from outside of the region.

Therefore, in keeping with our strong feeling about Independence and our belief in ourselves, that we could manage our own affairs, that we should break our ties with

the Judicial Committee of the Privy Council, which, for many years, has been our final Court of Appeal.

Madame Deputy President, in our case in Barbados, unlike the situation which exists in some of the other countries in the region... In the legislation which we now seek to amend, namely the Caribbean Court of Justice Act which was passed in 2003, and the amendments which were made to the Constitution at that time, on the passing to these amendments to the existing legislation, Barbados will be well on its way to severing those ties with the Judicial Committee of the Privy Council and to be giving effect to the decision that the Caribbean Court of Justice would not only be our Court in its original jurisdiction but would also be our Appellate Court.

11.30 a.m.

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SENATOR THE HON. E.R. GRIFFITH: Unfortunately, the only other country in the region at this point in time which has reached that state of readiness is Guyana. When the court is inaugurated on Saturday, April 16, 2005, the only two courts to accept it in both its original and appellate jurisdiction would be Guyana and Barbados. Hopefully, the others in the region would be able to deal with their differences and would, in the not too distant future, reach that state of readiness.

Madam Deputy President, it is obviously easier for persons in the region to accept the court in its original jurisdiction because, as you know, Madam Deputy President, it relates to the ability of the court to deal with issues flowing from the Treaty of Chaguaramas which authorised the implementation of the Caribbean Single Market and Economy.

Madam Deputy President, life is such that even among relatives, and friends, there comes a time when there is a dispute and there is need for a third party to get involved to bring about a settlement to that issue. Madam, from time to time, there may well be disputes among the countries of the Caribbean and the court would be the institution that would be called upon to settle those issues. Madam Deputy President, even if there are no disputes among the countries in the region, there would be times when it would be necessary for clarification of various provisions as member countries seek to put into effect various policies to advance their causes so that there would still be a need for someone to interpret those provisions and clarify the issue, that is the role of the court in its original jurisdiction.

Madam Deputy President, it is, therefore, easier in my view for member countries to accept that they need an

institution to perform that role. The countries in the regions have generally accepted that.

The question of the appellate jurisdiction seems to be a more difficult one. We are all familiar with the recent decision by the Privy Council in relation to the efforts by Jamaica to identify the Caribbean Court of Justice as its appellate body. Whether we agree with the position taken by the Privy Council or not, it is not an issue at this stage because Jamaica, from what I heard this morning, has accepted that ruling. Although yesterday in Parliament, Government was able to get through with the passing the appropriate legislation that would allow that country to accept the Caribbean Court of Justice as the court of first instance, the issue of the appellate jurisdiction still remains to be resolved and how they resolve it would be left up to them.

Madam Deputy President, the other countries are looking at what is required of them before they can move to the stage that we have reached along with Guyana. From what I have been advised, some to them will have to make constitutional amendments and there would be a matter of time before they can succeed with that approach in Parliament but we are hoping that ultimately all of them would go the same direction in which we are going.

Madam Deputy President, the Caribbean Court of Justice Act was passed in 2003 and the only thing to be done was for His Excellency to give effect to the Act by the usual proclamation. The Proclamation was given and according to the Official Gazetted dated April 4, 2005, the effective date is April 8, 2005 so that Act has now taken effect.

Madam Deputy President, the same thing happened with respect to the Constitutional (Amendment) Act of 2003, Number 10. The effective date according to the Proclamation made by His Excellency is April 8, 2005. Both of those Acts are now in effect. What we have before us today are amendments to those Acts so that by the time we have completed our exercise, it is clear that Barbados would be on its way to making the Caribbean Court of Justice a reality as its court both in the original and appellate jurisdiction and that the days of the Privy Council having jurisdiction over our affairs would be no more.

Madam Deputy President, the amendments before us that relate to the Caribbean Court of Justice Act are seeking to put in place the number of protocols. These protocols are being reflected in the Schedules to that Act. For example, provision is being made to grant certain privileges and immunities to the Legal Services Commission and its members. Provision is being made to establish conditions that would safeguard the independence and integrity of the judges.

Madam Deputy President, we tend to be fairly cynical and tend to believe that persons who are entrusted with various responsibilities in our midst simply because they come from among us would not be able to exercise an independent approach in the execution of their duties. Fortunately, a large part of the Caribbean Community does not subscribe to that because, our region has, in every sphere of activity, been able to produce persons of high calibre who have been able to take equivalent position in the region and outside of the region. People from the Caribbean have been able to go across the world and take positions of responsibility and do exceedingly well. Therefore, I certainly do not subscribe to any view that we in this region cannot find judges of the calibre and quality to conduct the legal business of the community and to do so efficiently and impartially.

S29/11:40

Sequence 4

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SENATOR HON. E.R. GRIFFITH: Nevertheless, so as to guard against the skepticism that sometimes takes hold of us, every effort is being made to establish that the court, the judges involved and members of the judiciary, will be able to function in a manner that will protect them against political or other interference in the execution of their duties. The protocols also provide for certain immunities to be granted them but also provide for the establishment of conditions that will safeguard their independence.

Madam Deputy President, there is also the protocol which deals with the property and assets of the court, the Commission, premises, archives and communications which grant them exemption from foreign exchange

control, customs duties and taxes, similar to those which are granted to international agencies and other foreign bodies.

Madam, there is a protocol which deals with the juridical personality and legal capacity of the court. That came about because of the fact that the court had to enter into an agreement with the country where the Headquarters are based, so the idea to give the court the legal capacity to enter into agreements and similar arrangements.

Madam Deputy President, as you are aware, the Headquarters of the court are in Trinidad and Tobago and there is a Headquarters agreement between the Government of that country and court. This protocol seeks to take care of that. There is also a protocol which deals with the manner in which the financial arrangement for the support of the court will be conducted.

Madam Deputy President, we have an abundance of evidence to date on the difficulties which regional institutions have experienced over the years in obtaining the appropriate level of financing from the member countries. Certainly, we would not want to see an institution as critical and important as the Caribbean Court of Justice experiencing some of those difficulties which the University of the West Indies, Caribbean Agricultural Research and Development Institute and other institutions now experience with the failure of member countries to keep their payments up-to-date.

Madam Deputy President, from the beginning an appropriate arrangement has been put in place that would allow the court to be funded by a number of sources that are not dependent on the regional Governments and to have a sufficient amount of money on the onset that it will be able to manage its day-to-day affairs by the use of the interest from various investments and in a sense it guarantees the court financial support over a prolonged period of time. That is very important because if an institution such as this does not have a sustainable financial arrangement, then it will have to come to a halt and that would be a serious blow to the confidence of the people of the region. Madam, the protocol clearly establishes how the financial support for the court will obtain over time.

Madam Deputy President, there are amendments which deal with various provisions with respect to the tenure of the judges of the court and which seek to ensure that the arrangement for the administration and financial sustainability of the court are sound. There is also an amendment which deals with the manner in which member Governments may withdraw from the court. That is another matter that has to be taken extremely seriously because if a member country withdraws from the court, that in itself would send a signal to the people of the region that we are not serious about our business. While no one can predict what would happen, it certainly is my hope that would never happen.

I hold the view that in spite of all the difficulties which we have experienced in the region to date in our efforts to put in place institutions that we know are necessary for our survival in this competitive world and to make sure that those institutions function properly, the evidence available is such that it suggests that we have to find a way of overcoming all of those hurdles and move forward together. If we fail to do that, then in a sense we are making sure that we fall out of what is taking place in this world. Therefore, I trust that we would never reach the stage where a member country would want to withdraw from the court.

Madam Deputy President, if that court for some reason is allowed to collapse, I believe that it would be generations before the Caribbean region would ever again

reach the stage that we have reached thus far in terms of our integration. We must make sure that we take all the necessary precautions to preclude any such occurrence and go forward together and move from strength to strength with the integration movement, which is our only salvation regardless of the difficulties that we may encounter and in making that a reality, it is our only salvation.

Madam Deputy President, none of the countries in the region will be able to do it alone in this world in which we live. Even together we will still have enormous challenges but we will be able to cope with them much easier than if we are alone. We must make sure that nothing is done to this court that will affect the confidence of the people of the region. That is why it is important that these provisions be put in place from the very beginning.

Madam Deputy President, there is also a provision which seeks to amend the Revised Treaty of Chaguaramas. That provision was put in as a result of the recent decision of the Privy Council in relation to Jamaica.

11.50 a.m.

