SENATE
Tuesday, February 07, 2012

The Senate met at 11.00 a.m.

PRAYERS

[MR. PRESIDENT in the Chair]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Fitzgerald Hinds and Sen. Shamfa Cudjoe, who are both out of the country, and also to Sen. Basharat Ali who is ill.

SENATORS’ APPOINTMENT

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

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: SHERRIE HAMIDAN LORNA ALI

WHEREAS Senator FITZGERALD HINDS is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(1)(b), 44(1)(a) and 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, SHERRIE HAMIDAN LORNA ALI, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Fitzgerald Hinds.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 3rd day of February, 2012.”
THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: ALBERT WILLIAM SYDNEY

WHEREAS Senator BASHARAT ALI is incapable of performing his duties as a Senator by reason of ill health:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c), 44(1)(b) and 44(4)(c) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALBERT WILLIAM SYDNEY, to be temporarily a member of the Senate, with effect from 7th February, 2012 and continuing during the absence from Trinidad and Tobago of the said Senator Basharat Ali.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 3rd day of February, 2012.”

THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ G. Richards
President.

TO: CAMILLE ROBINSON-REGIS

WHEREAS Senator SHAMFA CUDJOE is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(1)(b)44(1)(a) and 44(4)(b) of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, CAMILLE ROBINSON-REGIS, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Shamfa Cudjoe.
 Senators’ Appointment  

Tuesday, February 07, 2012

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann’s, this 7th day of February, 2012.

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law: Sherrie Hamidan Lorna Ali, Albert William Sydney and Camille Robinson-Regis.

PAPERS LAID

1. Loan Contract No. 2659/OC-TT between the Republic of Trinidad and Tobago and the Inter-American Development Bank for a programme to Support the Climate Agenda I (First Programmatic Operation). [The Minister of Public Ulities (Sen. The Hon. Emmanuel George)]

2. Loan Contract No. 2657/OC-TT between the Republic of Trinidad and Tobago and the Inter-American Development Bank for Strengthening of the Financial Sector Supervisory and Regulatory Framework. [Sen. The Hon. E. George]

3. Annual report of the Trinidad and Tobago Securities and Exchange Commission for the financial year ended September 30, 2010. [Sen. The Hon. E. George]


7. Annual audited financial statements of the National Infrastructural Development Company Limited for the financial year ended September 30, 2010. [Sen. The Hon. E. George]

8. Annual audited financial statements of the Trinidad and Tobago Film Company Limited for the financial year ended September 30, 2011. [Sen. The Hon. E. George]


ORAL ANSWERS TO QUESTIONS

Sen. Terrence Deyalsingh: Thank you, Mr. President. As you are aware Sen. Hinds is away on parliamentary business, I therefore crave the indulgence of my colleagues on both the Government side and the Independent side, and your indulgence, Mr. President, to have his questions deferred for one week.

Sen. George: We are ready to answer all three questions posed on the Order Paper today. [Desk thumping] In those circumstances I do not know that I would want to agree with the proposal.

Mr. President: If the Senator who has presented the question is not here, the rules provide for the deferral of the question. I appreciate that you are ready, but the questions would have to be deferred.

Sen. George: I thank you very much, and I will abide by your ruling.

The following questions stood on the Order Paper in the name of Sen. Fitzgerald Hinds:

Importation of Used Vehicles
(Government’s new policy)

26. With respect to Government’s new policy which will allow for the importation of used vehicles up to six (6) years old, could the Minister of Trade and Industry indicate to the Senate:

(a) the number of used vehicles actually imported into Trinidad and Tobago for the years 2008, 2009 and 2010; and

(b) his Ministry’s projected estimate of the number of vehicles expected to be imported into the country within the next twenty-four (24) months.
Community Development Financial Assistance (Studies) Programme (Details of)

27. With respect to the Community Development Financial Assistance (Studies) Programme, could the Minister of Community Development indicate to this Senate for the period July 01, 2010 to August 30, 2011:

(a) the number of persons who benefitted from the Programme for the period mentioned above;

(b) the total amount disbursed by his ministry under this programme for the same period;

(c) the names of the recipients at (a) above and the corresponding institutions at which the programme of study is being or has been undertaken in each case?

Persons Reported Missing in Trinidad and Tobago (Details of)

28. (A) Could the Minister of National Security indicate the number of persons reported missing in Trinidad and Tobago between October 01, 2010 and July 31, 2011?

(B) Could the Minister also indicate what specific action, if any, has been taken to protect other citizens from this trauma-generating phenomenon?

Questions, by leave, deferred.

11.15 a.m.

ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) BILL, 2011

[Second Day]

Order read for resuming adjourned debate on question [November 15, 2011]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: The following persons who spoke on Tuesday, November 15, 2011, including the mover of the Motion, hon. Herbert Volney, Minister of Justice; Sen. Faris Al-Rawi; Sen. Basharat Ali; Sen. Nicole Dyer-Griffith Sen. Terrence Deyalsingh; Sen. Corinne Baptiste-Mc Knight; Sen. Helen Drayton, Sen. The Hon. Dr. Bhoendradatt Tewarie and Sen. Shamfa Cudjoe. All Senators wishing to join the debate now may do so at this time.
The Attorney General (Sen. The Hon. Anand Ramlogan SC): Thank you very much, Mr. President. It is an honour to contribute to such path-breaking legislation as the DNA Bill. I believe it was the Political Economist John Stuart Mill who is renowned and revered as one of our great legal thinkers and whose work is studied by every law student in the course of his jurisprudence, who said that the whole principle upon which law and order is based in civilized democracies is the principle that you can do anything you want within the concept of personal liberty provided it does not interfere with the rights of another. That really is the essence of what law and order is about.

You are entitled to do what you want; you have all of the freedoms and liberties that come with being a citizen of a country or a member of a society, but once you begin to interfere with the rights of other citizens then the law must step in. The law, and indeed, the Government has a responsibility and a social duty to protect the rights of the innocent and to defend those whose rights are being violated. In Trinidad and Tobago we all know that we face a terrifying crime crisis, one that did not mushroom overnight, but one that has taken root in our society over a period of time and now we must grapple with it. We must grapple with it in a way that restores respect for the rule of law.

That can only come if we have in place an effective system of criminal justice. I think that it is an open secret that, at the moment, people in this country think that the scale of justice—the scale seems to be tilted too much in favour of the accused. People have been saying for some time now, why is it that those whom we have elected and those whom we have put to serve are not thinking about the rights of those who are innocent, law-abiding citizens, but who feel that they have no rights in our country?

This Bill, I dare say, Mr. President, seeks to strike the right balance between protecting and respecting as far as possible the dignity of the human being and respecting the individual right of the citizen whilst at the same time trying to achieve some measure of protection for those innocent, law-abiding citizens who are caught up in the tsunami of crime that we currently face.

The Government, in the short space of time that we have been here, has been trying to focus on what the critical problem in the criminal justice system is. Whilst in the past, the thinking seemed to have been, let us focus on giving more vehicles, let us focus on giving more plans and policies—so we had people like Prof. Mastrofski, we had Penn State University; we spent an awful lot money on plans, procedures and policies, but the reality was that the investigation and detection, and indeed, the prosecution rate of success in Trinidad and Tobago
have been abysmally low. Detection and investigation capacity has not been a source of immense pride for us in Trinidad and Tobago; in fact, the statistics do not speak too well at all. What we have been doing, on the one hand, is concentrating on the administration of justice to see how we can deliver a more effective and a quicker justice, while at the same seeking to strengthen and enhance the detection and investigation capacity of the police service. So permit me to just digress a little to highlight some of the laws that have been passed by the People’s Partnership Government in the short space of time that we have been here.

The focus and the accent have been on the utilization of cutting-edge technology in the fight against crime. Among the first things we did was to create a legislative framework to deal with the interception of private communications. You may recall the unregulated and illegal wire-tapping fiasco that engulfed us, and we now have the Interception of Communications Act which allows the police to seek a judicial warrant and to legally acquire and intercept private communication which can be used in a court of law to secure a conviction. Under the former regime, although it took place, it could not be used as admissible evidence in a court of law, and therefore, apart from infringing the rights of others, it was in fact operating completely outside the legal framework. That, of course, enhances the police’s ability to solve crime if properly used. That is one example of how we are seeking to enhance and develop the investigative capability of the police service.

On the court side we had the Firearms (Amdt.) Act, and what we did, for certain offences involving firearms and prohibited weapons, we doubled the penalty. We also shifted the burden of proof and put it on the accused to displace and disprove the intention to commit the crime; rather than the State having to prove that you had the intention to commit the crime you must now disprove the fact that you intended to commit the crime. That, of course, is to help the administration of justice and to assist in the prosecution of the crime, because it is a very difficult thing otherwise as time has shown.

Of course, we have passed the Financial Intelligence Unit (Amdt.) Act and we have categories of businesses that are most vulnerable to money laundering and we have the money laundering laws to take care of that.

We have the Miscellaneous Provisions (Remand) Act, 2011. Again, that is to assist not the police but the court by introducing a law that enlarged the time and the period of remand to 28 days. It means that prisoners would now have to be brought to court less frequently and the court will have more time to spend on actual trials.
The Miscellaneous Provisions (Kidnapping and Bail) Act, 2011: we increased the no-bail provision for kidnapping from 60 to 120 days; we furthermore increased the penalty for kipping from 25 years to life. That would assist the police again and it would also assist the court. How does it assist the police? When you are denied bail by law the police have more time to search for the accomplices, the possibility of eliminating, interfering and harassing state witnesses is minimized, and you also have a brief respite to actually gather your troops and to make strategic forays into the criminal gangs that may have led to the kidnapping, because kidnapping is oftentimes not a lonesome act.

We had the anti-gang law which deals with the suppression of gangs and gang-related activity; we had the Bail (Amdt.) Act, 2011 which denies bail for 120 days for gang members; we had the Trafficking in Persons Act which will again help the police; we had the Anti-Terrorism (Amdt.) Act, which was tied into the Financial Institutions (Amdt.) Act, to prevent financial institutions and listed businesses from doing business that was suspected of being involved in terrorism or supporting terrorist activity and, of course, we had the death penalty debate.

Coming on the heels of that impressive array of legislation, we had four path-breaking Bills: the first was the abolition of preliminary enquiries, already which, again, is geared to assisting the criminal justice system; we had the electronic monitoring Bill, which would help both the court system as well as the police to keep track on offenders; we had the present instant Bill, the DNA Bill, which would help the police; and we, of course have, coming soon, the new prison rules which, after so many years, are finally being revisited and revised. We also had the Legal Aid (Amdt.) Bill, where, to strengthen the respect for the rights of the accused, we have increased the ceiling to $30,000 for legal aid lawyers so as to give those at the lower end of the socio-economic ladder a fair and equal fighting chance when their case is being tried.

So, that is just to locate today’s Bill in the legislative context and backdrop of what the People’s Partnership has been doing with the legislative agenda thus far. To recap, we have been targeting the criminal justice system on the one hand by trying to pass laws that would improve the efficiency of the administration of criminal justice, but we have also been passing laws to improve, enhance and develop the investigative capabilities of the police service. When you make the system of criminal justice more efficient and you enhance the police investigative capabilities; when you join them together, what they produce really, is a better conviction rate at the end of the day and a safer society for us all.
This Bill represents a significant change in the way we fight crime. It has been born out of the 2007 experience with the law passed under the previous administration, which, by the effluxion of time proved to be unworkable, impractical and in many instances obstructionist. The forensic use of DNA evidence is a very important tool and weapon in the fight against crime. This Bill was an attempt to address many of the shortcomings that revealed themselves when we tried to implement that 2007 legislation.

Since the 1980s, DNA has been relied upon by many jurisdictions successfully in the fight against crime. But the law which was passed in 2007 contains several provisions which, far from being progressive, turned out to be quite regressive. One can just start by the definition of intimate sample.

Intimate sample was a sample of venous blood, a urine sample, a sample of semen or other tissue fluid obtained by breaking the skin, pubic hair, dental impression, a swab taken from a person’s genitals, a person’s bodily orifice other than the mouth. That was what was considered an intimate sample. Then, of course, you had a non-intimate sample which was a sample of hair other than pubic hair, a sample taken from a fingernail or toenail or from under a fingernail or toenail. The problem with all of that is that the actual yield of DNA which could be obtained by all of that could have simply been obtained by a simple prick of the finger and getting a drop of blood. It was as simple as that.

11.30 a.m.

DNA, in many respects, is the modern technological analog to the old fingerprinting. Fingerprinting was that unique identification utilized by law enforcement agencies to fight crime. But with the advent of the DNA, which was another unique identifier like a fingerprint, the criminal investigation took on a new direction and slanted. What the Bill seeks to do is to streamline and simplify the definitions of “intimate” and “non-intimate”. It is constructed on the recognition that the DNA that can be extracted from a simple drop of blood, can yield more, if not the same DNA, that can be obtained from hair or saliva. The mythologies that have been used the world over, we have modelled this legislation on that basis. So, for example, in Australia, the Criminal Law Forensic Procedures Act and Regulations 2007, entitles the police to take blood by a simple prick of the finger and this straightforward procedure has been in use since then, without any complaint.

In the old law, it became so cumbersome and complicated that if the person was not consenting you had to go to court to get an order. By the time you went to court and the matter was tied up there, it is because “some witness” was bumped off,
someone retracted their statement that they gave to the police and the investigation came to a close, if not ran completely cold. So, that unduly cumbersome and restrictive definition of “intimate” and “non-intimate”, we have now changed it. We have had the dental impression, which really did not bear any relevance to forensic DNA analysis. We have removed some of the unnecessary restrictions that were there, to have medical personnel present when you are taking the sample, and so on.

You know, it is amazing, but the whole philosophy and policy of the 2007 law, looking back at it, it really was not user-friendly and it could not have assisted in the fight against crime, because we tilted the scale so much in favour of protecting the human rights of the accused person, that we threw out the baby with the bathwater. That is why if you ask the question today, since 2007 till now, how many applications were made to the court successfully to take the DNA sample of an accused person who refused to consent, the answer is, very few. The legislation was unworkable and defeated the ends of justice. It was not very helpful.

But, permit me to just highlight what is taking place elsewhere in the world, right next door in Barbados. In Barbados, the United States, the United Kingdom, Canada, Australia, their criminal justice system now, is almost predicated on the technological advancements with respect to DNA. And in this globalized and complexly interdependent world that we live in, where crime crosses borders and we may have to share information, it is very important that Trinidad and Tobago get its act together.

Mr. President, there has been legitimate frustration and complaint about the conviction and prosecution rate in this country for some time. And that is so, because cases fall apart in court because of the vagaries of human memory, demeanour, an attitude in the witness box, and expert cross-examination by Defense Counsel of police officers and laypersons who may have witnessed a crime.

