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Jitters on final night made the difference

THE EDITOR: *Pan is Beautiful V* was a resounding success. It was inspiring to hear and witness the heights to which our innovators; pannists, arrangers, tuners and steel orchestra captains have taken this indigenous art form. However, there is one area of final night competition that most of our steel orchestras, and therefore, pannists seem yet to master. This is coping with the stress of the final night competition so that each pannist changes the "butterflies in his stomach" or "final night jitters" or emotional distractors as one researcher described this pervasive phenomenon, to an emotional but relaxed readiness for the event. Perhaps this can be perceived as one aspect of the psychology of final night performance. But let us get back to the *Pan is Beautiful V* competition.

Desperadoes won the competition.

The steel orchestra "from the hill" placed first on the final night with 828 points. But using the same yardstick, that is, the points given by the judges, the best playing steel orchestra during the entire *Pan is Beautiful V* was Tropical Angel Harps, 843 points on their semi-final night.

It is very likely that the level of "final night jitters" made a big difference in the placings of these conventional steel orchestras. Let me quantify "final night jitters" or emotional distractors, if you prefer a more scientific phrase, as the difference between semi-final and final night scores. The differences in points ranged from an improvement by 17 points to a deterioration by 62 points. The assumption here is that these eight finalists having put in hours of practice with their conductor/s/arrangers based on the critiques of the judges would improve rather than perform worse.

On the final night of competition the orchestra that came first, Desperadoes, made only three points less than their semi-final performance. Renegades came second and was the only orchestra

Valley Harps and Tropical Angel Harps were judged as placing fourth and fifth with drops in performance by 20 and 62 points respectively. Another orchestra that had "belly" for the final night was Phase II Pan Groove. They scored only three points less, but their position after the semi-final was seventh, so their improved placing on final night was just to the sixth position. One can hypothesise that if Tropical Angel Harps pannists had Phase II's final night "belly" or composure, this beautifully playing orchestra from Enterprise in Central would have won the competition.

Congratulations to Desperadoes, Tropical Angel Harps, and all those who gave us so much to be proud of; the development of our own creation has achieved. The challenge for Pan Trinbago is to market this product internationally so that Stalin's insightful and stimulating observation *Pan gone, but pan man still dey* will be eventually put to rest.

COURTNEY H. BOXILL,
Psychologist,
Tacarigua

Deemed Necessary

Mr Alexander was of the view that the warning of the witness by the court was to apprise him of the fact that any question which sought to extract from him matters which had come to his notice during the performance of his duties as an officer of the Central Bank must have been deemed necessary by the court for the purpose of carrying into effect the provisions of the Central Bank Act.

Senior Attorney argued further, that if the court so found, then the court could direct the witness to answer the question; if however, it did not, so find, then it could not direct the witness to answer.

Mr Solomon contended that Parliament, in its sovereignty, had forbidden the matters referred to in S.56 from being divulged. The court had no power to direct the witness to so divulge information and the exception to this is entrusted in the court.

It is not for the court to exercise a discretion; it must apply the exception according to law.

The court will be acting illegally if it permitted the witness to divulge any information except in accordance with the provisions of S.56 (3). If the witness answers a question in breach of S.56 (3), he would be committing a crime in the court.

Mr Volney, in response stated, that the procedure the court should adopt could be described as follows:

- (1) the witness is asked a question by the prosecution;
- (2) having regard to the nature of the question, the court informs the witness of his liability to prosecution under S.56 (2);

Due Performance

(3) the court also tells the witness that having heeded the warning, if the witness is of the view that the answer may be necessary for the due performance of the objects of the Central Bank, then notwithstanding the warning, he may answer the question;

(4) where the witness refuses to answer the question, the prosecution may then move the court to require the witness to answer the question or to produce any record;

(5) the court, before requiring the witness to answer, may conduct an inquiry as to whether or not the answer elicited may be necessary for the purpose of carrying into effect the provisions of S.56 (1) which would be, in so far as may be necessary, for the due performance of the objects of the Central Bank;

(6) the court, having enquired, will then decide whether to require the witness to give the evidence or not.

Mr Alexander was of opinion that in essence, the submission of the State Attorney sought to give to any employee of the bank the authority to disclose mat-

ters coming to his knowledge as an employee in respect of the functioning of the bank, if that employee is of the view that it was necessary for the due performance of the objects of the bank.

The prohibition, he continued, is not in relation to the court alone; it is a general prohibition, but the court is given power to ease that general prohibition in matters before it, when the court is of the view that those matters are necessary for the purpose of carrying into effect the provisions of this Act.

Senior Attorney then submitted that the practice should be that the witness should be told of the prohibition; and when questions are asked that may elicit an answer relating to matters which come under the notice of the witness in the course of his employment, the court should tell him that he should not answer the question as yet.

Attorney who has asked the question should then be invited to convince the court that the answer sought was necessary for the purpose of bringing into effect the provisions of the Act. If attorney cannot so convince the court, then the court cannot direct the answer to the question.

Unlimited Jurisdiction

At this step, Mr Solomon informed the court that he would like an opportunity to research a certain point and to address the court on the adjourned day.

On September 27, 1988, Mr Solomon addressed the court on the statutory meaning of the word "Court" in the Central Bank Act, Chapter 79:02 with particular reference to what the term may mean in s.s. (3) of S.56 of the Interpretation Act, Chap. 3:01.