Sequence 5

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Senate 29, sequence 06, 11.50 a.m.

Senator the Hon. E.G. GRIFFITH: There is a provision which speaks about how member Countries are supposed to relate to the court. In fact, it says here that the provisions regarding the original jurisdiction set out in the chapter, shall not be construed to require a contracting party to enact legislation that is in consistent with its constitutional structure of the nature of its legal system.

There are commentators who feel that this was not absolutely necessary. Nevertheless, the CARICOM countries agreed to amend the Revised Treaty of Chaguaramas so as to facilitate Jamaica because it was Jamaica's wish that there be such a section. There was no harm in acceding to it, if this will give them comfort, the other Member Countries agreed that they will go along with it because it did not in any way present any problems.

There are various amendments also, Madam Deputy President, to sections of the Constitution and these are in essence the same sections that were amended when the original Caribbean Court of Justice Act was passed. What is taking place here is just a tidying up of some situations.

For example, section 24 which was amended originally, is being amended and it says here that there is some renumbering of the paragraphs. It states in section 2(c) "of the Court of Appeal and the Caribbean Court of

Justice in relation to appeals to the Caribbean Court of Justice from decisions of the Court of Appeal in the exercise of such jurisdiction." This is being inserted immediately after paragraph (b).

There is an amendment to section 79B of the Constitution as well by inserting the definition, "Regional Judicial and Legal Services Commission." There is a section to 79D where, by deleting the words, "where the High Court of Appeal or the High Court" and substituting the words, "court or tribunal" and (b) by deleting subsection (3) and substituting the section which says, "the court shall be a superior court of record and save as otherwise provided by Parliament, shall have all of the powers of such a court."

There are other amendments to the Constitution as well. Amendment to 79E which is deleting subsection (2) and renumbering subsections (3) and (4) as subsection (2) and (3) respectively. There is nothing of substance but just a matter of making sure that everything is done in a tidy way.

There is a slight amendment to 79F of the Constitution by inserting, immediately after the word "court" in subsection (2), the words, "other than the President".

Therefore, these amendments to the Constitution are not anything of a material nature but are simply to make sure that everything is done in an orderly and correct manner.

The amendment to the Caribbean Community Act, as I said, is fairly simple. In the First Schedule, the principal Act is amended by " (a) redesignating the Schedule as the First Schedule; and (b) inserting immediately after the First Schedule, as redesignated the Second Schedule, as set out the Schedule to the Act."

Madam Deputy President, that schedule deals with the revised Treaty of Chaguaramas, which establishes the single market and economy and the relationship between that and the provisions of the original jurisdiction of the Caribbean Court of Justice, and the constitution of the States parties, so that also seeks to tidy up the issue in relation to the court.

Madam Deputy President, with those brief remarks, I beg to move that this Bill be read a second time.

Senator F.J. STUART: Madam Deputy President, I do not want to delay the Chamber on this matter because there are really no issues that divide the Government and the Opposition on the Caribbean Court of Justice.

The Caribbean Court of Justice is another dimension of the deepening of the integration movement in the Caribbean, bringing the people of this region closer together. The Opposition, the Democratic Labour Party has, over the years, played a by no means insignificant role in trying to foster closer relations between the countries of the Caribbean, and deepening the relationship between the people of the Caribbean. Therefore, the amendments before this Chamber, we consider proper and necessary, if the integration movement is to be deepened and of course, if the court is to have full efficacy so far as it relates to Barbados.

I noted that the Honourable Minister indicated and, of course, it is regionally known that when the Court is inaugurated on Saturday, April 15, 2005, only two countries in the Caribbean would be totally ready for the court in terms of its original and appellate jurisdictions. Those two countries, as I understand it, are Barbados and Guyana, two as it were, immortal allies in the process of regional integration, for there were these two countries which were at the forefront of bringing CARIFTA into existence, later to be joined by Antigua and these two countries again which were at the forefront of bringing CARICOM into existence, joined by Trinidad and Jamaica.

The history of integration in the region seems to be that two or three countries go out front and test the waters and then the others follow, when they are sure that the squalls are not untamable, and so is it with the Caribbean Court of Justice, which has had a long gestation and is having a very uncomfortable and sometimes, painful birth.

Sir, the time has come, if Independence is to make any sense to us, if we are to really take our place on the world stage and not be treated as marionettes of some foreign power, for us to envision our jurisprudence. It really cannot make sense for supposedly mature people to claim and to tell themselves that people in some distant and foreign clime are better able to define issues of right and wrong, good and bad, just and unjust, fair and unfair than they are to determine those issues for themselves.

Senate 29, sequence 06, 12:00:14

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SENATOR F. J. STUART: In any event, indications are that even if we were unwilling to disengage from the Judicial Committee of the Privy Council, noises being made by the present British Government suggest that we would be considered loiterers beyond a certain point since they themselves are looking at the restructuring and the refashioning of their judicial arrangements.

Madam Deputy President, we do not listen to our prophets. I supposed it is still true that a prophet is not

without honour save in his country. Some time in the early 70s the late William Gilbert Demas, that model civil servant of this region, warned us that if we did not move with haste to establish our own final Court of Appeal that we may well find ourselves scampering at the last minute because the English might try to get rid of us in any event, and those words fell on deaf ears. Thirty or so years later, we are here today trying to bring this court into existence.

Madam Deputy President, I support the court fully and wish it every success. That is also the view of the Democratic Labour Party. I do not subscribe to the view of those who believe that judicial wisdom is the exclusive preserve of the judges in the Judicial Committee of the Privy Council. Over the years they have produced some brilliant judges and some brilliant judgements, but so too have our judges in the Caribbean to the extent, if I may say so, that some of them may have attracted the attention of the Judicial Committee of the Privy Council and have actually sat on the Judicial Committee of the Privy Council in its determining of cases from the Commonwealth.

Madam Deputy President, our late Chief Justice, Sir William Douglas, sat on the Judicial Committee of the Privy Council. It is not without significance even as we inaugurate the Caribbean Court of Justice, that the President of the Caribbean Court of Justice, the Right Honourable Justice Michael de la Bastide was recently appointed to the Judicial Committee of the Privy Council as well. So we have had jurists who commanded the respect of the Law Lords in England who have felt that they could be guided by what some of our jurists had to say and still have to say. So we must steer clear of any symptoms of an inferiority complex which would be implicit in any claim that our judges are not as competent as the judges in the Judicial Committee of the Privy Council because the evidence is to the contrary.

The West Indian Reports, which catalogue decisions made by judges in the Caribbean, are replete with examples of brilliant jurisprudence coming from the courts in the Caribbean. These reports give the lie to any claim that our jurists are other than first-class. Of course, one is not surprised that one of the two countries that would be fully ready on Saturday is Guyana because long ago, in the Forbes Burnham years, Guyana took a decision to disengage from the Judicial Committee of the Privy Council. The late Forbes Burnham took the view that Guyana could not consider itself to be genuinely independent or could not command the respect of the world if it was calling itself independent or a republic, which they became around 1980, and was still looking elsewhere to get judicial issues determined. So Guyana has been a trendsetter in this regard having abolished appeals to the Judicial Committee of the Privy Council as long ago as 1980 when their Republican Constitution came into effect.

How the court is going to be financed has been adequately explained by the Honourable Leader of Government Business. Proper provision is made for the funds to be administered by the Caribbean Development Bank. Those persons who might otherwise have feared that he who pays the piper could call the tune need not fear that anymore because independent sources of financing will determine the durability of this court.

Madam Deputy President, it is one way of insulating the court and its judges from any perverse influence, particularly as some like to claim, the influence of politicians, perhaps the most endangered species in the Caribbean. The method of financing, how the judges are going to be paid and how the court is going to be maintained has been taken care of.

Madam Deputy President, the functioning of our own courts of appeals in this region and our own high courts suggest that we have persons of the highest integrity who can rise to the occasion and occupy positions of prominence on the Bench of the Caribbean Court of Justice. The concern about the independence of the judiciary can relate, I suppose, to how a court is financed, who appoints the judges and those kinds of things, but ultimately the independence of a court and the capacity for the independence of a court resides in the integrity of the personnel who are supposed to occupy positions at that court.

Madam Deputy President, we will fool ourselves, if we allow ourselves to be misled into the belief that we do not have judicial officers of the highest integrity in this region who can do this region proud by administering justice impartially, fairly and at very high standard. The method of appointment of the judges is taken care of by the creation of a regional Judicial and Legal Services Commission, which is diversely constituted, and therefore there is proof, based on the composition, against any encroachment or any interference by influences that might want to undermine the impartiality of the court.