The importance of DNA is that it is an extrinsic aid and an objective evidential basis for the prosecution to rest its case on. It is not subject to cross-examination about memory, whether the place was drizzling or rain was falling heavy, whether the street light was brightly shining or whether it was a dim glow. It is not subject to that. It is hard, factual, scientific analysis, completely external to all of the human elements of the crime puzzle that will be brought to bear on behalf of the prosecution and the full weight of the law will be felt.
In Time Magazine in 2009, it was said that DNA matches in potential perpetrators achieved 99 per cent accuracy. They noted that it was not just helpful in protecting those who may be a victim of the crime, but it was also helpful to those who may have been wrongfully arrested to prove their innocence. But where it was most helpful, of course, is in sexual crimes. Many times when you have sex crimes, the number one defence sometimes is an alibi. We also see it in robberies and so on. But the easiest way to disprove the alibi—when you say, “I was sleeping by meh gyulfen and I was home all night”—if you find bodily fluid or something and the DNA is present at the scene of the crime, well you obviously could not be in two places at the same time and that jettisons the alibi very easily in court. The DNA has been able to do that quite successfully in many cases.

What I find mind boggling, Mr. President, however, is the fact that from 2007, until today, Trinidad and Tobago has been struggling to find its way with DNA law and DNA legislation. I am happy, therefore, and wish to compliment my colleague, the hon. Minister of Justice, Herbert Volney, for bringing this legislation today.

In Trinidad and Tobago, during the period 2000—2011, 3,374 murders have been committed. And I dare say that this legislation should have been given greater priority. The old law did not work for a number of reasons and I do not understand why some amendment was not made to the old law to operationalize it in the interest of the country. DNA samples were not routinely taken. They could not have been taken by the law enforcement agencies, and why? There were no adequate storage facilities, either at the police station or elsewhere. There was a conspicuous failure, on the part of the former administration, to appoint a custodian, a DNA board and, of course, the way the law was drafted you could not have taken a sample from a convicted person or someone who was charged.

So, essentially what could have been a ballistic missile to target the heart of criminal activity in this country has been withheld and it is only now about to be deployed. That is what is happening. This DNA legislation is a game changer in the fight against crime, if it is properly utilized. It has been properly and effectively utilized elsewhere, and this Government is committed to using the DNA legislation effectively in the fight against crime. [Desk thumping]

The 2007 legislation: there was no political will, and it is clear that they were not serious about it. Just look at the checklist. Once you are charged, they could not take your DNA. If you are convicted as a prisoner they could not take your DNA. That is under the old law. Deportees, cannot touch them. DNA board, which is the cardinal cornerstone of the legislation, never appointed. Custodian, never
appointed. Deputy custodian, nil. And no provision for sharing DNA acquired by our authorities with other jurisdictions, none. You know, what is interesting is, in 2007, when the DNA Bill was passed and became law, maybe they did not realize it then, that what they were legislating was to take DNA from someone who was a suspect. But, once you charged the person or once the person was convicted, once that status was changed from being a suspect, you could no longer have the right to take that person’s DNA. That was the famous case in which that Justice Yorke-Soo Hon gave a ruling in 2007. She said; the learned judge indicated: that the law was drafted in such a way that it was only during that phase when the person is a suspect, that you can go to court to get an order for the DNA sample.

So, if the police suspected you of committing a crime, and if the police charged you, but afterwards they found an item of clothing with blood on it and they wanted to test that blood to see if it is your blood on the girl’s underwear or on some other item of clothing, they could not do it, it would have fortified and reinforced the prosecution’s case, but they could not do it because “dey done charge yuh”. So, the irony is, that having charged you for a crime they suspected you of committing, now that they could have gotten hard evidence to link you irreversibly, without doubt to the very crime, they could not do it because they charged you. And if you were convicted and they had reason to suspect that you may have committed other crimes they could not—problems. The law, really, was unworkable. And why was all of that the case? Because the 2007, Bill that they brought to Parliament failed to define what was a “suspect” or an “accused person”. That omission in the definition part of the law created virtual chaos and rendered inoperable that entire 2007 piece of legislation. That was the reality. Could you imagine what could have happened in cases like Akiel Chambers and so on?

Mr. President, as I indicated before, it is not just a matter of conviction, it is equally a matter of giving those who may be innocent an opportunity to vindicate themselves—Quincy Jeremy became the first person in Trinidad and Tobago to be cleared by DNA evidence. After serving more than four years in prison, for allegedly raping two women who had positively identified him, he was eventually freed. And that sends a loud signal about the commitment to rule of law and it sends a signal to those who say that the legislation is oppressive. It sends a signal because it is a double edged sword and it means that inmates at Golden Grove will also have the opportunity to volunteer to provide a DNA sample, if they feel that they have been wrongly convicted and sentenced. And in many cases, if it is that they were wrongfully convicted and the DNA can prove otherwise, then the normal consequences will flow.
In the United States of America, after 9/11, Mr. President, it was the DNA law, DNA database and the DNA technology that allowed families to get some form of closure, because they used DNA technology to help identify the remains of persons. I think they are probably going to do it in Italy as well, with respect to the cruise line disaster. But, when you have public human disasters, where a building is suddenly firebombed or is burnt to the ground and you do not know who was in it—a night club, for example, God forbid. We saw what happened in the front page of the newspaper at the Panorama semi-finals, but the fire officers apparently put rules in place to ensure public safety. But could you imagine, God forbid, if there was some public catastrophe or disaster and a night club or something caught afire and you do not know who is inside, it is the DNA law that will help us. It is the DNA technology that would help us.

11.45a.m.

So what is good law enforcement without the ability to attain the necessary evidence needed to convict? It is nothing. And this Bill will put teeth in the otherwise lifeless dog and represent a major philosophical shift away from the rights of the accused to rebalance the scales of justice in favour of the rights of the innocent.

Many points were raised during the course of the debate and we, on this side, have always been inspired by the mantra of our political leader, the hon. Prime Minister, Kamla Persad-Bissessar SC. Her personal mantra has always been: to listen; to listen; to listen, and then to lead. That is why, during the course of the debate we listened to what was said by our colleagues on the other side, both from the Independent and the Opposition Benches, and we have come back with an amended version of the Bill, that has sought to encapsulate and take into account many of the contributions made, and many of the valid and legitimate points raised.

Permit me to just briefly go through the new redraft that is now with us. You will see in the definition section we have defined “complainant”—

**Sen. Al-Rawi:** Sorry, Mr. President, just a point of clarification; potentially point of order, Mr. President. My enquiry is: is the hon. Attorney General intending to go through amendments in this debate, therefore allowing us the right to speak on those amendments? If not, I believe that the amendments need to come at the committee stage. So I would just like to know if I have the right to reply to the content of discussion of amendments on the floor now.

**Mr. President:** I will hear the Attorney General on that.
Sen. The Hon. A. Ramlogan SC: Mr. President, what I am attempting to do is to give an inkling as to those areas during the course of the debate that fell on fertile soil on this side and to indicate where we are prepared, at the appropriate stage, to give some concession, so that it will, perhaps, in the contributions yet to come, curtail some of the points that would be made, because there is not much point in repeating criticisms that may have been accepted by the Government and which we intend to deal with in a particular way.

Mr. President: If I may say, Senators, at this stage, are entitled—it is unusual, of course, to raise the question of line by line amendments, except at the committee stage, but in general, one is entitled to raise the question of amendments or reference to amendments to clauses that will be made. Therefore, I will allow you in a general way to talk to the issues that the Attorney General raises. One can proceed on that basis. I see no problem with the Attorney General’s reference to the amendments he proposes to make based on matters raised on the last occasion, and you will be permitted, within reason, to refer and to reply to what the Attorney General raises.

Sen. Al-Rawi: Thank you, Mr. President.

Sen. The Hon. A. Ramlogan SC: I am grateful, Mr. President, and it will come back at the committee stage as well. But one of the major changes that we have made, which I know Independent Sen. Drayton and Sen. Baptiste-McKnight would be very happy to hear, has to do with the point made about the victim of a sex crime, and the fact that the Bill as drafted could have been interpreted or read literally to suggest that you can take without the victim’s consent or permission, his or her DNA, being a victim of rape. We have now changed that so that that is not the case anymore.

We propose to proffer a definition of a complainant as meaning the person against whom the sexual offence was committed. We have, in fact, also had regard to the question of the independence of the appointment of the custodian and deputy custodian. I think some of the criticisms and concerns had to do with the direct involvement of the Executive arm of the State in making such an appointment, and, of course, we have changed it now from the Minister or President and we have specified that both the custodian and deputy custodian should be a public officer. So that takes care of that point, whilst reserving, in the interim—just to get it up and running—the right to hire someone on contract in the initial phase.
We also propose to accept the point made, I think, by Sen. Baptiste-McKnight, with respect to those who are in juvenile residential facilities and that it was too broad in the way it was phrased to capture all the children who may be there, and we propose to, perhaps, say that it will apply only to those who have been charged or convicted of a criminal offence in those facilities, as opposed to all the children who may be there, because, as you rightly pointed out, they may be referred to stay there for a number of reasons, not all of which may have to do with criminal issues.

With respect to deportees, certain points were made, and we propose to take that on board. I am grateful to Independent Sen. Prescott SC, for sharing with us his thoughts with respect to deportees, and the fact that the net may have been cast too far and wide. What we proposed to do with respect to the rights for deportees, if the person has been convicted and sentenced for a term of imprisonment for an offence which will be an indictable offence if committed in Trinidad and Tobago, then it is only in such a case that we will be entitled to take their DNA sample. So it is for serious crimes that would have been committed whilst you were abroad. If you have been deported, if you committed a serious crime which would be an indictable offence under our law, then you will have to subject yourself and provide a DNA sample.

As I indicated, the victims of sex crimes, they will now have to provide their consent, which can be withdrawn or revoked at any stage before their DNA sample can be taken. That is a very tricky and delicate matter. Last week I was speaking to a group of young people and one of the young ladies happened to have a sister who is involved in a life of crime, and she indicated to me that her sister was raped by the person who was the leader of the gang in that community.

The sister was sucked into this vortex; this life of crime, and when she eventually thought about reporting the matter—because she is trying to extricate herself from this life of crime—she was fearful, when she heard about this law, if she gave her DNA as a victim of crime—she is also a perpetrator of other crimes, robberies and so on—the possibility of her incriminating her own self arises. So that she will refuse to give her DNA as a victim of rape out of fear that when the DNA sample is put and it is run, it may throw her up on the other side of the fence as a perpetrator. So I think that is why the thinking of the hon. Minister of Justice originally—we said, well, you know, just take it from all and sundry.

The other side of it also was that there are many young girls and boys who are victims of sex crimes as a result of incestuous relationships, and if you are under age, even now, if you have to give your consent, you have to give it through the
parent or guardian. The problem is that the mother, who is in love with the stepfather who is raping the daughter, is not likely to tell her daughter, consent and give the sample. In fact, oftentimes the pressure is brought to bear upon the child not to give that DNA so as to protect the sole breadwinner and the revised family union that the stepfather now heads. So it is a tricky issue, but we have accepted the criticism and we have made the change, but I just wanted to point out that no law will ever be perfect and there will always be some room for improvement, as it were.

We have also taken on board the practical suggestion made by the Opposition with respect to having someone from the opposite sex being present when that is being done. I think it was Sen. Drayton who had initially raised it, and it was subsequently poached by the Opposition. [Laughter]

Hon. Senator: Nice shot! Nice shot!

Sen. The Hon. A. Ramlogan SC: Of course, concerns were raised about the integrity of the sample and what happens thereafter, and what is the process before it gets to court. We see merit in that. We did not think that it was something we need to legislate, but in the spirit of compromise and out of respect for the learned contributions that come from the Independent Bench we have put it in the legislation now rather than leave it for regulations. So you will see there will be a revised scheme to deal with the procedure to protect the integrity of the samples taken—from the moment you take it straight until the profile is generated.

With respect to the human rights argument, we propose to create a procedure to apply to the Commissioner of Police to have the sample expunged, and we have given a right of objection to both the victim of the crime—so that if I apply to have Mr.X’s profile and DNA expunged, but the victim of the unsolved crime in whose crime he was a suspect, they will now have a right to object, to say, “Well look, if you expunge his DNA and he is the main suspect, my case will never be solved; it will remain a mere statistic and it will remain forever unsolved.” They will have the right to make representations which the Commissioner can take on board and decide, in light of those representations, if he should or should not, and the decision will be his. And, of course, we have made similar provisions with respect to accused persons who may be convicted, whose time may pass and so on. After 10 years they can also apply to have it expunged. That will be 10 years after exoneration. In the case of children, we have said 10 years from the date when the profile was generated, they, too, can have a right to apply to have it expunged.
The DNA register, which was the subject of some criticism as well, we have done away with that. We think that the role performed by the custodian and deputy custodian is more than sufficient and that that should give us the adequate administrative integrity that we need.

If I can now turn to some of the criticisms that were made that we did not incorporate because we feel very strongly about our own policy position, I think there were concerns expressed about the constitutionality of the legislation and, of course, the very first and basic constitutional right is a right to enjoyment of life, limb, property, security of the person, and not to be deprived thereof without due process of law. That is a double-edged sword, because the State, in giving that sacrosanct guarantee, gives it to the citizen who is innocent and wants to enjoy his life, security of the person and property in the same way as it guarantees that fundamental right to the person who is suspected of committing the crime.

We think that this legislation strikes the right constitutional balance between the right of the accused and the right of the victim who has a right—let us not forget—to the enjoyment of life, limb, property and security of the person in this country. The criticism on the ground outside this Parliament is that the scale of justice is tilted too much in favour of the accused, and the time has come, as in many countries, to revise and revisit how we legislate; why we legislate, and whom we legislate for.

The time has come to legislate with the innocent in mind, just as much as the accused, because the system, as it is right now, is geared too much towards protecting the rights of a few. And when we look at the prosecution and conviction rate in this country, it is very, very low, and the reason for that is, in part, because of the kind of laws we have passed. So we say that with respect to the constitutionality of the legislation that we are comfortable with the constitutional position and context of this legislation.

12.00 noon

Concern was raised about the fact of the—I think, by Sen. Baptiste-McKnight and Sen. Drayton—equality of treatment argument, as to whether or not—as some concern was raised by someone in the Opposition, as well—people could be denied employment; it could facilitate discrimination and matters of the like. I really do not see how someone’s DNA sample and the profile that it generates could lead to all of that. It theoretically can, but in reality, if I want to discriminate against someone because they are Chinese, African or Indian, do I really need to go through the trouble of hacking into the DNA lab to get their profile to determine
their ethnicity? When you come for the job interview, I will see you and I will know. Well, you are either of my predisposition, you are either looking like the person I want to discriminate against or not. But, I do not need to hack into a DNA lab to compromise and breach all those security protocols, so that I could discriminate against you in employment for that. I find it to be, quite frankly, a bit far-fetched to suggest that.