Attorney then referred to S.78 of Chap. 3:01 where "Court" was defined as being any Court of competent jurisdiction and was of opinion that this threw a further light on the type of judicial activity contemplated by S.56 (3) of Chap. 79:02, when it gave the court the right to direct what may be necessary for the purpose of carrying into effect the provisions of the Act.

The court is constituted, attorney urged, as a result of the Indictable Offences (Preliminary Inquiry) Act, Chap. 12:01 and the court's jurisdictional competence is circumscribed by that Act. The court is competent to make an inquiry into indictable charges found in areas of the common law and statute, but not the Central Bank Act.

Nothing that this court has jurisdictional competence to do can be founded on the Central Bank Act. "Court" means any court of competent jurisdiction, but this court is not a court whose jurisdictional competence relates to the Central Bank Act.

The court contemplated by S.56 would be a court with jurisdiction to supervise

or give directions for the purpose of carrying into effect the provisions of the Central Bank Act. That must be a court of unlimited jurisdiction, and therefore, the High Court or the Court of Appeal.

Attorney was unable to imagine any court other than the High Court or the Court of Appeal contemplated by S.56. It was not the intention of Parliament to give power to magistrates sitting at a preliminary inquiry to give directions for the purpose of carrying into effect the provisions of the Central Bank Act.

Competent Jurisdiction

Mr Volney replied holding that the court was a court of competent jurisdiction to hear all admissible evidence under the Evidence Act. Questions of admissibility of evidence are questions of law within the court's jurisdiction to determine. This court is, for all intents and purposes, the "court" referred to in S.78 of the Interpretation Act, Chap. 3:01, accordingly it has jurisdiction to rule under the provisions of S.56 (1). Mr Alexander associated himself with the submission of Mr Solomon.

The foregoing is a schema of the legal arguments the court received on the point under consideration.

Section 56 (3) of Chap. 79:02 provides: "No director, officer or employee of the Bank should be required to produce in any court any book or document or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act, except on the direction of the court in so far as may be necessary for the purpose of carrying into effect the provisions of this Act."

The term "Court" is not defined under Chapter 79:02. By S.78 of Chap. 3:01 the Interpretation Act "Court" means any court of Trinidad and Tobago of compe-

below.

tent jurisdiction. "Summary Court" or "Court of summary jurisdiction" has the meaning assigned to it in S.2 of the Summary Courts Act. Section 2 provides:

"Court" or "Summary Court," or "Court of summary jurisdiction, unless the same is expressly or by implication qualified, means any Magistrate or Justice when sitting in open Court to hear and determine any matters within his power and jurisdiction, either under this Act or under any other written law, and such Magistrate or Justice when so sitting as aforesaid shall be and be deemed to be a "Court" or "Summary Court" or "Court of summary jurisdiction" within the meaning of this Act."

"Summary Offence" or "summary conviction offence" by the very section is defined as meaning:

"Any offence punishable on summary trial and conviction in the matter provided by this Act, and includes any act in respect of which, under any law, a person is liable on summary conviction to a penalty, or in respect of which, a summary court can make an order in the exercise of its jurisdiction; and the term "on conviction" in relation to a summary offence, means on summary trial and conviction in the manner provided by this Act."

Mr Solomon argued that the "Court" contemplated by S.56 of Chapter 79:02 must be a court with jurisdiction to supervise or give directions for the purpose of carrying into effect the provisions of the Central Bank Act and that must be a court of unlimited jurisdiction, that is, High Court or Court of Appeal. S.57 could have contemplated no other court.

I do not agree with this submission. Section 29 of the Act as far as is material provides:

"Any person who makes or cause to be made or uses for any purpose what-

of the view that there is force in this submission.

There are no provisions under the Central Bank Act whose infringement amounts to an indictable offence. Further, under the Indictable Offences (Preliminary Inquiry) Act, Chap. 12:01, S.2 (1) "Court" means the "High Court" or a "Judge of the Court." In so defining "Court," Parliament is clearly demonstrating that "Court" is not to be used synonymously with "Magistrate." Under Chap. 12:01, the magistrate is invested with power, *inter alia*, to issue search warrants, receive complaints, issue warrants of apprehension, hold a preliminary inquiry but for the purpose of that Act, he is not the "Court," he is the inquiring magistrate.

A perusal of the Central Bank Act, Chapter 79:02 would reveal that only summary offences were created thereby; there is no indictable offence which owes its existence to Chap. 79:02. Further, there is no provision in that Act whose infringement is embraced by the provisions of any other enactment making that infringement an indictable offence.

Indictable Charge

Accordingly, I am of opinion that the reference to "Court" by S.56 (3) of Chap. 79:02 does not include a magistrate holding a preliminary inquiry into an indictable charge laid under another act of Parliament. S.56 (3) therefore, is inapplicable to this inquiry, and I have no power to give directions for the purpose of carrying into effect the provisions of the Central Bank Act.

The procedure the court will adopt hereafter will be as follows:

- (1) as a witness takes the witness stand, he will be informed of the provisions of S.56 (1) and (2);
- (2) it will be entirely a matter for the witness thereafter, if he chooses to answer a question in breach of the section and subsections.