Madam Deputy President, I think that all the foreseeable precautions have been taken to make this court functional and effective on the behalf of the people of the Caribbean. It is true that in the exercise of its original jurisdiction it will be limited to issues arising under the Revised Treaty of Chaguaramas and in its appellate jurisdiction it will be hearing appeals from across the region from the courts of appeals in the various jurisdictions. It is a matter of some regret that, in the minds of some, the court became associated with the desire to hang where the Judicial Committee of the Privy Council was unwilling to do so.

Senate 29 Sequence 7

12.10 p.m.

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SENATOR F. J. STUART: Madame Deputy President, I believe this goes back to the early 1990s when the decision in Pratt and Morgan was handed down by the Judicial Committee of the Privy Council. The response in the region to that decision was felt to suggest that we needed our own court to do what the Judicial Committee of the Privy Council was refusing to do.

I believe I have made my view known on the death penalty in this Honourable Chamber. I have never supported it because I think it is too final. There is no scope for correction of error, if errors are committed and in any event, as I have said before, courts do not make decisions based on what they know but on what they believe. Therefore, belief is a function of one's socialisation and one's attitude of mind. Therefore, I cannot pin my faith on any penalty, least of all the death penalty, that is dependent on what any man, group of men or group men and women believe. I would feel more satisfied to pin my faith on what they know. And personal experience in my own practice has satisfied me that a number of horrible mistakes can be made because men, at the right time and in the right circumstances, can be made to believe anything, the most absurd things even and, therefore, the perils to which that can expose accused persons are sometimes unimaginable.

Madame Deputy President, the Caribbean Court of Justice should not be labelled as a 'hanging court.' It just happens that agitation for it coincided with the decision in Pratt and Morgan. I think that those responsible for public education in the region are going to have to spend some time on that particular issue, satisfying the people of the region that the utility of the court goes far beyond its jurisdiction in dealing with criminal matters because it will also be dealing with civil appeals among others, which would not relate to the death penalty. Therefore, to locate it within a matrix that deals with the death penalty only, is to be very short-sighted.

Madame Deputy President, this region, like all other regions of the world, has its own peculiar sociology, which is not always or necessarily understood by judicial officers elsewhere. I well recall when I was a student, and I believe that other legally-trained persons in this Honourable Chamber might remember, there used to be an argument as to whether words by themselves could have amounted to provocation in the criminal law, and English authorities were dead set against words by themselves justifying provocation that, in many cases, led to murder or manslaughter. I believe there was a case in Trinidad and Tobago, where an in-law in a dispute described a young lady as a old mule and arising out of the use of those words, a death occurred. The issue then for the Trinidad

and Tobago Court of Appeal - I believe the late Sir Hugh Wooding sat on that Court of Appeal - was whether those words could have amounted to provocation.

Madame Deputy President, the argument as I recall it was - I now rely on a memory that is growing dim by the onset of old age and so I ask to be forgiven - that the court made the point that those very words used in England would have meant nothing and could not have grounded a defence of provocation, but in the Caribbean and given the peculiar sociology of the Caribbean where having a child means so much to the average young lady, this affirmation as it were, or ultimate affirmation, short of marriage of her femininity, that to call her an old mule, was to touch her on the quick and, therefore, if she had overreacted or had appear to have overreacted, that appeared within the context of the sociology of the Caribbean and was sufficient to ground provocation. Madame Deputy President, when I read that case some 30 years ago, it dawned on me that there was a clear line of distinction between the sociological implications for jurisprudence in the Caribbean environment and those implications elsewhere. A judge in the Caribbean, therefore, can pick up the nuances from the Caribbean better than judges from the United Kingdom. Madame, that is one of the most potent arguments in favour of our having our own appellate final Court of Appeal here in this region. We have to reflect that the British, American and others, do not go elsewhere for final adjudication of their disputes, except in international law where they may, depending on how they feel, go to the International Court of Justice, but otherwise their jurisprudence is kept local because they have full faith in the people who administer justice in their country.

Madame Deputy President, I think we have to be matured on this issue but given the fact that the Caribbean Court of Justice will not have its own body of jurisprudence or judicial precedence to guide it, for a while decisions coming from the same Judicial Committee of the Privy Council and elsewhere, will have persuasive authority with the Caribbean Court of Justice but with the efflux of time our own jurisprudence will develop, and this can only be for the benefit of the people of the Caribbean.

Madame Deputy President, I want to take this opportunity to wish the Caribbean Court of Justice well. I hope that whatever constitutional or other legal obstacles that are in the way of those other countries which will not be fully ready on Saturday when the Court is to be inaugurated, would soon be removed so that we would have a full complement of countries supporting the Caribbean Court of Justice, in both its original and appellate jurisdictions, so that the genuine independence of this region could be ultimately affirmed and that we could at last look like a mature and viable people in the face of the world.

Madame Deputy President, one of the ironies, I thought, of the Pratt and Morgan issue had to do with the fact that the court decided, as I understand it, that to hold people on death row for beyond a certain length of time, amounted to cruel and inhuman punishment. Madame, in historical terms as distinct from personal terms, the persons who made that decision were the historical descendants of those who wrought cruelty and inhumanity unparallel on the people of this region, in historical terms.

12.20 p.m.

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Sequence 9

SENATOR F.J. STUART: What I found interesting was that while they seem to have reached their point of repentance and were now prepared to review their approach to cruel and inhumane punishment, that the historical descendants of those who were the victims of that cruel and inhumane punishment were saying that they did not think they were being cruel enough. The role of the coloniser and the colonised became reversed in that argument. It said to me in grave and moving eloquence that a serious job of education has to be done in this region.

This is why when the late Forbes Burnham abandoned appeal to the Privy Council, he argued that you cannot limit decolonisation to a flag and anthem and that you had to extent it decolonisation of the mind, that people are not genuinely independent until their minds are decolonised. I still think that one of the most urgent requirements of this region is the decolonisation of the minds of the people of this region. I think the establishment of the Caribbean Court of Justice is a great leap forward in that direction.

Madam Deputy President, there is still a lot of work to be done on people in this region who still look beyond the perimeters of this region for their models, ideals, values and their sense of what is right and wrong, what is good, what is bad, what is blameworthy and what is blameless, what is just and what is unjust. We have indiginise our own approach to these things and begin to behave like genuinely independent people with an independent cast of mind. Madam Deputy President, to the extent that the jurisprudence of the region would not be kept local when the full complement of countries come on board, I think we are making a great leap forward. I think we are privilege in this Chamber today to be witnesses and participants to this great movement forward on the part of the people of this region.

I hope that in those other areas which cannot be covered by the abolition of a court and its replacement by other, those issues that still have to do with our respecting

ourselves more and valuing more the things that we produce and the things for which we are responsible that we create. The work that needs to be done in that area would seem to be important by the Governments of the territories of this region.

Madam Deputy President, in the case of Barbados, we became formally independent in 1966. Madam, historically, thirty-eight years in the life of any country is quite frankly a short time. I may have said in this Chamber before that even though we talk about thirty-eight years of independence, quite a few of us in this Chamber who still know the British national anthem better than we know our own and in some case better because we sang both. While we are not very often forced to sing our own anthem, we had to sing theirs when we were a colony.

Madam Deputy President, I had occasion recently to reading and came across the words to the British National Anthem. I was quite intrigued by verse two and I could better understand why so small a country had so vast an empire. The verse said, Oh Lord our God arise, scatter our enemies and make them fall, confound their politics, frustrate their navel straits, on thee our hopes we fix, God save the Queen.

I do not think you could want it any better than that. This same kind of assertiveness, nationalist confidence that inspired so small a country as Britain which is smaller than Guyana here in the Caribbean, we are capable of that same kind of nationalist confidence but we have to begin by respecting who we are and what we represent in the context of world civilisation. Once we begin to look at ourselves differently, not as receivers from the world but as persons capable of giving to the world, we are on our road to a resplendent destiny.

Madam Deputy President, with those few words, I should like to give my fullest supports to the amendments contained in these Bills before the Chamber. I take the opportunity once again to wish the Caribbean Court of Justice well.

I am obliged to you.

MADAM DEPUTY PRESIDENT: Senator Nicholls.