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

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [Sen. The Hon. E. George]

Question put and agreed to.

Sen. The Hon. A. Ramlogan SC: I am grateful, Mr. President. I do not think that the DNA legislation, really, can facilitate these things. You know, interestingly enough, the argument about, it breeding racial discrimination, or any form of discrimination, is such that in the United States of America, it is actually used for the reverse effect. People use the DNA law there to improve their ancestral lineage, or to prove their racial make-up, so that they can, for example, access benefits, grants and certain scholarships. So, for example, African-Americans have successfully used it to prove their native American heritage, so that they can qualify for ethnicity-based scholarships. In other countries, they have used it to actually qualify for quota-based employment by the State to prove that I fall into one category or the other.

The real point is that I do not think in Trinidad and Tobago we need to concern ourselves with that. At the end of the day, if someone wants to discriminate against you, when you come for the job interview they will see what you look like and they will see who you are and they will know. And we have laws like the Equality Opportunity Act, and so forth, to take care of that.

Mr. President, the real issue is, what is the danger in taking someone’s DNA sample? What is the harm that will come to you? If I volunteer to give my DNA sample now, what is the real problem with that? What harm can you do me with that? I have asked that question in my own mind. And, I am afraid all of the issues that have come up, to the extent that there may be legitimacy in some, I have to say that the public good and public safety that will come about far outweighs it. There is simply no proportion; none whatsoever!
One of the points not made in the debate, for example, is that the mere existence of the right to take a DNA sample in itself, is a deterrent to criminals. A repeat offender for example, he knows that if he committed a rape, if he goes to burglarize a house after and they get that DNA, they could catch him for everything else, as has actually happened. So, that in some countries it has actually turned out to be a potent deterrent in its own right.

Now, criticism was made about the fact that the legislation is retroactive. It is not in fact retroactive. What the section says, is that it is intended to apply to the investigation and prosecution of offences committed before, on or after the Act. But that is not making the law itself retroactive, in the sense that it imposes any penalty on anyone. This is a law that is a procedural thing that will enhance criminal investigation and criminal prosecution. It is not that we are going to take away any rights now, that you would have had in the past, that is going to create any big chaos in the system. That is not what it is like.

In fact, for good measure, may I just point out that in his contribution, Sen. Hinds, who is not with us today, when they were debating the 2007 law, revealed to the country for the first time, that the former administration was, illegally, already collecting DNA samples without having the necessary legislative framework in place. And permit me to quote what he said in the Parliament on January 26, 2007. Sen. Hinds said, and I quote:

“To tell you how we have gone off the ground, a population database containing 231 samples has been developed. A staff database containing 70 samples has also been developed and is consequently being upgraded. In order words, they have begun to do the business. The sum of 2,381 profiles of exhibits pertaining to old and cold cases has been done from October 01, 2005 to September 30, 2006. That means that while we do not yet have the passage of this Bill and its application from a legislative standpoint, since 2005, because of their training, members of the Forensic Science Centre and its agents have been putting together profiles and storing them for cold cases…”

So that without the law being in place—[Interruption]

Sen. Al-Rawi: Point of order, Mr. President, Standing Order 35(5). My learned colleague has specifically said that Sen. Hinds was operating under—[Interruption]

Sen. George: Standing Order 35(5)—[Interruption]
Sen. Al-Rawi:—I must explain because it will be vague, otherwise, as my friend, the Leader of Government Business often does. I am saying, Mr. President, that the learned Attorney General has said, that Sen. Hinds has admitted to an illegality and he has referred to a contribution in 2007, relating to collection of DNA samples in 2005, when in fact, there was DNA legislation prior to that period. So, I strenuously object to the allegation and statement that there was any illegality admitted to, or in fact, that Sen. Hinds was complicit in any, in the manner that the hon. Attorney General has referred to, Mr. President.

Mr. President: Attorney General, may I hear you.

Sen. The Hon. A. Ramlogan SC: Mr. President, to the extent that it has been misinterpreted that way, I will withdraw it and I will rephrase it to state that the State, the Government, when the PNM was in power, was collecting DNA profiles and samples, at a time when the law did not admit to that possibility. That is a reality and that is a fact.

Permit me to say that the situation at present—and the reason I am raising that point is to deal with the issue of the allegation that we made it retroactive. That section in the Bill is simply there to validate what has gone on in the past, as they did when they brought the 2007 legislation. When they brought the 2007 Bill, you will see that in the same section 3, they did exactly what we are doing in this law. And it has to be done, in recognition of the need to regularize what had gone on before. The point I am making is that this is nothing new. So, to stand up and beat up about it does not really answer the point. But, I am grateful to Sen. Al-Rawi for providing me with some much needed injury time.

[Interrupt]

Sen. Al-Rawi: Point of privilege, Mr. President.

Sen. The Hon. A. Ramlogan SC: Privilege!

Sen. George: There is no point of privilege.

Sen. Al-Rawi: Yes, Mr. President, on a point of privilege. There being an implied privilege to all Senators. The hon. Attorney General has referred to the PNM as doing things not permitted by law and, I take strong objection to that fact, when the DNA Act itself provided, born under the UNC in 1999, as it was, for the collection of samples. So, that was a very reckless statement on the hon. Attorney General’s part. It goes to every police officer [Desk thumping]—who was engaged in the collection of samples.

Mr. President: Attorney General I will rule in the matter.
Sen. The Hon. A. Ramlogan SC: I stand by the statement because the law simply did not permit the profiling, sampling, storage, and what was taking place, as indicated by Sen. Hinds and I am entitled to say that the PNM “did a lot of” things illegally in this country, including the creation of SAUTT, including what took place with respect to DNA. I am permitted and entitled to say that. I am entitled to criticize the PNM. And, I do so now.

Mr. President: Hon. Senator, I see no objection to the Attorney General saying, that at a time when the law was not in forced, DNA samples were taken and that, therefore, the taking of those samples were not within the law. I understand, of course, the law was made retroactive to make those things legal. But he is entitled to say that at the time of taking it, no such law was in effect. And I so rule. [Desk thumping]

Sen. Al-Rawi: But, Mr. President, if I may, just for your clarification. Only insofar as hon. Senators are required to quote factually, the Deoxyribonucleic Act (DNA) Identification Act, 2000, does provide for provision, I do not know what the hon. Attorney General is referring to. [Desk thumping]

Sen. The Hon. A. Ramlogan SC: Thank you, Mr. President. One of the more intelligent points that were raised during the course of the debate had to do with the inclusion of suspects in the database. When one looks at what obtains in the United Kingdom, to exclude suspects from the DNA database would defeat the purpose of the legislation. You see, in the United Kingdom, it was the inclusion of suspects that led to the rapid expansion of the database that has led to the resolution of many crimes committed.

Now, the accuracy and contamination of samples was raised. I believe that it was my learned friend, Sen. Al-Rawi, who had raised the issue of the fact that we are not specifying the qualifications of persons in the legislation. It is very rare in the law itself that you would specify the qualifications of the persons that would have to be hired. But, permit me to say, that the qualifications of the people that we do have at the Forensic Science Centre at the moment are impeccable. They are people who are well experienced, and well trained. The University of the West Indies now has a Criminology Unit within the Faculty of Social Sciences where they offer MSc and PhD courses specific to forensics. We also have returning scholars who are coming back to Trinidad and Tobago, having taken up scholarships on a needs basis and they are coming back qualified in this area.

I would have thought by now we had reached the stage where we can demonstrate some confidence in our forensic lab. In fact, other countries, such as Antigua, that are now looking at setting up a DNA lab—we have acquired such a good
reputation over the years, such a solid reputation— they are now seeking our assistance to help in establishing their own DNA lab. So, I want to pay tribute to the hard-working public officers from the Forensic Science Centre. They work under very trying circumstances and they have been performing yeoman service to this country for quite some time. Today, I want to pay tribute to them and say that we believe in them. [Desk thumping] And we know that the integrity of the samples and the profiles, we know that the country will be in very good hands with them.

The big issue and concern raised about, “yuh taking dis DNA, ah drop ah blood from somebody, and yuh going to get this profile”, and this is something so revolutionary; it is not. The police have been fingerprinting suspects from time immemorial. The police have the right to get “ah search warrant behind yuh back, and they could kick down yuh door, come inside yuh bedroom, raise up yuh mattress, go in your Anchor box, go in your bureau, and dey could dig up anything dey want. That is without any advance notification. If you are driving down the road now, the police have the right to stop you, make you come out of your car, search you and search your car. There is nothing revolutionary about this.

You know, when we all travel to the United States of America, we seem to have no problem complying with the law, with the little green machine, and “de man tellin yuh, put your index finger, put yuh right, put yuh left.” We have no problems. Nobody complains. I am yet to see “ah Trini” say, “Yuh see me, me eh like dat, I going back home.” I am yet to see a Trinidadian say that. They do not complain.

I remember a Trinidadian complaining, saying, “Well, you know, if they ban smoking in public places in Trinidad it could never work.” But, he was smoking outside a pub in London telling me that, because, he dare not go inside. But, we banned it in Trinidad and Tobago and it is working. The breathalyzer is now being enforced. The police are out in full force with road blocks outside Carnival fetes. They did it at the south cancer fete in San Fernando, on the San Fernando Hill. Those partygoers enjoying the Carnival, make sure you have your designated driver and he must be sober. The police are out in full force and they are implementing the breathalyzer and they ought to be supported and complimented for so doing. [Desk thumping]

12.15 p.m.

So, Mr. President, we accept that the DNA legislation is a game changer in the fight against crime and it is a tool that is needed by the police. We understand that there were some concerns expressed about national security. Permit me to just quote from the learned Master of the Rolls, Lord Donaldson in the case of Secretary of State for the Home Department, Ex parte Cheblak, [1991] in the All England Law Reports. This is what Lord Donaldson said:
“Those who are able most effectively to undermine national security are those who least appear to constitute any risk to it...I am simply saying that there is no evidence whatsoever that the decision was irrational and in this particular field, it would probably be a unique case if there was.

...although they give rise to tensions at the interface, ‘national security’ and ‘civil liberties’ are on the same side. In accepting, as we must, that to some extent the needs of national security must displace civil liberties, albeit to the possible least extent, it is not irrelevant to remember that the maintenance of national security underpins and is the foundation of all our civil liberties.”

So, that, I support the inclusion of that clause in the Bill, that clause that deals with the right to take a DNA sample from someone if the interest of national security requires it. We must not forget. I saw it on page 17 of the Trinidad Express one day, buried in some recondite section in the Trinidad Express, but I saw it; that the man they held for the attempted plot to bomb the plane out of JFK, was convicted and serving time.

With respect to the rights of the child, we have treated, of course, children, victims of sexual crime and exonerated persons differently, with respect to the expungement. On the issue of reasonable force and the possibility that, excessive force could be used, I have researched this. In the United Kingdom, Western Australia and many other countries, the legislation is the same; that the police must have the power to use reasonable force if it is necessary. If they use excessive force or they are negligent, they can still be sued. But once they use reasonable force—I mean, we have to be serious about this fight against crime, you know; we have to give the police some support too. You cannot mollycoddle criminals. You have some “hard-back” men coming there in the station, they want to fight the police, they want to cuff them down. [Desk thumping] And, we are telling the police, “Well, you must say ‘good day, Sir. Could I get you something to eat and whilst I am at it, do you mind giving me a DNA sample please?” “It doh work like that.” Sometimes they need to use reasonable force and reasonable force is different from excessive force.

We support the right of the police to be able to take a DNA sample from a man suspected of a crime, or, indeed, a man convicted of a criminal offence already, whom they suspect may be a repeat offender. If he is playing the fool and he does not want to give it, we support the use of reasonable force in extracting the sample. That is our position with respect to that. [Desk thumping]

We have, in fact—[ Interruption]
Mr. President: You have four minutes.

Sen. The Hon. A. Ramlogan SC: Yes, Mr. President, certainly. With respect to the issue of accreditation, you would see that we have embarked on a programme of rigorous training at the Forensic Science Centre, and we are very comfortable. There is a United States based company that does regular testing of all the staff there and that is a useful and wonderful check and balance to ensure that the staff are trained and on top of things.

In closing, this DNA legislation is an important ballistic missile that we must deploy at the very heart and centre of criminal activity in this country. We must not be prepared to allow the criminals to roam free anymore. Let us not allow them to walk another day among the innocent in our society, without using all the available tools and weapons at our disposal, to hunt them down, capture them and bring them to justice.

So, Mr. President, today, I ask that we give our full support to this Bill, so that, as the people—the public—have put us here to serve their interest, we can give the best possible protection to secure the safety and protection of all our citizens. I thank you very much. [Desk thumping]

Sen. Al-Rawi: Much obliged, Mr. President. It is very unusual that one is permitted the opportunity to reply in the manner that I propose to do now, and I thank you for your ruling in that regard. I, of course, had no intention at all of speaking today, because the hon. Attorney General, I did not think, would have gone into the nature of the amendments proposed. [Interruption]

Mr. President: Senator, I did not understand—[Interruption] sorry. At the time when you asked the question of the Attorney General, and you asked whether replies could be made to the question, I did not understand it that you personally would be making those replies. The Standing Orders are clear that:

“a member”—of the Senate—“shall not be entitled to address the Senate or a Committee…for more than 45 minutes on any subject.”

And, of course, you have addressed the Senate on the subject on a previous occasion. I understand that your side of this Senate may speak on the question as to the amendments and issues that the Attorney General raised, but I did not really mean it that you specifically, may do so. And, therefore, given Standing Order 40(2), I do not think that I am in a position to permit you to.

Sen. Al-Rawi: If I could, Mr. President, just refer to the Standing Orders. I thank you. That is why I took so much care to ask the question the way I did. Generally, the contents of speech are provided for at Standing Order 35, and, in fact, the
learned Vice-President has ruled, on many occasions, in this Senate, that we cannot refer to amendments that are on the Table to come at committee stage because by the rulings in fact, as the learned Vice-President has on umpteen occasions made it was specifically stated that the Standing Orders would not prohibit a discussion of amendments because other Members of the Senate would not be permitted the right, having spoken already, to speak to the nature of amendments of the type which the hon. Attorney General did. In fact, this debate involves some 30 amendments, with 71 paragraphs and some 19 pages of amendments and the hon. Attorney General took a great deal of time—

[Interruption] [Sen. Al-Rawi remains standing]

Sen. Oudit: Standing Order 40(3), Mr. President, and I would ask the hon. Senator—I am on my legs for a Standing Order, Sir. [Sen. Al-Rawi sits]—Could you kindly contain your contribution and your arguments to the rulings of the President, and not in reference to what I may have alluded to, probably in private conversation, not in my rulings at all. [Interruption and crosstalk] But, Standing Order 40(3)—

Mr. President: I am going to allow Sen. Al-Rawi to address me on the question whether he should be permitted to speak. Of course, you must restrict yourself to that issue. I did not quite catch the Standing Order you were referring to when you suggested they would not allow you to.