Senator G.P.B. NICHOLLS: Madam Deputy President, I am grateful again for the opportunity to make a contribution to debate in this Honourable Senate, time concerning three pieces of legislation which in broad effect would make provision for the entry of Barbados formally into the Caribbean Court of Justice and abolish appeal to the Privy Council.

I am very pleased that we in this country can go forward with the establishment of the Caribbean Court of

Justice with the sort of bipartisan support and affirmation that is known to be the reputation of this country when it comes to the fundamental issues of governance particularly in relation to the administration of justice. There are other countries in the Caribbean that cannot have the right to boast of that distinction.

Madam Deputy President, I am indeed heartened that the Parliament of Jamaica only yesterday passed the relevant bills in their Parliament to allow Jamaica to enter into the Caribbean Court of Justice by way of a court of original jurisdiction but they are still having to deal with the effect of the decision of the Privy Council handed down in February which in a large way affects us in Barbados as sovereign people because the very pronouncement and concerns in which the Privy Council base its decision on affects us as we enter into the treaty that they had made an issue.

Madam Deputy President, I want to flavour my contribution to this debate within the context of constitutional reform. I think it is important that the ongoing dialogue and discussion as to how we shape and fashion the society we live in so that our Parliament give effects to very broad pronouncements of what the people desire.

Madam Deputy President, the Constitution of Barbados is the most defining instrument within the political framework of our community. Some would argue that abstraction of the Crown is the most defining moment but I would beg to differ that since we have become an independently sovereign nation.

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SENATOR G.P.B. NICHOLLS: Since we have become an independently sovereign nation, the Constitution is the most defining political instrument within our society because it establishes the ultimate ground for the legitimate exercise of political power by some over others. It creates a charter of rights between the citizens and the State. It also sets up the basis of how the Government, courts, Executive and Parliament function.

Madam Deputy President, we in Barbados can boast of a very mature and politically developed society. We have the most stable Parliament in the Commonwealth Caribbean and we have the longest tradition of parliamentary democracy of the Westminster model in this part of the world. As I said earlier, that we can move forward to the entry into the Caribbean Court of Justice with the bipartisan support that these Bills enjoy, speaks to

the very sound logic associated with the creation of the Caribbean Court of Justice.

Madam Deputy President, the truth is, the Barbados Constitution, which we are seeking to amend, by allowing the Caribbean Court of Justice to replace the Privy Council, has not been the product of our own collective and deliberative efforts. The reserve of interpretative authority over the said Constitution rest in a foreign tribunal, style, Her Majesty Judicial Committee of the Privy Council. Notwithstanding the level of the political maturity and sophistication, for the reserve interpretative authority to reside in a foreign tribunal, some forty years after we have proclaimed the right to be our own country, represents what Professor Simon McIntosh in his book entitled “Caribbean Constitutional Reform, Rethinking the West Indian Polity”, he calls that a vestigial incongruity. I am attempted to agree with him because for a foreign institution to play a constituent role in defining the political society that we are saying we are part of, almost forty years after we have broken links from the colonial power, represents a very negation of the said political sovereignty, the act which started in 1966.

Madam Deputy President, the Caribbean Court of Justice, to my mind, represents that fundamental leap in which we would now have the defining institution of our own political society in this region being part of our own deliberate and collaborative efforts. It would be an institution of our own making, therefore, we should be proud of the very sterling efforts that have been made to create this court and to imbue it with the very broad provisions to insulate it from political influence, financial collapse and to give it the juridical and legal personality to operate in its own way.

The Caribbean Court of Justice is, indeed, the most profound expression of our confidence and capacity to make fundamental decisions for ourselves and the idea of taking into our own hands the responsibility for defining our political society is a step in the right direction. Madam Deputy President, the Caribbean Court of Justice has been the subject of emotional and emotive debate in recent times and one of the amendments that we are entertaining today relates to the provision of juridical and a legal personality. It is important that we understand that the Caribbean Court of Justice is not a Barbadian institution and it is a supranational organisation to which we, as an executive government, have decided that we would associate the good people of Barbados. That is why we seek in this Parliament to give effect to the decision of the executive by way affirming our entry into this treaty.

Madam Deputy President, to imbue the Caribbean Court of Justice with the corpus of rights and privileges, as is the standing of any other international organisation is fundamentally important. The right of the court to lease

property, hire individuals and to enter into contractual arrangements with people, in terms of contracts of employment and things of that nature is important.

Madam, the right to protect the Caribbean Court of Justice from financial collapse in the event of a contracting party withdrawing is, indeed, important. These provisions under consideration today in a very broad and detailed way seek to give that comfort to those retentionists and doubters that what we are doing is not going to leave the administration of justice subject to the whims and fancies of political parties when governments change or when positions change positions and things of that nature.

I want to focus the majority of my presentation on analysing that judgement in the Jamaican case, The Independent Jamaican Council for Human Rights versus the Honourable Signia Marshall-Burnett and the Attorney-General of Jamaica. As most of us well know, that was the case in which the Jamaican Government was challenged before the Privy Council as to the effect of three Bills, similar to what we are doing now, seeking through constitutional process to remove the Privy Council. In that case the Privy Council said, very early, that they do not ‘feel any way’ about being removed as the highest court of Jamaica. In fact, they have no objection because the Privy Council does not enjoy the entrenched protection in the Jamaican Constitution as the Court of Appeal of Jamaica and the High Court of Jamaica.

Madam Deputy President, similarly in Barbados, the Privy Council is not an entrenched court protected from changes to the Constitution or changes as to how that court functions in our law. I cannot follow the logic of the Privy Council when they say that the Caribbean Court of Justice cannot now operate in Jamaica as a final Court of Appeal because the Caribbean Court of Justice is not similarly entrenched.

Madam, basically, the Privy Council was saying that we do not have to be entrenched because if the people who determined what the constitutional arrangements of the Caribbean countries should be at Independence wanted to entrench the Privy Council it was not known how they could entrench an itinerant court sitting thousands of miles away from the jurisdictions that you are dealing with. The Privy Council concede, in that judgement, that the very arrangements for the setting up of the Caribbean Court of Justice meet every reasonable standard that a court of its nature would want to have.

Madam Deputy President, they were not concerned that the protections that we give to the Caribbean Court of Justice are there, in fact, they said that the question is not whether the protections provided by the Caribbean Court of Justice agreement are stronger or weaker, they conceded that the protections are there but said that their concern was

that the protections were different. That is the test that they used. They were not concerned whether we insulate the Caribbean Court of Justice in a manner which makes the protection given to that court stronger but the issue was that it was different from what obtained in the High Court and the Court of Appeal.

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Senator G.P.B. NICHOLLS: Sir, that presents a fundamentally difficult problem for the other countries of the Caribbean to come into the Caribbean Court of Justice, particularly in the Appellate jurisdiction area. Here is the Privy Council pronouncing that you cannot entrench the Privy Council because the Privy Council is not a Caribbean institution, it is a British court appointed by the Lord Chancellor who is appointed by the Prime Minister of Great Britain.

The Prime Minister of Great Britain appoints the Lord Chancellor who appoints the judges who sit on the Privy Council and you could not incorporate that into any Constitution of the Caribbean because it is not clear how you would do that for an itinerant court in each and every jurisdiction.

They can see that, yet they put a very high standard in relation to how Caribbean countries in their own deliberate efforts as sovereign nations to set up their own court. This is something that should concern us because those persons who doubt the validity of what we are doing might well seek some comfort in the questions being posed by the Caribbean Court of Justice and, if we do not examine their decision, it could indeed give rise to the accusations that we have sidestepped a number of important questions that have been raised in this judgment.

Sir, for them, the British Privy Council, not entrenched in any Caribbean Constitution, could function because they have always been functioning in that way and they said it. If we abolish the Privy Council, the Court of Appeal of Barbados, like the Court of Appeal of Jamaica, could stand as the Final Court of Appeal and they would be satisfied. This is what they said.

Indeed, in Guyana, they have abolished appeals to the Privy Council and they have two tiers of structures in their courts. The High Court of Guyana and the Court of Appeal, nothing more. It is a great vote of confidence for the Government and the people of the Republic of Guyana

to want to go to the Caribbean Court of Justice rather than the Privy Council.

Madam Deputy President, in 1966 when our Constitution came into effect, the framers of that Constitution at section 86, put a provision to allow the Government of Barbados at some time in the future, to create a Final Court of Appeal outside of the framework with the British Privy Council. Sir, not only did they establish that possibility of creating the framework, it said at section 86 that could be done with an agreement with any other Commonwealth country.