Sen. Al-Rawi: Thank you, Mr. President, so that I would not cause my learned colleague any upset I am referring to her ruling specifically in the Senate.

Mr. President: I refer to the specific order I am asking.

Sen. Al-Rawi: Yes, Mr. President, generally, Standing Order 35 involves contents of speech and the Standing Orders are a mix, as I am sure you are well aware, from Standing Order 32 onward, up to Standing Order 37, where we deal with “Anticipation”. It is provided through: “Time and Manner of Speaking; Right of Reply; Interruptions; Contents of Speeches and Scope of Debate, specifically.

The report is—and I have had a chance to flip through May’s quickly as I have been sitting here, not having come prepared for this kind of interaction—that the hon. Attorney General spent a large amount of time discussing amendments, not yet before the Senate, not in the form of an amended Bill before this Senate, and in respect of which, the policy considerations were debated by him and put in issue. That would put us, Senators, who have spoken already, at a specific disadvantage, Mr. President, in our ability to interrogate the policy.
I say so, in light of the ruling in Pepper v Hart, particularly when a court will be called upon to interrogate the intention of Parliament by way of statutory construction. It would look to the Hansard debate, and then the voices of the Opposition would be silent, because they would not have been heard in relation to the debate of amendments put forward by the hon. Attorney General. [ Interruption and crosstalk]

Sen. Ramlogan SC: “All yuh have other people to talk!”

Mr. President: Of course, I was not here on the previous occasion when this matter was debated, I should indicate that, but I take from the tone of what the Attorney General was saying, he was not simply bringing amendments to this Senate but he was referring to objections raised by the Independent Bench and the Opposition Bench. [ Desk thumping] And, therefore, I think that he was well within his rights to refer to observations made on the Independent and Opposition Benches and to deal with the way in which he has treated or he intends to treat with those matters that were raised.

I do not think that that opens the door for a Senator who has already spoken to address the question. He does have a number of colleagues on his Bench who may do so and address those issues. In that circumstance, Sen. Al-Rawi, I am not in a position to allow you to speak to the matter. [ Desk thumping]

Sen. Sherrie Ali: Thank you, Mr. President, and colleagues. Again, I am before you with great honour and a tremendous sense of privilege. I wear my hijab when I am called upon to represent in Parliament, because I enter en masse with my family and with my loved ones, and I feel it is befitting that I do so in an appropriate manner.

I am a member of a beautiful country. I am a citizen and I am proud to be a Trinidad and Tobago citizen of a multicultural country; a country that hon. Volney referred to himself, a land most people would consider as a land of milk and honey; and it is. We, citizens of the Republic of Trinidad and Tobago, observe a democratic country. We are involved in a democratic process. That is why we are here and that is why we are arguing this Bill and we are not opposed to DNA. In fact, it was the PNM that passed it or helped pass it in 2007. In fact, the very large shoes that I am attempting to fill today, Sen. Fitzgerald Hinds, was one of our most proactive members for the passing of that DNA proposition.

I have the privilege of going back even further where a wise man said:

The problem is not the lack of laws but rather the penetrating policy and the enforcement of the existing laws.

That wise man was our hon. Attorney General in the Trinidad Express of August 01 2004. Now, it seems that he has changed his mind.
We do not want a law that is susceptible to abuse. And the way I see it, as a member of the People’s National Movement, as a representative of the people, we are attempting to infringe on several basic rights, privacy rights and human rights, of our fellow citizens.

I find even the amendments which we just argued upon and which will continue to be argued upon, I am certain, you have a 37-page document with 34 amendment reconstructions. That sounds to me like a Bill on its own. Why is there such a severe revamping of a proposed Bill? The Bill is so gravely flawed—like I said, 37 pages and you have 34 proposed amendments—it would be best to simply withdraw it and submit a new Bill; [Desk thumping] a Bill that does not, so blatantly infringe upon the democratic process and the rights of all of us—you and me included—as citizens of this beautiful country.

Clause 8—not meaning to itemize—and I have gotten a few objections myself about it getting close to lunchtime—the custodian appointed is appointed by the Minister, not the President. That is politically motivated or has room to be politically motivated. The said custodian, above all, will be given immunity against civil action. Minister Volney said: “If you have nothing fear, why fear?” Well, why is that in that clause? If you have nothing to fear, why fear? Why are we granting anybody immunity against civil action?

Clause 13—and I cannot tell you the number of times, in my preparation for today, that I have seen the words “without consent”; “without consent”. That is not a democratic process. Without the consent, a sample can be taken from a variety—from rape victims, raping the victims twice in my perspective. You already have a traumatized individual who is brave enough to bring herself or even himself before you, and you are going to require by law that that individual submit a sample, additionally traumatizing that individual?

12.30 p.m.

In clause 15—you are going to ask samples of your protective services, your servicemen, your applicants for firearms, law abiding citizens who only intend to protect themselves. You are going to require DNA samples from them and hold that sample for an indefinite amount of time; that is a blatant intrusion.

Furthermore, to address an issue that was brought up, DNA sampling is not unreplicable. In fact, this was quoted in August 2009:

“Scientists in Israel have successfully fabricated blood and saliva samples containing DNA, potentially undercutting what has been considered key evidence in the conviction or exoneration in crime cases.”
This was reported in *The New York Times* as well:

“...the scientists also demonstrated that if they had access to a DNA profile in a database, they could construct a sample of DNA to match that profile without obtaining any tissue from that person.

‘Any biology undergraduate could perform this’…”

Mr. President, and colleagues, there are no safeguards. Once that sample is taken and stored and is available to even one individual, it could fall into the hands of any wrong-meaning individual.

This is the one I am particularly tickled about, clause 16, where the Minister of National Security would be able to provide the Commissioner of Police, in written form, the ability to forcibly extract a DNA sample from any proposed accused without consent and with the liability of arrest. This is an unlimited power that you are securing to one individual, to one Minister; the same Minister who only recently did not know that his Commissioner of Police purchased a $1 million aircraft. *[Desk thumping]* This point should be belaboured, in my opinion, even further. No such power should be given to any individual.

**Sen. Brig. Sandy:** Mr. President, there was no purchase of an aircraft by any agent or agency from the Ministry of National Security over the past few months. *[Desk thumping]* That statement is erroneous.

**Sen. S. Ali:** My apologies. My point is there is no knowledge of the action or intention of the action. *[Desk thumping]* This is a power that I foresee could be greatly corrupted. Let us go back again to our most recent past: the state of emergency, the plot against the Prime Minister, the curfews. Where did we go with that? Where did we end up with that? Who was detained? Who has continued to be detained? Who was prosecuted? Where is the prosecution process that our Attorney General spoke of? What was the outcome?

Yet unlimited powers were given to individuals to come into a private citizen’s house on a blatant accusation and hold that private citizen without regress or reform until a decision was made. That is an unlimited power that should not appear in a democratic process. By approval of this Bill, as it stands, you are allowing that power to be taken away from our citizens. Our rights as citizens should remain our rights as citizens, as members of this country, unless we want to take away the democratic process as a whole, and change the nature of our republic, to change the nature of this country, which we do not, Mr. President. We want to remain a free and freedom loving country.
Clause 17—a citizen of Trinidad and Tobago who has been deported from another country. The deportation process is not specific to the committing of a crime. There are individuals who are deported simply because their visa has expired or because they had entered the country without knowledge of having had to obtain a visa. So these private citizens, non-criminals, not in the manner that we would view kiDNAppers and murderers, would be subject to a criminal process? I do not see where the punishment suits the crime.

Clause 19—sexual offence, again the words “without consent”,”without consent”; we continue to violate without consent. These examinations for rape victims, medically speaking, are lengthy and intrusive and you would be putting an already traumatized individual through an extremely lengthy, unforgivingly embarrassing process to obtain a sample without their consent. If those persons want to, let them, but if they choose not to, forgive them.

Clause 20—same sex seclusion. If I were, unfortunately, in a situation like that, I would want my husband there; I would want my husband to hold my hands. Allow our citizens to be treated as individuals, as people. That is all we are simply asking here; respect their rights.

Clause 22—reasonable force to secure and claim a DNA sample with force on a private citizen who may not have been subject to due process. That should speak for itself. That cannot sound right to anyone. That does not sound right to anyone. What I am seeing here is an unlimited amount of flexibility to the powers that seek to obtain more power, more work, more staff, more money. Where is this leading? Is this leading to privatization? Are we going to put this responsibility into another group of uncontrolled individuals; something as sensitive and easily manipulated as a DNA sample that could have long-standing consequences, including ruining somebody’s life and taking away their freedoms? That is too much to ask. That is too much to give.

So, let us take a serious look at this. Let us definitely approach these amendments; re-address the things that need to be re-addressed. I agree nothing is perfect, but why seek to revamp, on such an extraordinary scale something that works. In fact, Quincy Jeremy was freed, was he not? In 2008, right after the 2000 amendment Bill was passed. So it worked and it has worked.

I bring to the floor in my closing, that we take a serious look at this. We address what needs to be addressed, but take our citizens’ rights into concern, and acknowledge that our citizens have rights.

Thank you, Mr. President. [Desk thumping]
Sen. Prof. Harold Ramkissoon: Thank you very much, Mr. President. Let me commend first the hon. Minister of Justice for bringing this important Bill to the Senate and secondly, those who have made contributions on this Bill. One of the things coming out of the debate on this Bill is the fact that we all agree on having good DNA legislation; that is what is coming out of this debate. What we are trying to now do is to make sure that the legislation is, in fact, very good legislation that strikes a good balance between the rights of an individual and the rights of a larger society.

The hon. Minister, I think, understands the balance we are trying to strike and the Minister has, in fact, been willing to compromise. As I mentioned some time ago, Mr. Minister, you must not interpret the willingness to compromise as a sign of weakness, but rather as a sign of a greater maturity. It is always a pleasure working with Ministers who listen to the voice of reason and, more importantly, are willing to act appropriately. [Desk thumping]

Mr. President, let me start off my contribution by saying that science and technology in general have been good to mankind. We have witnessed over the last century, and in particular the last 50 years, the revolution in telecommunications, radio, television and the computer. We have witnessed the green revolution in agriculture that has averted major food crises. We have witnessed the major strides in medicine and in health care.

Mr. President, in 1762 the philosopher, Rousseau, said and I want to quote:

“Half of all children will die by age eight. This is an immutable figure. Do not try to change it.”

So that in 1766 they expected approximately 50 percent of the children to die by age eight. What is the situation today? The infant mortality rate in Trinidad and Tobago is 3 per cent. Most of the youths who die under age eight are those who die during infancy. So we have an infant mortality rate in Trinidad and Tobago of approximately 3 per cent. In Cuba it is even less, it is 1 per cent; one of the lowest in the world. So, thanks to science and technology we have indeed come a very, very long way.

Let me not hesitate to add that the field of criminal investigation has not been left out; it too has been the beneficiary of science and technology. Today, we have the field of forensic science in which, for example, fingerprinting is a tool. With the major discovery of the structure and functions of DNA, we now have the DNA testing.
Mr. President, just for information, the DNA structure was, in fact, discovered in 1953 by Crick and Watson working at Cambridge University. Nine years later, in 1962, they shared the Nobel Peace Prize together with one, Wilkins. Normally one would have to wait much longer to be awarded the Nobel Peace Prize.

12.45 p.m.

What this tells us—it underscores the importance of their work. To me, the consequences of that discovery are without precedent in the annals of science. No other discovery, in my view, has had such an impact. It has given us the laser-like tool for DNA testing. It has given us modern biotechnology. It has given us the new fields of molecular biology and genetics. It has given us genetic engineering, genetically modified organisms, GM foods. It has given us gene therapy. It has also given us, Mr. President, as you may recall, the cloned sheep, Dolly, and holds the key to unlocking the secrets to such diseases as Alzheimer’s. It has also popularized the field of bioethics, which is an academic discipline which started in the 1960s. In the UK, Parliament has set up a House of Commons Science and Technology Committee to look at S&T in general and associated ethical issues, in particular.

Before I go to the Bill, and for the benefit of the public, let me define a couple of things. We have been talking about DNA. We have been talking about genetics. What is DNA? DNA, in simple layperson’s terms, is a very long important molecule. It carries the blueprint for life.

What is a gene? A gene is a part of a DNA that carries a complete message. What is important is that we have, in common, over 99 per cent of DNA. We all have the same DNA with respect to that 99 per cent. So there is only 1 per cent that is different. What is important here though is that we do have a tremendous amount of DNA in our system. The smallest building block is a cell. We have trillions of cells in our system and, if the figures I have are correct, each cell has the equivalent of six feet of DNA strand. So when you are talking about trillions of cells, you can imagine the amount of DNA we have in our system. The point I want to make is that although we have the same 99 per cent, there is enough left to make us unique human beings; to make us different.

As we have heard before, the reason DNA testing is a powerful tool is that one’s DNA is unique unless you have an identical twin. If a blood sample or strands of hair points to a particular individual with respect to the matching DNA, the chances of that being wrong is not one in 10; it is not one in 100; it is not one in 1,000; it is one in a billion. If you remember your arithmetic and you try to correct that to eight decimal places, the chances of that being wrong is zero, hence the reason we must use DNA testing in criminal investigation. It is a laser-like tool.
Let me quickly go into some history here before I get into the heart of the Bill. DNA testing was developed in 1984 by British geneticist, Sir Alec Jeffreys and was first used four years later—and I think that Sen. Al-Rawi talked about this—in the conviction of one Colin Pitchfork for two murders and he received two life sentences.

Starting in the 1990s, many countries then introduced DNA legislation. At the forefront were the UK and Canada in 1995. Hence, we were very much on the ball in Trinidad and Tobago when, for the first time, we introduced legislation in 2000, five years after the UK and Canada, entitled, the Deoxyribonucleic Acid (DNA) Identification Act. This Act was then replaced by the 2007 DNA Bill which, in turn, we are now attempting to replace.

We have had lots of action in the Parliament for over 11 years with very little action on the ground. I am not in the business of apportioning blame to anyone but it seems, in our country, when we make one step forward, we make one step backward or vice versa. That is not going to take us very far. I think it would have made much better sense taking as our starting point the 2007 Bill and modifying that Bill, working closely with the legislation in Canada, the UK and other countries. This would have saved us a lot of time and a lot of energy.

Be that as it may, we have to deal with the Bill before us and I now proceed to deal with it. The first thing I want to talk about is something more general, the question of consultation. Bills like the DNA Bill are very important Bills. They are very controversial Bills and, as such, there must be widespread consultation before you bring a Bill to the Parliament.

The hon. Minister said there was consultation and I have no right to dispute that. The hon. Minister is an honourable man. What I do question, however, is the extent of that consultation. Was it taken to the four corners of the country? Was it taken to central? Was it taken to Tobago? Was it taken to the NGOs and the scientific community? Mr. President, too often we treat consultation in a very superficial manner. We merely interpret consultation as informing the population. Consultation is much more than that and it is my hope that in future we would engage in more meaningful consultation with the public.

I think we need to set up structures and procedures so that, when we want a feedback from the public, we know exactly what to do. This, I think, is sadly lacking in the country and I suggest that in the future we set up those procedures and mechanisms. Had we done that, we would not have gotten into a situation where there is serious opposition to the original Bill.
I want to quote the Newsday. A survey was carried out on December 12 and in that survey over 60 per cent of those surveyed had serious misgivings about the Bill. So, again, I urge those who bring Bills before the Parliament to do a bit of homework; have proper consultation and, in that way, when you bring a Bill to the Parliament, the chances are that you are going to have fewer problems getting that Bill through. We must remember that democracy is more than just voting once a year; it involves consultation with the people at regular intervals. [Desk thumping]

Mr. President, let me now get into the heart of the Bill. Firstly, let me make the following statement: very often people are not happy when we compare what is happening in other jurisdictions. It is true that as a society and as a culture we are different from those elsewhere in Europe and other regions, however, we should be wise enough to try to benefit from their wealth of experience, their wisdom and their maturity.

1.00 p.m.

DNA legislation has been around since 1995, over 15 years, and we do not have to really reinvent the wheel. We need to learn from what others have done; the mistakes that they have made and the ongoing debate. This debate on DNA legislation is an ongoing debate.

Secondly, let me talk about the potential for mischief, as some of my learned colleagues from the legal fraternity would say. There is much more to a bit of blood and strands of hair than meet the eye; there is much more. They carry information, private information, about us. When the DNA is analyzed they give you genetic make-up—the genes you inherited from your parents and the genes you will pass on to your children. It can tell if you most likely will get diabetes, cancer, heart disease or mental illness among others. If this information is made available to a potential employer you can be deprived of a job. [Desk thumping] The Attorney General has made reference to this, and I will come to this, again, later on.

Sen. Ramlogan SC: Mr. President, with your leave, it is an interesting point, and I just want to crave your indulgence to mention something. A history of family illness and health complications and so on—most companies now in Trinidad and Tobago and elsewhere send you for a medical test. They do it in the public service, for example, and the test in itself is to see what kind of employee you are receiving, and whether that employee is of a healthy mind and healthy
body and so on. So, I wonder if you could just factor that in to address that, because you do not need to break into the DNA lab to get a family medical history when, in truth and in fact, before you hire them in the public service or at Atlantic LNG, you will send them for a medical anyway.

**Sen. Prof. H. Ramkissoon:** I agree with you, but there is additional information you will not be able to get that you will get with the DNA samples. So, your point is well taken.

**Sen. Ramlogan SC:** Thank you.

**Sen. Prof. H. Ramkissoon:** So, Mr. President, as I said, it can deprive you of a job if the information becomes available and also it can deprive you of health or life insurance. So, there is potential for a lot of mischief, and that is why some countries—I am sure the Attorney General will be interested in this—like the USA, France, England and Sweden, there are laws to protect people from this kind of thing. They, in fact, have laws banning the use of what is called predictive genetic results by employers and insurance companies.

Now, while we may not be in a position to do this in the country at this point in our development, I think we need to think about the future. Eventually, it is going to come down to our country. We may not be that sophisticated, at this point in time, but there is no doubt that, eventually, we are going to be faced with that problem, and I think we need to factor that into our legislation.

In Britain, there is reportedly an increasing abuse of DNA samples, including genetic research, without consent, hence we need to ensure that DNA samples do not get into the wrong hands, but more importantly are not kept one day longer than is necessary. They should be destroyed as quickly as possible. Having made these points, I now turn to the Bill.

Mr. President, I want to look at two fundamental questions with respect to this Bill. The first question is: who should be tested? A lot have been said about that. How long should a person’s DNA sample or profile be kept? Let me make the point that a profile is, basically, a set of numbers that reflect your genetic DNA make-up. So it is a set of numbers.

Mr. President, I want to go to clause 13(1) at this point and it says:

“13.(1) Subject to subsection (2), a police officer shall take a non-intimate sample from a person without his consent where—

(a) the person is a suspect, detainee or accused;”
Mr. President, this list is too wide, too broad and may include many victims. You just have to be at the wrong place, at the right time, and the next thing you know you are taken down to some centre and blood or strands of hair are extracted from you.

So, the question is: who should be DNA tested? There are those on one extreme who say that only those involved in serious crimes, violent crimes and sex crimes should be on that database. That is on one extreme. On the other extreme, there are those who say that everyone should be on our database, a national DNA database. So you have two extremes. Let me point out, as far as I am aware, no country has a national database for forensic purposes.

One country that has a national database as far as I know is Iceland, but that is purely for genetic research. Iceland is called a natural laboratory for genetic research. It is one of the world’s leading countries when it comes to genetic research. One of the biggest companies based in Iceland is called deCODE. It is an Icelandic company and it does extremely good genetic research, and it has identified a number of genes with certain illnesses and diseases. So, there is one country in the world where you have a national database, but this is purely for research purposes, and that deCODE company has access to the national database.

I want to get to the UK, and the Attorney General mentioned the UK. In Britain, anyone charged with a recordable offence—that could be anything trivial like begging or an illegal demonstration—can be DNA tested without consent. As a consequence, Britain has the largest DNA database per capita in the world. However, that is going to be changed. The new government is going to introduce what is called a Freedom Bill that will wipe out approximately one million names from that database of five million names. [Desk thumping]

I am just curious that that clause also includes detainees. When I looked up the Oxford Dictionary, “detainee” is defined as a person held in custody especially for political reasons. Hon. Minister, I hope you are aware of that.

**Sen. Ramlogan SC:** It is defined in this Bill.

**Sen. Prof. H. Ramkissoon:** Or it is defined in the Bill, my apologies. Mr. President, I would strongly recommend we narrow down the list. This is my suggestion. I would suggest to include those convicted and those charged with criminal offences; those suspected of serious crimes and, if you want, you can, as in C-104, the Canadian Bill, identify what you mean by serious crime, and have a list of serious crimes. [Desk thumping] I think Sen. Al-Rawi also touched on this in his contribution.
My advice is to start with a small databank and manage it properly—make sure samples do not disappear; make sure samples are not contaminated—and then you can expand the database as you go along. [Desk thumping] This is my suggestion to you. [Desk thumping]

Mr. President, I now turn to the question of retention. How long should the sample or profile of an individual be kept? Now, I am more interested in the sample as it lends itself to genetic research. Let me once more say, when you retain the sample of an individual you have in your possession very private information of that individual.

Mr. President, I want to quote from two sources here: one deals with the profile and one deals with the sample. I quote from an article in the Journal of Law “Medicine and Ethics” 2006 by Rolstein and Talbot and I quote:

As long as samples are stored, there is a possibility that they could be used by unauthorized third parties in ways that might lead to disclosure of confidential information or for malicious, retributive or oppressive purposes.

Let me now quote from another source, the House of Lords Constitution Committee and I quote:

We believe that the retention of’—DNA—“profiles on the national DNA database potential impinges on civil liberties. DNA profiles provide the state with large amounts of personal information about its citizens that could, in the future, be used for malign purposes.

What are we proposing in this Bill, Mr. President? To retain samples for a maximum of 10 years, retain the profile indefinitely.

What is the situation in other countries? We looked at England and, as I said, things are changing in England, and the samples are kept by companies that do the actually DNA testing, and they are kept indefinitely. The profiles are kept on their government database, and they are also kept indefinitely, and that is expected to change to five years.

What is happening in Scotland? Samples are retained for three years and permission must be sought for a further two years. The individual has the right to appeal, if acquitted and the state wishes to retain the sample for a further three years. [Desk thumping]

In Canada, samples are normally destroyed one year after the matter is closed. Special permission is required from the judge if it is to be kept longer. So, Mr. President, the trend is not to keep the DNA sample longer than is necessary. It
seems that the norm is a period of five years, and the question is: why does our hon. Minister want to keep the sample for such a long period? I am assured the hon. Minister would have a reason, and I hope in his winding up he would enlighten us as to the reason he wants to keep the sample for a maximum of 10 years.

Mr. President, a simple question is: why not destroy a sample once the profile is obtained and the investigation is completed? As simple as that! [Desk thumping] I hope the hon. Minister will answer that question. Once more, let me repeat the question. Why not destroy the sample once a profile is obtained and an investigation is completed? Concerning the retention of the DNA profile, even though it is less useful, it nonetheless contains information and should not be kept indefinitely.

My recommendation is that DNA samples should be kept for a maximum of five years; a profile for a maximum of 10 years, and if you need an extension then empower judges to so do under reasonable conditions.

Individuals’ rights must not be unnecessarily violated. Again, my recommendation with respect to the Bill is quite clear, narrow the net and reduce the time of retention in keeping with the trends in other countries.

I would also like to suggest that this is a very controversial Bill, and there have been amendments in a number of countries, so I would really like to recommend that if this Bill becomes law that we revisit it five years down the road.

Mr. President, before I end, I would like to quote again. This quotation comes from the European Manipula Molecular Biology Organization 2006, and the article comes under the heading “science & society”. The heading of the article is “The UK National DNA Database: Balancing crime detection, human rights and privacy” and I quote:

“Some important changes could be made to safeguard privacy and individuals’ rights without compromising the use of DNA in tackling crime. First, a public debate could address who should be in the”—database—“and for how long.

Second, individuals’ DNA samples should be destroyed once an investigation is complete and after the DNA profiles used for identification have been obtained.”

That is what I have been saying.
“This would limit the potential for revealing and analysing personal genetic information in the future. Third, the practice of allowing companies to undertake controversial genetic research using the...—database—“should be stopped, as it violates ethical requirements for informed consent to genetic research. Fourth, the government should return to its previous policy of taking DNA at the time of charging an individual, except when a sample is needed to investigate the specific crime for which a person has been arrested. This would reinstate an important safeguard against the discriminatory collection of DNA profiles. Fifth and last, the creation of an independent, transparent and accountable governing body would do much to restore or increase public trust in police use of DNA profiles and samples.”

Mr. President, let me now conclude. There is no doubt that DNA testing, which has been described as the greatest breakthrough in forensic science since fingerprinting, can be a very powerful tool in our battle against crime, particularly given the situation in our country where witnesses are reluctant to appear in courts. There is also no doubt as someone said and I quote:

The good of the innocent collective supersedes the rights of a legitimately suspected individual.

However, we must be careful that in the application of this most powerful and most useful tool, we do not unnecessarily trample on the rights of others and invade their privacy. [Desk thumping]

If, perchance, this Bill becomes law, it is my fervent hope that the zeal which will be deployed in its implementation will be tempered by prudence and civility. In this case, Mr. President, fellow citizens will be comforted.

I thank you very much, Mr. President. [Desk thumping]

1.15 p.m.

Sen. Terance Baynes: Thank you so much, Mr. President, for the opportunity to contribute to this debate. I sat here and I was thinking about the convention in a debate that when an opposing Member speaks you have to respond to some of the things, and sometimes reluctantly. I was listening to Sen. Ali, a youngling as myself, and I had to make one or two observations, if I may, because from the last time she was here, I thought that maybe it was just because she was new, as I was. But I find that today she seems to have stayed true to form, and I want to just make a few comments.

I remember on the last occasion she made some criticisms about the Minister of National Security, about him having no plan and no programme, and I said, “She was not properly apprised for the debate”, because every time the Minister of
National Security comes to this House he always has a wealth of information and a plan on what the Ministry of National Security is doing. I said, “She has been abroad, perhaps”, and I saw Sen. Al-Rawi in a little huddle, and I said he was probably doing some coaching—of which he is a skilful gentleman himself. I even want to lay that on his charge too, that he did not do such a good job on that occasion. [Desk thumping]

Mr. President, even today, I found several of the things that were raised by Sen. Ali were, to my mind, in the amendments, so I thought that while based on the response of her colleagues on that side who may have deemed her contribution to be good, that it could have been better if there was a greater sense of preparedness, in my view—[Interruption]

**Sen. Al-Rawi:** “Yuh forget how you speak de first time.”

**Sen. T. Baynes:** —in terms of coming and sharing and speaking in these debates. With that said, I want to get into pretty much the kernel of my contribution today. The context and circumstances that informed the amendments made to the original Bill, must be taken as an expression of the People’s Partnership Government’s willingness to listen and to work with all the people of Trinidad and Tobago, as it assays to build a new socio-political civilization, culture, culture of peace, good governance and lawfulness. [Desk thumping] We on this side—[Interruption]

**Sen. Al-Rawi:** Better preparation with no reading. “Come on man better preparation.”

**Sen. T. Baynes:** Mr. President, I seek your help with these gentlemen trying to distract me so early in my contribution. We on this side commend the hon. Minister for returning to this honourable Senate with this amended version of the Bill. In fact, the Minister’s tour of duty has been quite successful, for the most part. So praise is in order both for the hon. Minister for piloting this Bill and, of course, the People’s Partnership’s willingness to enact legislation to improve safety and security for all our citizens.

Mr. President, this honourable Senate will recall that the original Bill was heavily criticized by the Opposition and literally dissected by the Independent Bench. I remember sitting on this side when Sen. Drayton was laying it on so thick.

**Sen. Deyalsingh:** Was anything wrong with that?
Sen. T. Baynes: No, I never said that. I did not say that—if you would allow me. [Interruption] I remember listening, and I personally am one who is like: “Is there a place to hide”, as if you would be hiding behind plastics on a day like that, and remembering also Sen. Baptiste-Mc Knight’s contribution, where at one point she alluded to the fact that if anybody tried to get a sample from her without her consent, she would resort to karate, and all of that. I said, “geez, it is just a tough day for us on the Government side.”

But the thing that is critical though, is that I regarded this whole debate as something that was quite healthy; it was like a people-centred legislative debate. What is perhaps more important for this country to note, is that, as mentioned before, the Government, our Government, or the people’s Government, listened, took notes and went back to the drafting board. This is what constitutes and promotes people-centred governance. [Desk thumping]

Mr. President, as it relates to the reintroduction of this DNA Bill, we must look at it as the re-engineering of a scientific evidentiary weaponry platform, that becomes such an important and necessary legislative tool in the war against crime and criminality. It is indeed the creation of a much-needed scientific witness that would stand in a court of law and deliver the evidence that would convict the guilty, and more importantly, exonerate the innocent without fear, favour, malice or ill will. That is justice for all.