Sir, all of the Constitutions of the Commonwealth Caribbean are almost *impari materia* in terms of the creation of the executive legislative and judicial arms of the state but the Barbados Constitution of 1966 goes further than any other Constitution in the Caribbean and says that we can create our own final Court of Appeal with any other Commonwealth jurisdiction that has a similar body of law like ours.

Sir, that is indeed the greatest affirmation of the fact that it was always envisioned at the time of Independence that there would come a time in the history of this country, or as the nation progresses that we make the fundamental step of being able to determine all aspects of our Governance and maintain those strategic aspects of our sovereignty, as the people of Barbados determine from time to time.

There could be no greater statement in terms of the Constitutional founding of this country than that is so, but I take objection, Madam Deputy President, to the very convoluted and high standards being set, almost impossible standards, because when the Privy Council can concede, if you wanted to make it an entrenched part of your Constitutional arrangements, it is not clear how you could do that but still say to the Caribbean Court of Justice, that they do not know how you would protect the judges of the Privy Council, but even if you tried to protect the judges of the Caribbean Court of Justice, they do not think you could achieve it because it is not being done by the same way in which you protect a judge of the High Court of Barbados or a judge of the Court of Appeal.

In fact, the Privy Council states that there is a risk that the Governments of the contracted states of the Caribbean Court of Justice, would get together at a Summit sometime in the future, and determine that a particular judge should not sit on the Caribbean Court of Justice.

Sir, those 15 Governments who have signed on to the Caribbean Court of Justice Agreement, would then determine that they would pass a Resolution to remove a judge. Each of the 15 countries would have to go back to their respective Parliaments and pass the legislation to

amend the protocols, which have established the agreement creating the Caribbean Court of Justice to remove a particular judge and that is a risk too great for them to accept, that is what they are saying.

Sir, they are saying that the Governments of the Caribbean cannot be trusted to abide by a Treaty that they have themselves agreed to, since they would have the power to do away with the same safeguards that we are now today contemplating to put in place. It is the doctrine of anticipatory wrongdoing, that the Privy Council is saying that we are stepping in to make sure that the Governments of the Caribbean do not together gang up on a particular judge.

Sir, we do not know how the judges of the Privy Council are appointed. They claim that their imperviousness, historically, makes them different from the judges of the Caribbean Court of Justice. These are the kinds of ideological battles that developing nations have to engage in and we have, not only with the establishment of the Caribbean Court of Justice to make sure that we walk down the right path, but we need to make sure that we can defend the very institutions to which we hold dear. The sovereign right of the people of Barbados, as well as the sovereign right of the people of any other Caribbean country, cannot and ought not to be tampered with, under a fanciful possibility.

The possibility to which I referred was described by the Privy Council as fanciful, that all of the Governments would decide to 'gang up' on a particular judge and remove him, causing an amendment to the Protocols which would have to be passed by the respective Parliaments, by way of an ordinary majority. They describe that as a fanciful possibility but it was the principle upon which that decision of the British Privy Council was based. This is why Jamaica cannot now join Barbados and Guyana on Saturday to join the Caribbean Court of Justice.

Madam Deputy President, as long as I am involved in the legal fraternity and I must concede that given my training and background, I cannot stifle my conscience to speak about these things because it is important as an emerging democracy that we can answer the very serious and fundamental challenges. We sit here in Barbados with the comfort that both political parties support this issue. I believe that we need to develop the response that if an attempt is made to alter or tamper with the very safeguards that we established the Caribbean Court of Justice with, that the said court structure in Barbados, starting with the High Court, should be able to entertain an application by any citizen that the very piece of legislation which would purport to remove the particular judge by changing the protocols should be tested in our courts.

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SENATOR G. P. B. NICHOLLS: The English court system and the jurisprudence that we know have rejected the whole concept of anticipatory wrongdoing by a Parliament. Lord Denning and Lord Diplock, the two most noted English jurists of the 20th Century have given many decisions in respect of the whole concept of anticipatory wrongdoing. We are being charged with the fanciful possibility of tampering with the very same protocols and agreements which we are considering today.

Madam Deputy President, I want to say to this Honourable Senate and to the people of this country that we must protect the Caribbean Court of Justice and we must be vigilant because, as the saying goes, the price of freedom is eternal vigilance. Therefore, I am encouraging the people of this country as well as all of the citizens of the Caribbean to seek to learn more about the Caribbean Court of Justice and the way in which it would function in their day to day lives. It is not only about having a court of our own or about having a court to arbitrate disputes among the members of the CARICOM Single Market and Economy, it is the top tier of our administration of justice. Therefore, the same way in which we would seek to protect the high court or the Court of Appeal of Barbados from unwarranted attacks to their integrity, we must do so for the Caribbean Court of Justice with similar vigour.

If it is one thing that I can be remembered for in this presentation to you, Madam Deputy President, is that I repudiate the doctrine of anticipatory wrongdoing. It is not something that we should take lightly, because as I said the very same principles enunciated in that case affect the standing of the Caribbean Court of Justice.

Madam Deputy President, Senator Stuart can tell you that he appeared before the British Judicial Committee of the Privy Council before and that it is not an easy thing to be charged with the responsibility of arguing a case for someone and being given the 'short end of the stick', practically being chased out of the court before the case was heard, and the decision of the Judicial Committee of the Privy Council being reduced to three and four lines. These are the kinds of things that we as legal practitioners face. The possibility of advising a client to take a matter up to England after the Court of Appeal in Barbados has determined it is not a possibility that the average citizen or even the average business in Barbados can contemplate.

Mr. Deputy Speaker, we now have the possibility, of flying 35 minutes away from here or when the court starts to move around the Caribbean, in having all of those matters properly ventilated without any unnecessary cost or hardship to the people of Barbados.

I conclude, Madam Deputy President, by congratulating the Government of Barbados and the Government of Guyana for this most bold initiative. Therefore, I want to pledge my support to the Bills today and to being ever watchful, that the commitments we as a Government has given to the people of Barbados, that the system of the administration of justice in this country would continue in the way that it has done for the last 40 years. It has been a sterling system of justice. The rule of law as we know it in Barbados has never been under serious or significant threat and we can count on our judicial system to pronounce on any matter involving anybody in the Barbadian society without fear or favour.

Madam Deputy President, I am obliged to you.

SUSPENSION OF SITTING

SENATOR the Hon. E. R. GRIFFITH: Madam Deputy President, I beg to move that this Sitting be suspended until 2.00 p.m. today.

The question that the Sitting do now suspend until 2.00 p.m. today was put and resolved in the affirmative without division and MADAM DEPUTY PRESIDENT suspended the Sitting accordingly.

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12.56 p.m.

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RESUMPTION

MADAME DEPUTY PRESIDENT: This Sitting is resumed. Senator Eastmond.

SENATOR the Hon. Miss L. V. EASTMOND: Madame Deputy President, I rise to add my support to the amendments that are before us today, which are to the Caribbean Court of Justice Act, the Constitution of Barbados, and the Caribbean Community Act.

In my view, it is a great privilege that I have been afforded the opportunity to speak on this matter because at this time we are dealing with amendments to the Caribbean Court of Justice Act and the Caribbean Community Act, which would have been passed previously and on which I would not have had the opportunity to speak.

Madame Deputy President, the matter which this debate touches and concerns is an historic one, since we are engaged in the process of severing our judicial ties with the United Kingdom's government through the Judicial Committee of the Privy Council. This is very significant for Barbados as a nation that has been Independent since

1966. Madame, I believe at that time that many of us had believed that we were no longer loitering on the steps of our colonial masters but it seems as though we have still been doing so through the Judicial Committee of the Privy Council and through retaining the Queen as our Head of State.

Madame Deputy President, these are two matters that this administration is seeking to address, of course, with the concurrence of the wider public of Barbados. This process of severing ties with the Judicial Committee of the Privy Council is a matter that I believe every law student who entered the University of the West Indies had to contemplate at one time or the other, where the question would have been raised as to the relevance of the Judicial Committee of the Privy Council for independent Caribbean states. I believe all of us probably would have written an essay on it. Certainly I believe that all of us would have discussed it at one time or another, whether it was during our constitutional classes or at lighter moments, for instance, while at the cafeteria. At that time law students used to have very interesting debates on legal issues. We actually enjoyed studying law, and I hope that is still the case.