Mr. President, this Bill would prove to be a significant development in the administration of justice, and a major deterrent to criminals and would be criminals alike. This is the philosophical path from which I am walking into these debates. And let me hasten to say that I do not proclaim this is the most holy path but rather appears to be the most reasoned one.

Sen. Al-Rawi: Keep your head!

Sen. T. Baynes: Yes, I do not have the oratory polish like Sen. Al-Rawi, so I have to do some reading from time to time. Mr. President, the Bill has been rewritten in large measure and is before us now. As with any law, it is a continuous work in progress and, as such, there would always be room and good reasons, in some cases, for persons to highlight the merits and demerits of some of the proposed provisions in the Bill. I am certain that the amended version of this Bill has significantly reduced such options and opportunities.

Sen. Al-Rawi: He is using the amendments. We are not debating the amendments.
Sen. T. Baynes: Therefore, for me, what has transpired at the last sitting on this Bill and what has happened to bring us to this point, constitute good and purposeful law-making procedures, and even more importantly, the proper discharge of our responsibility and duty to the people of the Republic of Trinidad and Tobago. For me, the making of laws to regulate people’s lives and for good governance of the republic must be treated as a sacred duty and should not be taken lightly.

There were provisions in the original Bill that impacted negatively on the constitutional protection of sections 4 and 5 of the Constitution. The new Bill has softened the impact in some significant areas. For instance, the new clause 19(1) provides for samples to be taken from the victims of sexual offences only with their consent. There is now provision—[Interruption]

Sen. Al-Rawi: On a point of order, Mr. President. Just to get it clear; are we debating an amended Bill that is not before the House, or observations versus going into the content of amendments not before the House?

Mr. President: As I understand it, on the last occasion that this matter was debated the Opposition and Independent Benches raised a number of matters to be addressed, hence we had a long suspension or adjournment between hearings. I think it is open to Members of the Government to say the manner in which they have sought to address the concerns raised by the other side. Therefore Sen. Baynes, without going into specific provisions of the amendments, is free to address the question of amendments that are made, in order to address questions raised by the other side.

Sen. Al-Rawi: Thank you, Mr. President. My objection was to the specific going into clause 19(1) amendments.

Mr. President: I understand that. I did not think he had entered that domain as yet, but he would be aware that he is not allowed to enter into the domain of specific amendments.

Sen. T. Baynes: As I was saying, Mr. President, relatedly, the new clause provides enhanced conditions and circumstances for the taking of intimate samples. This clause also places significant responsibility on the qualified person taking the sample to ensure that certain conditionalities exist.

Clause 21 provides protection for children and incapable persons in the event that a sample is to be taken from them. The new Part V outlines the procedure for taking and packaging, storage, labelling of samples, and so on. It even sets out the procedure to be followed when the samples are delivered to the forensic centre. This is the regulation—[Interruption]
Sen. Deyalsingh: On a point of clarification, please. You had issued a letter about reading. Are we now allowed to read freely in debates? Just on a point of clarification on a letter you had circulated in 2010. Thank you.

Mr. President: I am free to determine whether the speaker is perhaps relying too heavily on his notes, and that would be a judgment on which I would make the call. As it is, I would allow Sen. Baynes to continue.

Sen. Deyalsingh: Thank you, Mr. President.

Sen. T. Baynes: Thank you very much, Mr. President. Tough day today it seems, but I prayed this morning and I think I will make it.

By all standards, this has turned out to be an improved DNA Bill, and as legislators we have a duty and responsibility to the population to ensure that we make the least imperfect law. We are well aware of the insecurity, challenges and attendant anxieties that have visited the population of Trinidad and Tobago in the more recent times, and the struggles with law enforcement, judicial challenges, and so on, and there is perhaps little that we can gain in going back and rehashing these struggles in a debate like this.

Against this backdrop though and other publicly expressed concerns about some of the provisions, it is incumbent on us that we ensure that we define a period of public education and sensitization on the provisions of this new DNA Bill. Sen. Dr. Ramkissoon was alluding to that fact, and I am in total agreement.

Sen. Deyalsingh: Like the anti-gang legislation.

Sen. T. Baynes: You know—[Interruption]

Sen. Deyalsingh: You were educated on the anti-gang legislation.

Sen. T. Baynes: A Jewish sage once said there is a time for everything under the sun, and there is a time to just pay no attention to that which has been said.

Hon. Senator: That is right.

Sen. T. Baynes: Mr. President, being relatively new to this place, and I am thinking going forward that this should be pretty much a constitutional feature, that is the whole question of a timeline for the public education. So, there must be a comprehensive massaging of something like this DNA legislation. This to me must become part of the framework as we go forward in bringing legislation, and so on. A defined period of public education, either before the law comes to the Parliament for debate, or after it is passed, but certainly, before it is implemented. Such an activity would have the effect of bringing the population closer to an understanding of the intent of the law and the problems to be addressed by the law.
As a Tobagonian, and having the experience and understanding of the challenges that the police and other law enforcement entities face on the island, I would state here that the details of some likely issues that would surface in the operationalization of the DNA law, in the Tobago context, are being documented to ensure that they are appropriately dealt with in the regulations to this Bill.

Sen. Deyalsingh: You are not stating, you are reading.

Sen. T. Baynes: Mr. President, I had been advised that there would be a—[Interruption]

Mr. President: It is now 1.30 p.m., I intend to take the lunch break and we will resume at 2.30 p.m. This Senate is now suspended until 2.30 p.m.

1.30 p.m.: Sitting suspended.

2.30 p.m.: Sitting resumed.

Mr. President: When we rose for the lunch break, Sen. Baynes was on his legs, and by my calculations he has another 14 minutes available of original time. Of course, I hope that perhaps during the lunch break you managed to get your notes less copious than they were before. [Laughter]

Sen. T. Baynes: Thank you so much, Mr. President. You know how much pressure I was under. [Laughter]

Sen. George: You took it in good spirit.

Sen. Deyalsingh: And with those words—

Sen. T. Baynes: While preparing for this debate, I sat with what you may call a seasoned and, perhaps reasoned crime researcher from Tobago, and he was sharing some thoughts. I am just throwing this into the mix because I thought it was an interesting perspective. He was suggesting that if we were to approach this DNA legislation, not necessarily from a criminal standpoint per se, but more as a part of the population identification system, that it may have been or it could be a little more user friendly. He also suggested that the present approach could rob us of the opportunity of exploring perhaps a broader use for DNA legislation in just identification of persons dead or alive, in all human circumstances and endeavours including, but not limited to, crime and criminality. I thought that because I had never heard that perspective, it was an interesting thought.

He was talking about using the DNA profiles as an identification tool, as like an ID card or a biodata. I thought that I would just put that into my contribution, because that was a novel approach. I think that our aim really, as we present this Bill, is to get everybody on board, and I thought that this was just a really interesting contribution.
Mr. President, as I close, I want to say that my decision to navigate away from the technical and legalistic issues associated with provisions of the Bill, was a decision I made, being a neophyte, and a lot of these legislative matters I am not too versed in. That contributes to me being a little gun shy, even as I am trying to measure my delivery on every Bill that I speak on in this Senate. I thought it would be a little more instructive for me to look at the philosophical moorings, the associated processes and procedures, and to craft my contribution in a way that I think would add value, meaning and purpose to this exercise.

I would want to salute the Minister of Justice for the work that he has done on this Bill. In fact he has stayed true to form in that he listened to the views as ventilated and made the necessary adjustments, all in an effort to ensure that when we pass legislation in this House, we pass good legislation. With these few words, I want to say, thank you for the opportunity.

Sen. Dr. Lester Henry: Thank you very much, my colleagues. [Interruption] [Inaudible] Okay. I will remember that one. [Interruption] Yes. I rise to make a relatively—[Interruption]

Hon. Senator: Sterling contribution.

Sen. Dr. L. Henry: “Sterling”—good word man—[Laughter] contribution to this debate today, because I think there are a couple of points that I would like to emphasize and probably just add one or two things differently, based on what has gone before. I guess I feel particularly honoured today, going after my friend the Rev. Sen. Terance Baynes—

Hon. Senator: Pastor.

Sen. Dr. L. Henry: Pastor, reverend “same ting man”. It must be a sign from above that I was scheduled to speak after the Sen. Terance Baynes.

Mr. President, but seriously, I want to make two points today in this contribution. One is that we must be realistic about the prospects of DNA, and we should not get too carried away in thinking that it might be a panacea for solving our crime problem, and putting people behind bars who deserve to be there. We could never have any problem with the implementation of anything that would accomplish that with some greater degree of efficiency.

As a whole, the idea of DNA is not necessarily something we could object to, using the techniques, but we must be realistic, as I said, in terms of the limitation of the technology and the potential for abuse. Some of it was noted by the hon. Attorney General, some was noted by my colleague, Sen. Ali, to my left, but it is such a
serious matter that we should not take it lightly. Even in the first debate, some of the Independent Senators really brought home some of the problems with DNA in general, and then some of the issues that were specific to the Bill. That is why we are here today with all the revised amendments to the Bill. So that is one, that we should not estimate the potential problems.

As someone who lived in the US for a long time and saw the kind of abuse that you have in the justice system, I am always a bit wary about things having to do with making it easier to lock up people. It touches a nerve with me, because I have seen have seen abuse of the system first hand in the US and it is all well documented throughout the pages of history in that country. We have seen a tendency, even in our own country at times, for people to get overzealous and feel that they have the smoking gun, and they start putting people away too quickly, then after set them free.

What I am saying is that there are two problems; one, that we do not have a panacea with this DNA technology for all our crime problems; two, I would like to put on the record that I am a bit worried about increasing the intrusive power of this Government, because we have seen some recent examples where that could cause us some concern, in terms of how they have tried implementing policy and laws that we have passed here, putting people away, or at least trying to put people away. [Desk thumping]

In fact, let me deal with the first one. Let me make my case, because some of it, like I said, we already know, but I would like to use some examples to even deepen the point. After the debate for the first time on this issue, we had the Attorney General earlier today, standing right opposite me making his presentation, actually making the statement that he referred to DNA as a unique identifier, and as being completely objective. We know that that is not necessarily true, based on a lot of cases that have happened all over Europe, America, everywhere they have employed this technology.

Just to give an example, Prof. Ramkissoon talked about the identical DNA. There was a case in Germany, for example, where identical twins robbed a bank. They collected DNA from the crime scene, and they actually had to let both of them go because neither one could be exclusively linked to the scene of the crime, and the law provided that you had to be exclusively linked to the crime as an individual. They had to let both of them go. As Prof. Ramkissoon said, sometimes in the case of identical twins, which might happen, we could run into problems.
The issue of DNA testing has gotten a lot of ink in the Los Angeles area in recent times since they introduced it. Apparently it is one of the areas where there was quite some concern about the ability to implement it properly and concern about the abuse. Let me just give an example from the LA Times, in an article entitled, “Are the F.B.I.’s Probabilities About DNA Matches Crazy”. That is the name of the article.

What happens in terms of the probabilities is that very often these things are overstated. I heard my colleague on the Independent side say that the probability of an equal match was 1 billion or in that order of magnitude. Very often, depending on the system you use to calculate and the methodology, it could be a lot less than that, especially if you have people who do not know what they are doing. The prosecutors in most of the cases in the U.S. tend to rely on FBI statistics that estimate the rarity of a particular DNA match, and a particular DNA profile. This is known as the random match probability. Generally, the article was saying that a lot of these claims about the low or zero probability tended to be overstated, that we had not had the kind of true scientific techniques that could really bring us to zero error in terms of claiming that you have found an identical match.

Some of my colleagues before spoke about cross-contamination and where people are caught, the sample is taken and it gets infested or mixed up in labs. Then we had an additional problem which I think I have not really digested properly yet, in terms of our discussions so far, the search for people who are suspected of a crime give their DNA, and then they get the whole family involved. So if you happen to be related to someone who is a felon they tend to expand the database and want to collect DNA on everybody.

2.45 p.m.

That was the issue I think some of the speakers before touched on in terms of invasion of privacy, of discriminatory factors and profiling. And, of course, when you look at the databases in these countries you find a disproportionate number of African-Americans and Latinos being targeted in the database, and therefore, more likely when they put in some DNA the match would come up with somebody of that ethnic origin. So, these are some of the things that are quite potentially disturbing.

In fact, in another Article from The Times, where they talked about the peril of DNA—and it is not perfect—the prosecutors, made some errors, in terms of picking up someone who really was not guilty based on DNA. They made the point that prosecutors and crime labs across the country routinely used these exaggerated numbers of the significance of DNA matches in so-called cold hit cases.
Cold hit cases are cases that were around for a long time with no solution, in which a suspect is identified through a database search. And, as they were pointing out, jurors are often told that the odds of a coincidental match are hundreds of thousands times more remote than they actually are, according to dozens of interviews with leading scientists and legal authorities a comprehensive review of scientific and academic papers in the field and court documents in cold hit cases.

In other words, the best science can do is estimate the likelihood that a match has occurred by sheer chance and they point out that these statistics are frequently misunderstood by lawyers, judges and juries, and sometimes even the expert witnesses. So these people who are charged with carrying out justice in a particular case can sometimes be easily duped into thinking that they have a sure thing when it is really not.

Then we also have the concern, some of it raised by my colleague, Sen. Deyalsingh before, when the debate first started in terms of the cost, maintenance and implementation of the DNA kits and so on. So, we already know that we have a relatively stretched budget and we also saw in the last budget the Minister coming back and asking for more money and it would be nice if we could get the kind of cost information. And, as my training must permit me to ask, how are we going in terms of the cost of implementing these things when larger countries than us are having problems with the prices of the kits, and even the supply and maintenance? [Interruption]

Even in the US, as some of my colleagues may have alluded to, where they are supposed to have all this technology and implementation of the legal system at a very high level with proper financing and so on, they are having particular problems in dealing with this. So, the cost, the backlog of kits, poor maintenance and the pricing of these things could create a significant problem for our implementation.

In other words, for you to have this thing implemented properly you have to have a certain infrastructure in place. Then you have the potential—one last point about the potential for people to abuse the system, Mr. President, and I raise the case of the Duke University Lacrosse Team, the rape case that was publicized a couple years back. Just to alert the country and the public that you could have even political interference in DNA issues, because this came out when the lacrosse team held a big party in one of its dorm houses and a particular stripper was invited. The stripper was of African-American origin, most of the lacrosse team were white males.
After the night was done she claimed that she was gang raped by the lacrosse team, and the prosecutor took up the case and decided we are going to go with this. He made sure the woman in question identified who were the assailants. She narrowed it down to three and they arrested those three students of Duke University of the lacrosse team. The case went to court, the prosecutor claimed he had airtight evidence this woman was raped and they were going to put these “fellas” away for a long time.

Apparently he had sent out for DNA samples of all 46 members of the team—he farmed it out to a private firm—the DNA samples came in; all negative, no match. No match with the victim. He conspired with the director or the owner of the company to bury the evidence, and the young men in question were almost about to be found guilty.

It turns out that—what was the real issue? This particular prosecutor was running for re-election in a predominantly African-American part of the city and he saw the racial tension in the case as good for his campaign and he pinned his re-election bid on carrying out this wrongful prosecution of these college students.

So, the crux of the matter is that, eventually, the owner of the DNA company came forward and admitted that he had conspired with the prosecutor to hide the DNA evidence. So, what I am saying is that you could use it for good and you could use it for bad, but this is something that we must keep in mind.

What we have today is that, like I said, I am making two points, one: the problem of the abuse and misuse of DNA and also giving the Government additional power to invade people’s privacy and wrongfully arrest or persecute innocent people.

Given what we have seen, like I said, we cannot have 21st Century, or late 20th/21st Century law with 19th Century infrastructure and try to match the two. [Desk thumping] If you do not have the right people, the right expertise, the right training and all of that, which cost a lot of money and preparation, you would end up with abuse of the system. As some of us who like the game of cricket will say, you cannot set a field for bad bowling. [Desk thumping] You cannot set any good field for bad bowling. So if you do not have the proper infrastructure and the people in place, passing this law will not get you very far, even if we all support the Bill and it becomes law tonight.

In the current state, I do not think the Bill is quite ready in any event, but even if it was, we would still be left with significant implementation issues, and given the abuse that we have seen from the Government in terms of the mass arrest of people under the anti-gang and the state of emergency, we expect the bad bowling to continue.
Hon. Senator: Well said! [Desk thumping]

Sen. Al-Rawi: The only problem you cannot hit the ball. [Laughter]

Sen. Dr. L. Henry: We expect the bad bowling to continue, strictly full toss and long hop from this Government. You cannot bowl Sunil Narine from both ends. [Desk thumping] But seriously, we do not expect any major significance coming out of this Bill in the sense of the implementation of it, and the Government has shown its lack of ability, lack of clarity in terms of how they tried to implement the anti-gang and so on. Even if the Bill is passed, will this end up like the anti-gang legislation which we saw turned out to be flawed and all the people had to go free, and we have seen no attempt to bring it back and amend it thus far? [Desk thumping]

So, my point in concluding, Mr. President, is that we are looking, possibly and almost certainly, at another fiasco in the making.

I thank you.

Sen. Dr. Victor Wheeler: Thank you, Mr. President, for allowing me to make a brief contribution on this Act to repeal and replace the DNA Act, Chap. 5:34.

First of all, Sen. Ramkissoon has already addressed some of the issues related to what DNA is and the fact that DNA is found in most cells of the body. DNA testing is here to stay; however, there must be efforts to reduce the errors associated with this crime-fighting tool. Errors are mainly associated with contamination of the sample or contamination while the test is being performed, the storage of the sample and also the interpretation of the results.

DNA testing is superior to fingerprint testing but, I believe, it is easier to plant DNA evidence as opposed to planting fingerprint, so we do need to be careful about how this is used. During the testing itself contamination can be reduced by the analyst using a proper technique. Contamination can also be reduced by the analyst using proper controls, both of which require the person to be properly trained.

There must also be a proper chain of command of the sample from the time it is collected to the time it reaches the laboratory. In Tobago this will become an issue, as raised by Sen. Shamfa Cudjoe, that we have transportation issues in Tobago, which, I think, are going to be eased fairly soon with the opening of the airports.

There is also the issue of temporary storage of the samples in Tobago. From my experience at the hospital in the past when forensic specimens were obtained after a postmortem, it was not unusual for samples to remain at the hospital for several
months before they were actually transported to Tobago. However, with the recent increasing use of helicopters, maybe, this can be one of the additional uses that the transportation can be used for. [Desk thumping]

Mr. President, the other area I would like to comment on is the use of the partial profile. The partial profile is used when there is not sufficient DNA material collected to have a full profile. The difficulty with the use of the partial profile is that it can be misleading in that it is difficult to have a control specimen for a partial profile.

To quote Mr. Donald Riley of the University of Washington, who wrote a paper on DNA testing, he indicated that the use of partial profiles may also mean a reduction in standards for DNA testing, but in some cases when there is nothing else present, partial profile may be the only thing that can be obtained that can point in detecting a crime.

3.00 p.m.

Mr. President, I would just quickly go on to comment on some of the clauses in the Bill. The first one I would like to comment on is clause 7, where there was a concern relating to how long the profile should be stored and the disposal and I am happy to see that the Government has paid heed to the comments made by previous speakers on their concerns and there is the intention to address this.

The other area is in clause 8, where there was a concern that the custodian would be appointed by the Minister and it is proposed that that person will now be a public officer. This, I believe, will try to allay some fears, in terms of the direct control that the Minister would have on the staffing of this forensic databank.

However, we have seen in the past where, even though the Public Service Commission has been given the authority to appoint the custodian, for example, in the FIU where the Public Service Commission actually made the recommendation for an appointment, still the Government was able to have its way in having the person it chose, appointed. So, even in the change to have this person be a public officer, it is still possible for the Government, and by extension the Minister, to have his way, in terms of who is to be appointed.

Clause 11, addresses the fact that:

“The Custodian shall, within three months after the end of each calendar year, submit an annual report of his operations to the Minister.”

I believe that there should be some clarification as to what this report contains, and bearing in mind issues of confidentiality. I would certainly like to hear the Minister just give a little brief of what is to be placed in the report.
Clause 13—and here I would have to agree with Sen. Prof. Ramkissoon, where the issue is if the person is a suspect, a sample can be obtained. We really need to have clarification of this, because one can be accused of all sorts of crimes and unless we put a restriction to this, it can result in any one of us or even someone totally innocent being wrongly accused, being arrested, because they have to have a sample taken, and hauled into a police station. I would at least like the Government to consider restricting what type of crime would be subjected to the collection of a sample. [Interjection]

*Hon. Volney:* What clause?

*Sen. Dr. V. Wheeler:* That was clause 13(1). With respect to clause 16(1), it says:

> “Where the Minister with responsibility for national security is of the opinion that a sample is required from a person in the interests of national security, he may, in writing, request the Commissioner of Police to make arrangements for a non-intimate sample to be taken from the person by a police officer.”

I would like the Government to clarify, what really is “interests of national security”, because we have seen in the past—recently, at the conclusion of the state of emergency, there was an issue of national security that resulted in several persons being arrested and they all had to be released because of lack of evidence. If this Bill was passed then, you could have those persons have their samples taken. [Desk thumping] I would like some clarification again on what really is “interests of national security” that would require the Government to have the need to take a sample.

There is just one other area that I would like to comment on, which is on clause 23. There seems to be the intention to make amendments on this after the contributions by both Sen. Drayton and Sen. Baptiste-Mc Knight, with respect to the collection of a sample from someone who is raped. I am happy to see that there is going to be consideration for not using force. If, for example, someone who claims that they are raped and a sample has to be collected, that force would not be used because Sen. Baptiste-Mc Knight has indicated that policeman may come to harm and we would not like our police force to be unduly subjected. Because, if the Senator said that is what is going to happen, you might find other people in the community taking it upon themselves to defend themselves vigorously.

Mr. President, many comments have already been made on several areas on the Bill that I had intended to comment on, so, in the interest of time and to avoid repetition I look forward to the committee stage of this Bill where these issues will be expanded further. I thank you.
The Minister of Transport (Sen. The Hon. Devant Maharaj): Thank you very much, Mr. President, for allowing me the privilege of joining this very important debate. I too intend to be brief, as I know that much of the work will be done at the committee stage.

First of all, before I get into the nut of the matter, I ask this honourable Senate: how many Senators here have actually had the experience of having any analysis of their DNA; of having a sample taken and seeing a report and what this DNA that we are debating is and looking to enact as legislation and provide it as a tool for analysis? Albeit that the analysis that we are speaking about here is one of a criminal and investigative sort. I would guess that not many, if any at all, have taken the time and effort to have their inner cheek swabed, hair sample hair follicle analyzed or a blood droplet carried to any lab, and so on.

I did that in 2007 or so, as Chairman of the Indian Caribbean Museum located in Waterloo, Carapichaima, as part of our genealogical work at the museum. We were looking at this new development in the development of genealogy, where persons were using DNA to assist them in their research. We struck up a strategic alliance with a company in Houston Texas called Family Tree DNA, whereby persons, for a modest fee, were able to get this kit mailed to them and they took a swab from their inner cheek and posted it back and within a short space of time they would have gotten the results of their DNA work mailed to them. But, prior to that, you would get an email and they would link you with anybody else who has shared commonalities and your chromosome. They tested at different degrees. You could test up to 23 chromosomes, “30-something” and then 64 or so, for different prices; so they tier it. It is very interesting, the analysis that provides. The Trinidad Guardian on the day did a little report on it showing the attributes of DNA testing and how it could assist persons interested in any research in their family history. Other sites and other persons and organizations with genealogy have adopted and embraced this as a tool to augment their own research. I say this in this debate, in this context, because the issue of privacy and security has arisen time and time again.

Since 2007 to now, I have visited the US a number of times and at no point in time—this company, Family Tree DNA is a private company, it is not a state company, so I would assume that the level of security, and so on, is lower than a state facility, and they boast of having the largest database in the US, outside the Mormons in Utah, for that information. At no point in time during my sojourn to the US, have I ever been accosted at any immigration point, or been stopped or been informed that there was this great robbery at this DNA bank and masked men were running out of a DNA bank with this documentation and my identity was stolen and my DNA sample was placed throughout some crime scene.
So DNA use as a tool for crime fighting or as a tool generally, is something which is fairly common in the world. Its abuse—while some exceptions could be cited easily, and it is easy to find the exception, the rule is, it is more helpful than hurtful. And this is what we have to be guided by. The exception of the twin and of the politician wanting to suppress information for a particular electoral event are just that. Those are exceptions to a rule. We see this come alive almost on a weekly basis.

I do not know how many of you have the time, when you look at the various television crime shows police shows, you see—I think it is *Law and Order, CSI, Criminal Minds*—the use by the police; an investigative teams utilizing DNA evidence. And in fact, so much so I remember, there was one report that these shows go so much in details that there was an argument that they revealed to the would-be criminals how to hide the evidence. But, many of us however, it seems, the last criminal show they may have seen was, Starsky and Hutch, Mannix or Cannon, or some “long time” show where the police work was just really limited to “chasing down” criminals in a car with some sort of firearm. But, we have come a long way. Crime fighting has come a long way and we should be very careful if we try to rob ourselves and commit a crime on the national community if we do not advance with this legislation.

Sen. Prof. Ramkissoon went to great lengths as to what is DNA and so on, so there is no need to revisit that. But, the Minister of Justice, hon. Volney, must be commended for taking on this very serious—[Desk thumping]—and I do not say that because he is a Member of our Government or our colleague who is sitting on this side, but one has to be commended for that because this DNA Bill was passed in 2000, having been revised in 2007, by the then PNM administration. We must remind ourselves that it was redone in 2007, and within the same year, Justice Yorke-Soo Hon, I believe, pointed out the fundamental flaws of that Act of 2007.

So, within one year, less than a year, the Act was exposed for having some serious deficiencies and the administration of the day, instead of taking it head-on and addressing the deficiencies as the hon. Justice identified, I think in particular she looked at the issue of definition of “suspect”, if my mind on the judgment is correct. But that very important definition of “suspect” and what constitutes a suspect, needed to be redressed and needed to be redressed with some degree of urgency, but, instead what did we allow ourselves to do?—rob ourselves from having access to this very important piece of legislation, since 2007.

Since 2007, the police were robbed of this very important tool. Now, the hon. Attorney General made it quite clear as he contextualized the Bill within the framework of the various pieces of legislation which this Government passed and
clearly indicated that no one can think that this DNA Bill amendment is a silver bullet to solving the crime problem. It is, however, as he correctly pointed out, a ballistic missile in the arsenal of the police force of Trinidad and Tobago.

3.15p.m.

Since 2007, the people of Trinidad and Tobago were robbed of this very strategic intervention, because the administration of the day lacked the political will to come forward and address the issue. So in that regard Minister Volney must be commended.

What happened as we did not have this tool? It is interesting to cite some of the statistics. From 2007, there were 391 murders, a detection of 74 or only 19 per cent. In 2008 it skyrocketed to 547 murders, a detection of 56 or 10 per cent. In 2009, the murder rate was 511, 80 of which were detected, or 16 per cent.

So the DNA Bill which was passed by the PNM in 2007 had neither the effect of preventing serious crimes nor detecting serious crimes, much less for convictions, because the Act was severely deficient. And it is no wonder that there are some who are saying we should probably withdraw this Bill and come back again. When one considers that it was this same administration that is now in the Opposition, inviting criminals—community leaders as they called them—to Crowne Plaza to fete and wine them and dine them, one wonders if there was not an interest, an alignment, in order to create the enabling environment for this to continue.

It is without any defence that many cases fall apart in the courts because of the lack of proper evidence, and this evidence now, as was stated before on this side, is being removed from the hearsay, “I see” realm, to that of hard, scientific, undisputable fact, and to cite exceptions to the rule to negate the importance of DNA would rob the officers of the court, the victims, of that right to justice which they demand and which we intend to provide them.

When we were here last in November, a number of concerns were raised by the Independent Bench, as well as others, on several issues, and we gave a commitment to revisit the comments made, and we would be treating with those at the committee stage, and I would not be going into them much. But it shows that Minister Volney and, indeed, by extension, the Government, is one that is prepared to listen to the complaints; factor them in, in our decision-making process and make the necessary adjustment to prepare and present better legislation. [Desk thumping]
How does that compare to 2007 when Justice Yorke-Soo Hon commented on the deficiencies of the then legislation? Were her comments taken with any degree of seriousness? Were they factored in by the Attorney General who gave himself silk? Did he factor into his legislative agenda that he needed to remedy and fix that 2007 legislation and come back to the House and fix it, listening to an independent judge sitting on the bench? No. Instead, it was allowed to languish on some law book, getting dust.

The issue of privacy was raised, and I want to touch on that briefly, but at no point in time do I believe it was the intent to invade the privacy of any citizen of Trinidad and Tobago, and to suggest that, I think, evokes memories of wiretapping of the previous administration, and that sort of fear and motivation of invasion of one’s rights is not one which this Government, by any means, intends to pursue.