Madame Deputy President, this particular episode is a matter that should have engaged the minds and hearts of every Barbadian. Unfortunately this has not been the case. Unfortunately I do not believe that Barbadian have truly connected to what we are doing in these circumstances, in terms of asserting our sovereignty and independence, but nevertheless we press ahead with it.

Madame Deputy President, as I said before, the other issue that we have to address has to do with the Queen being the Head of State of Barbados and the issue of the Barbados becoming a republic, is an issue on which we need to have discussions because from certain letters that we have seen and certain discussions that we have heard, there seems to be a view within the public domain that becoming a republic means devaluing the dollar and removing all social services, et cetera. Madame it is mind-boggling how one could have actually interpreted becoming a republic as meaning that all social services would be removed or that the dollar would be devalued. The two of them are not connected in any way as far as I can see. Nevertheless, these are the discussions that we are having and one is tempted to believe that in raising these issues, that sometimes individuals are being mischievous and in certain circumstances are being irresponsible in leading the public to believe things that they would not have contemplated otherwise.

Madame Deputy President, I would wish to focus my contribution within the context of building the CARICOM Single Market and Economy because this process of establishing the Caribbean Court of Justice is

one of the actions that we must take in building that economy.

In the many discussions that we have had on the CARICOM Single Market and Economy in many different fora across Barbados there are many interesting issues that are always raised about what we might wish to do next. There are few principles I think it is important to understand whenever talking about the CARICOM Single Market and Economy. The first thing to note is that the legal instruments that we sign will not create the CARICOM Single Market and Economy. The CARICOM Single Market and Economy will come into effect when individuals within the community start to utilise and to take advantage of the rights to which they have now become entitled, through treaty.

S:No.29(14)2:10 p.m.

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SENATOR the Hon. Miss LYNETTE EASTMOND:
It will come into effect, therefore, when we begin to trade goods and services based on the principals within the Caribbean Single Market and Economy.

Madam Deputy President, since we are talking about rights, there needs to be a mechanism by which we would ensure that those rights are respected across the several states of the Caribbean Single Market and Economy. The Caribbean Single Market and Economy is work in progress. There are many questions that individuals asked about it. When one is unable to give an answer with respect to one discreet area of the Caribbean Single Market and Economy, often the individual takes the position that some how they have caught you out and that the Caribbean Single Market and Economy cannot work because this particular matter has not been dealt with.

Madam Deputy President, the Caribbean Single Market and Economy can be no more than work in progress. Fortunately, I do not believe any time will come in our history, as long as we continue to support the notion of regional integration, where we will close our book of things to do within the Caribbean Single Market and Economy and say that there is nothing further to do. Madam, there will always be more work to do within the Caribbean Single Market and Economy.

Madam Deputy President, the Caribbean Single Market and Economy is akin to nation building. At no point in time did any country in this world closed its book of things to do with respect to the development of their country because they have reached the point where they no longer needed to build any new institution or strengthen existing institution. It continues to develop over a period of

time and this is going to be the same with respect to the Caribbean Single Market and Economy.

Madam Deputy President, in order for individuals to take advantage of the Caribbean Single Market and Economy, you would find that there are a number of institutions which we have to establish. There are already existing institutions around which the Caribbean Single Market and Economy is focused. These institutions are set out in the Revised Treaty of Chaguaramas. For example, they include the various organs of the community, such as the Conference of Heads of Government, the Council for Finance and Planning, the Council for Trade and Economic Development.

Madam Deputy President, in addition to those, if you look at Article 21 and 22, you would see that already there are existing institutions which help to facilitate the Caribbean Single Market and Economy. These include institution such as the Caribbean Disaster Emergency Response Agency (CDERA) and the Caribbean Agricultural Research and Development Institute (CARDI).

There are other institutions which we know about but probably do not associate them with the Caribbean Single Market and Economy. These institutions were established some time ago with the understanding that all the countries within the English-speaking Caribbean would be pursuing integration in some form or fashion. For example, we established the Caribbean Development Bank, the Caribbean Law Institute and the University of the West Indies. These are all institutions that would continue to help facilitate the implementation of the Caribbean Single Market and Economy.

In addition, there are other institutions such as the Caribbean Regional Organisation for Quality and Standards which was recently established as part of the mandate of the Revised Treaty of Chaguaramas. There are number of other policies being implemented in terms of institutional strengthening. One of those institutions established recently in Barbados was the TVET Council. I am sure many of you would have seen advertisements and promotions with respect to the establishment of TVET Councils across the region which are meant to establish standards, training and certification across the region over time. We are currently building this institution along with the Caribbean Court of Justice.

In addition, I know that recently there has been a meeting of the Registrars of Corporate Affairs across the region in order to focus on harmonising not only the laws but the practices with respect to the incorporation and the registration of companies.

Madam Deputy President, all of these institutions help to facilitate the rights to established under the Revised

Treaty of Chaguaramas. I want to remind you that those rights included, the free movement of goods, the free movement of services, the free movement of capital and the free movement of people.

Madam Deputy President, I hasten to add that the free movement of people is restricted to the movement of skilled community nationals under Articles 46 of the Revised Treaty of Chaguaramas. This includes university graduates, media workers, sports persons, artistes and musicians. At this point in time, it does not include any other category of person than those mentioned under Articles 46. Madam Deputy President, all these institutions are meant to facilitate those rights I mentioned previously.

How does this work? If we start from the notion that individuals will have the right to sell their goods and services across CARICOM, we could then look to see the institutions that would be necessary in order to enable us to do that most effectively. We could start with one of the old institution, the University of the West Indies, with which we are familiar.

Madam Deputy President, because we have had the University of the West Indies now for several years, it means that in certain areas, certainly with respect to law, medicine, engineering, management and social sciences, that there would be a great deal of conformity across the board across the various campuses in Barbados, Jamaica, Trinidad and Guyana where it would be expected that a standard would have been set for all CARICOM nationals attending the University of the West Indies. This would help to facilitate free movement and is probably one of the main reasons that it was easy to include that in the category of persons eligible to move within the Caribbean Single Market and Economy because the standard has been set.

Madam Deputy President, with respect to the TVET Councils as established in Barbados, Trinidad and Tobago, Jamaica and recently in St. Lucia, we are seeking to address the other areas that would not be covered by the University of the West Indies. The right of establishment, the right to set up your own business, applies to all non-wage earning activities which means that it applies to any type of economic activity for which a person is not an employee.

S29/14:20

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SENATOR the Hon. Miss L. V. EASTMOND: When individuals say that the Caribbean Single Market and Economy is elitists and there is nothing in it for the ordinary person, this, of course, is completely untrue

because the Caribbean Single Market and Economy facilitates the movement of people who wish to establish businesses but not for those people who seek to be employees. Madam Deputy President, these are businesses at all levels.

Madam, I know that within the context of Barbados we believe that B S& T is a business but the person who sells chicken and chips is a business. We also believe that Goddards is a business but we do not believe the person that operates a shop and sells drinks, cigarettes and newspapers is not a business. We would believe that Cave Shepherd is a business but the person who is providing plumbing services or is a joiner does not have a business. We know that is the thinking in Barbados. Fortunately, the Revised Treaty of Chaguaramas is more forward thinking than most of us.

Madam Deputy President, this Revised Treaty contemplates that a person who is a nail technician, cosmetologist, hair dresser or plumber might wish to travel throughout the region providing their services and, therefore, it contemplates the free movement of those persons.

Madam, the Technical and Vocational Education and Training Council (TVET): Madam, within Barbados we know that John Brown is a good plumber and we would phone somebody and ask if he is a good plumber and if we should allow him to do work for us. Obviously that is not going to be the same circumstance if John Brown goes to Grenada to provide those services. When he goes to Grenada he needs to be able to provide some kind of certification which says that he can do a reasonably good job if he is allowed him to provide services as plumber. That person would have to meet a particular standard and based on certain evaluations by the TVET, including experience, that person would be able to go to Grenada with some piece of paper to show that person is actually qualified and that is what that particular institution will do.

Madam Deputy President, I am pointing out the need for institutions to facilitate the creation of the Caribbean Single Market and Economy as people start to move around in the Caribbean Single Market and Economy to do their business whether as employees or people establishing businesses. Therefore, this is where we come to the establishment of the Caribbean Court of Justice.

Madam Deputy President, if we look at the Revised Treaty of Chaguaramas we would see that Chapter 9 of the Treaty deals with Dispute Settlement. Madam, dispute settlement is going to be very important within the context of the Caribbean Single Market and Economy. Most treaties have a dispute settlement mechanism and it is anticipated that once people start to businesses and move around with the Caribbean Single Market and Economy,

issues will arise. For example, there might be issues as to whether entertainers who are barred from coming into to Barbados have any rights under the Caribbean Single Market and Economy to enter as musicians, artistes or sports persons. So, there are claims that can be pursued through the dispute settlement mechanism.

However, I wish to make the point that, as in all dispute mechanisms, systems found within treaties, there are a number of alternatives to go into the Caribbean Court of Justice. You do not go into the Caribbean Court of Justice first. You first seek to come to a solution through using good offices, mediation, consultations, arbitrations, et cetera, before you get to the Caribbean Court of Justice, if you so desire.

Madam Deputy President, I would like to make reference to the point, which is set out in Chapter 9, that those disputes should be settled in an expeditious fashion. I am very happy to see that because within the context of the Caribbean Single Market and Economy and doing business, and with all due respect to the courts within the region, we would not like to have circumstances where a business dispute is held up in court for 10 or 20 years. We do not want to see those circumstances occur within the context of a Caribbean Court of Justice which must determine disputes with respect to business.

Madam, this is a matter that I think should become a principle for all new institutions which must make commercial decisions within the context of the new environment within which we are working in. If you look to dispute settlements at the level of the World Trade Organisation we would see set out very clearly in their procedures an emphasis on making sure that all decisions are made in an expeditious fashion. Madam Deputy President, not that we wish to sacrifice justice but if justice takes too long to come, at the end of the day one will still ask what kind of justice it is.

Madam, with respect to matters such as these, it is my view that it is necessary to ensure that the procedural rules that are going to be put in place and the culture which is going to be developed with respect to the Caribbean Single Market and Economy that things need not take as long as we have become used to within the context of our domestic circumstances. I believe that information technology should assist with this.

It has also been my view and recommendation that with respect to the establishment of all aspects of the Caribbean Single Market and Economy, one of the first issues that we need to address has to do with communication. In my view, the Caribbean Single Market and Economy will not thrive if the means of communication among the various actors is not rationalised in such a way that it becomes more effective. It certainly

cannot be the case, as it is now, that decisions take a remarkably long period of time before they can be resolved, simply because the papers are not getting to the individuals who need to make the decisions.

I believe that this is a circumstance where we can see a change in how we approach matters at the level of CARICOM because even though there is a criticism about the CARICOM Secretariat and how long it takes to carry out certain instructions in certain matters, it is my view, from having seen it close up, the CARICOM Secretariat is no more than a reflection of the combined inefficiencies of all the domestic Governments within CARICOM. While singly, there is some efficiency joined together in form of a CARICOM Secretariat, inefficiencies are multiplied. I also know that there are circumstances where the CARICOM Secretariat is required to do additional work without given the requisite resources to carry out those tasks.

I believe that as a matter of priority, in terms of the communication tools that we now have available to us, email, video conferencing and the lowering of telecommunication rates, we are now in a position to make CARICOM work in a more effective manner.

14.30 p.m.

Sequence 16

Wednesday, April 13, 2005

Senate 29, sequence 17, 14.30 p.m.

Senator the Hon. Miss L.V. EASTMOND: I would hope that the CCJ can be considered to be the first digital court in the region, where the focus is going to be on the use of the technology; use of technology for the submission of documents, use of technology for publishing decisions, use of technology for the submission of documents, use of technology for communications in every way. Therefore, the paper that lawyers have become used to and that lawyers become bogged down with might not also be a feature of the CCJ.

I would hope that those who are involved in setting up the new system for the CCJ would ensure that only the good practices from the legal profession and the judiciary are carried across to the CCJ and not the antiquated practices that are best left in the past.

Madam Deputy President, with that I would wish to support these three Bills and as I said before, I consider it a real privilege to have been given the opportunity to speak in this debate.

I am obliged to you.

Madam DEPUTY PRESIDENT: Senator Linton.

Senator I. St.C. LINTON: Madam Deputy President, I am delighted and overjoyed not just because of the matters that are before this Honourable Chamber but because of the maturity of the Parliament of Barbados at this particular time. In the Other Place and in here today, we are demonstrating that the Parliament of Barbados has reached a pinnacle of maturity, never experienced before.

Madam Deputy President, there are a few of us in here who could speak of the joy and delight of such a maturity. Persons like you Madam President, Senator Crichlow, Sir John Stanley, and my good friend, Senator Sir Roy Trotman, who were teenagers in the times when the political system of this country began its true development.

The Trade Union Movement must take the lead kudos for being part of the development that is taking place in these two Chambers this week. The political system which began its development from the 1940, in relation to education and the development of the jurisprudence of Barbados, at time when Caribbean unity would have been viewed as a cultural fantasy, when we read about Caribbean unity under the term of a Federation and when you read "Lizzy and Joe" in those days. We were teenagers then, but today we are privileged to see, experience and understand the seriousness of those times in the development to this maturity which we have come to see this week in Barbados.

This is a demonstration of maturity to the Caribbean of a small independent country which, through its professionals, politicians and those who work in institutions and businesses. When one considers the development of jurisprudence in this country when we go to revered jurists like the late Chief Justice of Barbados Sir Alan Collymore, when we would look back to the days in the halls of justice, of one of the Excellencies of Barbados, National Heroes, the late Sir Grantley Adams, and also to the revered jurists, Keith Walcott.

Those were men who demonstrated the skills in their professional fields in which, Madam Deputy President, we grew up as teenagers, and learnt and understood, where we were heading and where we have come to in political maturity in these two houses of Parliament in Barbados to discuss matters relative to Caribbean Court of Justice and the Caribbean Single Market and Economy (CSME) and at the same time demonstrate the character that we, as a small country has demonstrated, not only to this part of the world but to the entire world. This is a proud moment for us.

Indeed, when I recall the second time I entered a polling station to vote for five persons to go to a Federal Parliament and to see where we have come today, this very

day, to be signatures of our future, when I recall the moment that the immortal words were said: "One from ten leaves nothing." I remember the heartburn felt as an unrepentant federalist but the joy has come.

I recall, coming out of the Constitutional discussion in London that I could still find in the Constitution of Barbados, the kind of maturity that we have come to today, when those who sat around the conference table in Britain preserved the right to decide who we must be in the areas of justice in the courts. We decided then, even before we became independent to claim the right to be united with any country in the Commonwealth, in relation to justice in our courts.

Senate 29, sequence 17, 14:40:15

Wednesday, April 13, 2005

SENATOR I. St.C. LINTON: Madam Deputy President, I was one of ten commissioners under Sir Henry Forde who sat on the Constitution Review Commission which represented every institution in Barbados and we sought and preserve the right to have our own system of jurisprudence in Barbados. We recommended that if the region do not accede to a Caribbean Court of Justice that Barbados would set up its own appellate court of justice. That is a demonstration of the will of a people who were born for these times.

Madam Deputy President, we in this august body today should rejoice that we could be in a position to place the final signature on these pieces of legislation. That this small country of Barbados can be a signatory to this court shows sensibility, a maturity and a responsibility coming out of our independence. As an Honourable Senator, I want today to appeal to all those who are signatories to the Grand Anse Declaration to join Barbados in becoming as matured as the Parliament of Barbados did this week.

It is with that kind of feeling in the breast, and I am sure that you are feeling it too, Madam Deputy President, because we came along with it in our breast as teenagers, that we rejoice today as we give our fullest support to these measures that are before us.

SENATOR the Hon. E. R. GRIFFITH: Madam Deputy President, I wish to thank all Honourable Senators who spoke for their contributions in which they not only supported the measures before the Senate but also reaffirmed their support and commitment to the functioning of the Caribbean Court of Justice in both its original and appellate jurisdiction. All of us wish the Caribbean Court of Justice well and look forward to the occasion when the other CARICOM countries would join with Barbados and Guyana to accept the court not only as a court of first instance but as an appellate court.

Madam Deputy President, I do not think it is necessary, in view of the nature of our discussions, to delay the Senate any longer. Therefore, I beg to move that this Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR the Hon. E. R. GRIFFITH, the Senate resolved itself into Committee, SENATOR the Very Reverend H. E. CRICHLow in the Chair.

COMMITTEE

Mr. CHAIRMAN: The Senate is in Committee.

Clauses 1 to 7 inclusive were called and passed.

The Schedule was called and passed.

On the motion SENATOR the Hon. E. R. GRIFFITH, Mr. CHAIRMAN reported to Her Honour, the DEPUTY PRESIDENT the passing of one Bill in Committee and MADAM DEPUTY PRESIDENT resumed the Chair and reported accordingly.

Senate 29 Sequence 18

2.50 p.m.

Wednesday, April 13, 2005

On the separate motion of SENATOR the Hon. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Caribbean Court of Justice (Amendment) Act, 2005.

ORDER NO. 3 – THE CONSTITUTIONAL (AMENDMENT) BILL, 2005.

SENATOR the Hon. E. R. GRIFFITH: Madame Deputy President, I beg to move that this Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR the Hon. E. R. GRIFFITH the Senate resolved itself into Committee on the Bill. SENATOR The Very Reverend H. CRICHLow in the Chair.

COMMITTEE

Mr. CHAIRMAN: This Senate is now in Committee.

Clauses 1 to 8 inclusive were called and passed.

On the motion of SENATOR the Hon. E. R. GRIFFITH, MR. CHAIRMAN reported to Her Honour the DEPUTY PRESIDENT, the passing of one Bill in Committee and Madam DEPUTY PRESIDENT resumed the Chair and reported accordingly.

On the separate motion of SENATOR the Hon. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Constitution (Amendment) Act, 2005.

A division has been called. The bell was rung.

AYES: Senator the Hon. Erskine R. Griffith, Senator the Hon. John E. D. Williams, Senator Sir Roy Trotman,

Senator Sir John Stanley Goddard,

Senator Rudy W. Grant,

Senator the Hon. Miss Lynette V. Eastmond, Senator Ivan ST.C. Linton,

Senator Gregory P. B. Nicholls,

Senator Miss Patricia E. Parris,

Senator G. P. Ian Gooding-Edghill,

Senator Miss Sandra C. V. Husbands,

Senator Freundel J. Stuart,

Senator the Very Reverend Harold E. Crichtlow,

Senator Dr. Frances L. Chandler,

Senator Sir A. C. Fields,

Senator Dr. D. S. Lowe - 16

Noes: 0

MADAM DEPUTY PRESIDENT: The result of the division is that 16 Honourable Senators have voted for the Bill and none against. Therefore, this Bill is now passed and cited in accordance with section 49 of the Constitution.

ORDER NO. 4 – THE CARIBBEAN COMMUNITY (AMENDMENT) BILL, 2005.

SENATOR the Hon. E. R. GRIFFITH: Madam Deputy President, I beg to move that this Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR the Hon. E. R. GRIFFITH, the Senate resolved itself into Committee on the Bill. SENATOR The Very Reverend H. CRICHLow in the Chair.

COMMITTEE

MR. CHAIRMAN: This Senate is now in Committee.

Clauses 1 - 3 were called and passed.

The Schedule was called and passed.

On the motion of SENATOR the Hon. E. R. GRIFFITH, Mr. CHAIRMAN reported to Her Honour the DEPUTY PRESIDENT, the passing of Bill in Committee and Madam DEPUTY PRESIDENT resumed the Chair and reported accordingly.

On the separate motion of SENATOR the Hon. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Caribbean Community (Amendment) Act, 2005.

ADJOURNMENT

SENATOR the Hon. E. R. GRIFFITH: Madam DEPUTY PRESIDENT, I beg to move that this Honourable Senate do now adjourn sine die.

The question that the Honourable Senate do now adjourn sine die. was put to the Senate and agreed to and Madam DEPUTY PRESIDENT adjourned the Senate accordingly.

3.05 p.m.

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SPEAKERS IN THIS ISSUE

**(TVET), Madam, the Technical and Vocational
Education and Training Council (TVET)
EASTMOND, Senator the Hon. Miss L. V.
GRIFFITH, Senator the Hon. E. R.
LINTON, Senator I. St.C.
NICHOLLS, Senator G.P.B.
PRESIDENT, MADAME DEPUTY
STUART, Senator F. J.**

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EDITORIAL NOTES — NOT PART OF THE REPORT

Prepared with the transcript; for checking against the recording and the Minutes.

EDITORIAL QUERIES

Points noted while preparing this report from the edited transcript. The text has not been altered except where stated.

Q1. Masthead. The session is not stated in the source, so no session line is printed.

Q2. Dates in the text. The source gives ‘Saturday, April 15, 2005’ (15 April 2005 was a Friday). The weekday and date do not agree; printed as in the source.

Q3. Opening. The convening sentence is split in the source, with ‘Buildings on Wednesday, April 13, 2005, at 11.15 a.m.’ set as a separate paragraph after the rule. The Governor-General’s signature ‘C. STRAUGHN HUSBANDS’ is set as a heading. Printed as in the source.

Q4. Public Business, first Bill. The Caribbean Court of Justice (Amendment) Bill, 2005 carries no Order number in the source; the next two Bills are Orders Nos. 3 and 4. Printed as in the source.

Q5. Public Business, Senator the Hon. Miss L. V. Eastmond’s speech. One paragraph beginning ‘Madam, the Technical and Vocational Education and Training Council (TVET)’ has been set as a speech heading in the source; the words are the Minister’s. One speech label reads ‘Senator the Hon. E.G. GRIFFITH’ for Senator the Hon. E. R. Griffith. Printed as in the source.

Q6. Order No. 3. The Bill is headed ‘THE CONSTITUTIONAL (AMENDMENT)BILL, 2005’ and given notice as ‘Constitutional (Amendment) Bill, 2005’, but is cited on passing as ‘the Constitution (Amendment) Act, 2005’. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The Senate met on Wednesday, 13th April, 2005 at 11.15 a.m., with the Deputy President, Her Honour Senator Dame Patricia Symmonds, in the Chair; prayers were led by Father E. Massiah. The Deputy President read a letter from the Governor-General, Sir C. Straughn Husbands, who would be in the United Kingdom from 5th to 19th April, 2005 for the Service of Prayer and Dedication after the marriage of the Prince of Wales, the President of the Senate, His Honour Sir Fred W. Gollop, acting in his place. Apologies were received from Senators Newton and Barker.

The Leader of the Senate, Senator the Hon. E. R. Griffith, laid eight papers, among them the Telecommunications (Transition Timetable: Phase III) Order, 2005, the Annual Report of the National Petroleum Corporation for the year ended 31st March, 2003 and the audited financial statements of the Grantley Adams International Airport Inc. Standing Orders Nos. 22(1) and 45(2) were suspended, and on his proposal Senator the Very Reverend H. E. Crichlow was appointed to act as Deputy President and Chairman of Committees for the Sitting. The Caribbean Court of Justice (Amendment) Bill, 2005, the Constitutional (Amendment) Bill, 2005 and the Caribbean Community (Amendment) Bill, 2005 were read a first time.

Senator Griffith proposed one debate on all three Bills. He said Barbadians across the community accepted the Caribbean Court of Justice and that Barbados should break its ties with the Judicial Committee of the Privy Council; when the court was inaugurated on Saturday, 16th April, 2005, only Guyana and Barbados would accept both its original and appellate jurisdiction. He described protocols protecting the judges from interference and an amendment to the Revised Treaty of Chaguaramas made at Jamaica’s wish.

Senator F. J. Stuart said no issue divided Government and Opposition on the court. He traced the call for a regional court to the Privy Council’s decision in Pratt and Morgan in the early 1990s and restated his opposition to the death penalty. Senator G. P. B. Nicholls welcomed the bipartisan support, discussed the Privy Council’s ruling that it could not be entrenched in a Caribbean constitution, and urged vigilance in protecting the court.

After the suspension, the Minister of Commerce, Consumer Affairs and Business Development, Senator the Hon. Miss L. V. Eastmond, linked the court to the Caribbean Single Market and Economy: the free movement of skilled people such as plumbers and cosmetologists required institutions to certify them, and she hoped the court would be the region’s first digital court. Senator I. St.C. Linton spoke of the maturity of the Parliament and recalled that the Constitution Review Commission under Sir Henry Forde, of which he was one of ten commissioners, had recommended a court of Barbados’ own if the region did not agree to a Caribbean court.

Senator Griffith thanked Senators, and the Caribbean Court of Justice (Amendment) Bill, 2005 passed through Committee, Senator the Very Reverend H. E. Crichlow in the Chair, and was read a third time. The Constitutional (Amendment) Bill, 2005 passed all stages and, on a division, was carried by 16 votes to none, as required by

section 49 of the Constitution. The Caribbean Community

(Amendment) Bill, 2005 then passed all stages, and the Senate was adjourned sine die.

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