In Trinidad and Tobago we are still plagued with the memories of so many victims. One that comes to mind is Radha Pixie Lakhan, a person who was raped and eventually brutally murdered in the Siparia forest. Up to this day the perpetrators of that heinous crime remain at large. Whatever DNA evidence they left on the spot we could not use because we did not have the enabling legislative tools at our disposal.

What about young Tecia Henry from Laventille? We need to remember these victims. Remember her killer still walks free. And what did the then leader of the day say at a PNM convention in Chaguaramas? He said there is more to the story than meets the eye. Was he in possession of information that he could not translate as evidence because there was no DNA evidence?

We need to ask ourselves what is our purpose in being here. Are we here to protect the perpetrators of crime or are we here to advance the issues of justice who are the victims of crime? [Desk thumping] This Government is about instituting rules, policies and laws to reduce crime. Criminals have been put on notice by our Minister of National Security, by our Minister of Justice, by our Attorney General, that under this administration they would not find a warm embrace.

Some issues have also been raised about the judgment from the European Union. It was the case of S and Marper v the United Kingdom. If I am not mistaken, the European Union is not a jurisdiction that Trinidad and Tobago is part of. We subscribe to the Privy Council. But interestingly enough, parts of those judgments address some of the very concerns that have been raised here, and if you permit me to quote briefly from it, where it speaks about the retentions of the samples. I quote directly from the judgment:
“…the retention of the sample permits (a) the checking of the integrity and the future utility of the DNA database system; (b) a reanalysis for the upgrading of the DNA profiles where new technology can improve the discriminating power of the DNA matching process; (c) reanalysis and thus an ability to extract other DNA markers and thus offer benefits in terms of speed, sensitivity and cost of searches of the database; (d) further analysis in investigations of alleged miscarriages of justice; (e) further analysis so as to be able to identify any analytical or process errors. It is these benefits which must be balanced against the risks identified by Liberty."

**Sen. Al-Rawi:** What page? What judge?

**Sen. The Hon. D. Maharaj:** This is page 4.

**Sen. Al-Rawi:** So that is the English case put forward to the court.

**Sen. The Hon. D. Maharaj:** Yes. So within this very judgment you have some of the questions that you have raised being answered.

As I conclude, I would like once again, to appeal to all those in this Senate. Let us support those who seek justice and not support those who perpetrate injustice. [Desk thumping]

**Sen. Camille Robinson-Regis:** [Desk thumping] Thank you very kindly, Mr. President. Mr. President, I am very honoured to have been asked to sit temporarily in the Senate to represent the People’s National Movement. At the outset, let me indicate that on this side we are not against DNA legislation. In fact, in 2000 when we were asked to sit on a joint select committee to determine the legislation, we participated vigorously, so that the legislation that was passed was passed with our support. Indeed, we also passed legislation in 2007 to ensure that DNA legislation would be a reality.

The Minister of Justice tells us that he has brought this Bill to fix some problems that have occurred with the existing legislation, and the evidence shows that the existing legislation can work. [Desk thumping] In fact, in his contribution, the hon. Attorney General indicated that there has been one case that he cited, in the case of Quincy Jeremy, where it was DNA evidence that freed him from being accused or convicted of the rape of two women in Trinidad and Tobago.

The DNA legislation, perhaps, needed some tweaking, but the DNA legislation that is on the books can work. [Desk thumping] In addition to that, we are faced with a situation where the Minister brought a Bill to this Parliament that
eventually needed so many amendments that, in fact, the amendments are almost the size of the Bill the Minister brought to the Parliament. In those circumstances, it may have proved better if the Minister had brought a redrafted Bill so that the amendments could be properly articulated and adjudicated upon by this honourable Senate. [Desk thumping]

At times when I hear hon. Senators speaking in this Senate—as a matter of fact, in relation to the issue of the redraft, Sen. Terance Baynes, in fact, admitted that there has been a complete revamping of the original Bill that was brought to the Senate by the amendments. [Desk thumping] But I go on to say that Sen. Maharaj who just spoke, indicated that he had his DNA taken, and he developed a relationship with a company in Texas and, you know, it is so strange with this current administration, that immediately upon my hearing him say that, I wondered if the company in Texas would be used to provide the kits that will be brought in to test the DNA, because of the kind of shenanigans that have been taking place with this Government. Immediately, that came to mind.

**Sen. Ramlogan SC:** At least he would not use his credit card to pay for it. [Desk thumping]

**Sen. C. Robinson-Regis:** Perhaps he would not use his credit card to pay for it, and we hope he does not, and we also hope that he would not burn down his own office, and perhaps we need to take DNA samples in that fire case.

**Hon. Senator:** Whoo! [Desk thumping]

**Sen. C. Robinson-Regis:** Mr. President, as I continue, if we had proper use of the legislation that currently exists, and Minister Devant Maharaj, Minister of Transport—I did read that you insist that we call the Minister by their full title. Is it Hon. Devant Maharaj, Minister of Transport?

**Mr. President:** Yes.

**Sen. Ramlogan SC:** What were you called?

**Sen. C. Robinson-Regis:** As a matter of fact, we have been calling you several names, but we cannot say it in the Senate.

**Hon. Senators:** Whoo! [Desk thumping]

**Sen. Ramlogan SC:** What were you called?

**Sen. C. Robinson-Regis:** And not me alone; people in the society have been calling you several names.
Sen. Ramlogan SC: As they are you, Ma’am.

Sen. C. Robinson-Regis: Yes, Mr. President. The Minister of Transport indicated that with the 2007 Act when Justice Yorke-Soo Hon indicated that there were some problems—with the Act—that the PNM administration did not do anything at the time to fix what problems she saw arising.

3.30 p.m.

But, interestingly enough, in 2011, we had the anti-gang legislation passed. Immediately, even without it having to go to the court, we had seen problems that existed with that anti-gang legislation. To date we have not seen that legislation come back to the Parliament to be fixed. [Desk thumping] And that piece of legislation is important in the arsenal against crime. I think that, this is perhaps one of the—what did the Attorney General call it? A ballistic, or bullet or some—I think he gave a name to this legislation, that it was so important in the crime arsenal.

As a matter of fact, if that legislation were working, we would be able to pick up people, detain them,—[ Interruption]

Sen. Ramlogan SC: “You forget it was passed unanimously.”

Sen. C. Robinson-Regis:—bring action against them that would probably work, and we would also be able to take their DNA based on the existing legislation of Trinidad and Tobago. [Desk thumping]

Mr. President, I heard the hon. Minister of Transport talk about the People’s National Movement hugging up so-called, “community leaders.” Permit me to remind him that it was the previous Prime Minister under the UNC, who called criminals community leaders. That name did not start with the People’s National Movement. In addition, it was the previous leader under the UNC, who put up known criminals as candidates in the Local Government Elections and in the election in Tobago. It is amazing to me how quickly, when they find themselves on the other side, they forget what they did when they were either in Government or in Opposition. [Desk thumping]

I also want to take this opportunity to remind them, as I am on that track, that it was when they were in Opposition and we asked them to participate in the joint select committee on this very legislation that was passed in 2007, they insisted on consent. They insisted that police officers could not be trusted. As a matter of fact, it was their current Prime Minister who said that police officers should not be used to take DNA evidence, because police officers in Trinidad and Tobago could not be trusted. [Interruption][Inaudible] Excuse me, would you like me to quote? I can quote.
It was when they were part of the joint select committee. They insisted on certain things being part of the legislation; they insisted on the DNA board, and now, today, they have made a complete about-turn. No more consent is needed. This is an administration that cannot, really, be trusted.

And, as I speak about the issue of trust, I ask the Minister, through you, Mr. President, why is it that whereas the current legislation insists on the custodian, the deputy custodian, and those offices being appointed by the President, we are now seeking to put it in the hands of a Minister and politicizing the entire— [Interruption]

**Sen. Al-Rawi:** The amendments are not before this Senate. We cannot debate them. [Interruption]

**Sen. C. Robinson-Regis:** I am not permitted to debate the amendments because they are not before the Senate. [Interruption]

**Sen. Al-Rawi:** We have been denied that right. It was not laid. Where is the policy debate on that? [Interruption]

**Sen. C. Robinson-Regis:** We have a serious concern with the Minister being allowed to have that kind of power. In several situations there needs to be insulation from political interference. [Desk thumping] We have seen that this current administration is not afraid to interfere politically in all sorts of issues. And, if that is so, we have a definite concern about that particular issue. It must be that the Minister should not be allowed, to ask for samples or ask for someone’s DNA sample to be taken. The Minister of National Security can do that. Why would that be necessary?

We also see a situation where, in addition, to the Minister being able to ask for DNA samples to be taken, we have no insulation in terms of samples being taken without consent. Why would this administration want to be able to take people’s samples without consent? It is clearly a violation of the rights of the citizens of Trinidad and Tobago. [Desk thumping] [Interruption]

**Sen. George:** Mr. President, I rise on a point of order 43(1), which speaks of tedious repetition of arguments that went before; the issue of the rights and taking DNA samples without the consent and so on. The goodly, Sen. Sherrie Ali, beat that to a frazzle earlier on. I mean, come on. [Desk thumping] [Interruption]

**Mr. President:** Sen. Robinson-Regis, you may continue. [Desk thumping]
Sen. C. Robinson-Regis: Thank you very much, Mr. President. There is always that underlying concern, when we have any kind of legislation that seeks to interfere with the rights of the citizens of Trinidad and Tobago. I know this legislation must be passed by a special majority. It is incumbent on us, particularly those of us in the Opposition, to point out the concerns that may not necessarily be raised by citizens individually. But, we have a responsibility to insist that the concerns of the people of Trinidad and Tobago are brought to this Parliament of Trinidad and Tobago. [Desk thumping] [ Interruption]

I noted that the hon. Minister of Transport stopped at the year 2009, in terms of his numbers, and in terms of his detection rate. Has he got statistics on the detection rate for 2010/2011? Have you got, Minister?

Sen. Maharaj: I stopped in your last year of office. [ Interruption]

Sen. C. Robinson-Regis: Okay, we also need to understand what the detection rate is for 2010/2011. Especially in circumstances where the persons who were well trained in getting DNA evidence, in taking evidence from crime scenes, have been sent back to England. We want to ensure that the current group of persons in the police service are properly trained to take the DNA evidence, to take the samples, so that when they have to be stored they have been properly taken, and stored, in as secure a circumstance as possible. [ Interruption]

Sen. Al-Rawi: Under a certified lab. [ Interruption]

Sen. Maharaj: Why did you not do it when you were there? [ Interruption]

Sen. Al-Rawi: You had two years to do it too, you know. [ Interruption]

Sen. C. Robinson-Regis: That is why Quincy Jeremy was freed because the samples were properly taken, properly stored, and he was able to use that sample. [Desk thumping] Those were taken when the People’s National Movement was in office.

Mr. President, I would like to also refer to the issue of the retention of the samples. I heard the hon. Attorney General talk about us making good law that is in keeping with the developments that are taking place worldwide, in specific reference to the DNA legislation. But, it is interesting, that this law stops, insofar as the retention of the samples is concerned, because the current situation in Scotland and developing in the United Kingdom is that the samples are kept only for a specific period. Yes, previously they were kept indefinitely, but now they have seen the error of their ways and consequently—as my colleague was saying—mandated by the court, they are now moving to the next step; as Mr. Basdeo Panday would say, “to the next generation.” [ Interruption]
Sen. Maharaj: “Look where you reach, quoting Panday.” [Interruption]

Sen. C. Robinson-Regis: Yeah, well, I cannot quote anybody else on your side, so, I now have to quote Panday. [Interruption]

Sen. Deyalsingh: They are not worth quoting. [Interruption]

Sen. C. Robinson-Regis: They are not worth quoting. If I may refer to my notes, I would just like to quote, and it says in the GeneWatch UK of January 2011:

Computerized DNA profiles and personal data when stored indefinitely on a database, could be used in ways that threaten people’s individual privacy and rights and that of their families.

And following on that kind of thinking, in Scotland, it was the Information Commissioner who said, and I quote:

The indefinite retention of DNA profiles of individuals arrested but not convicted of any offence, and where there are no longer any policing concerns about them is an ongoing intrusion into the private lives of these individuals.

So as a consequence of that, the law in Scotland is being changed to remove from the database persons’ DNA following acquittal.

In England, where they keep a national database allowing for the permanent retention of samples and records from anyone arrested for any offence, in February 2011, the United Kingdom Government announced that hundreds of thousands of profiles on the database would be deleted. The legislation states, and I quote:

Any adult convicted of a crime will have their DNA stored indefinitely in the national database. An adult arrested for a serious offence, but not convicted, the DNA would be kept for three years with the possibility of extension for two years with a court order. Persons arrested for less serious offences, the profiles would be deleted, if not subsequently charged.

And that is, Mr. President, if we are doing new legislation, is where we should be, not keeping it indefinitely, especially since this kind of DNA sample could be taken if someone is arrested for any offence where they could be charged for over six months; any offence.
3.45 p.m.

So, persons who were suspected and put in jail for the alleged assassination plot, their DNA could have been taken. Persons who were arrested under the anti-gang legislation, their DNA could have been taken, and then they would have had to—what would be the situation today, if this legislation were in place because those persons were released? It puts us in a situation where these kinds of things can take place and persons in Trinidad and Tobago, citizens of Trinidad and Tobago, their rights are being infringed. [Desk thumping]

Mr. President, I would also like to ask the question with regard to the registry. In the legislation, it seems as though each police station would have its own registry, and there was no central registry existing that would collate the information to ensure that there is some central collating of the information. [Interruption]


Sen. C. Robinson-Regis: What I understand has happened now, given some concerns that were raised previously in the debate, the registry has been excluded completely. But, Mr. President, there must be some form of ensuring that there is a proper registry for each police station to be able to centralize the information that has come to it. I would like to suggest to the Minister that there be a reconsideration of how the registry should work, because it is important, in terms of the tracking of information, as it relates to this legislation and how it would operate. [Desk thumping]

Mr. President, we are also concerned about the expansion of the targets who may have their DNA taken. Persons who are going for a firearm licence, we have some concern about that; persons who came into this country as detainees but have not committed any crime since they came to Trinidad and Tobago— [Interruption]

Hon. Senator: The deportees.

Sen. C. Robinson-Regis: —deportees, sorry, yes, thank you very kindly; we have some concerns about that, because some of those persons have turned their lives around and it must not be that because—[Interruption]

Sen. Al-Rawi: Commissioner Gibbs. [Crosstalk]

Sen. Deyalsingh: Commissioner Gibbs was sent back from Brazil.
Sen. C. Robinson-Regis: We have to ensure that we do not make people feel that they are consistently the targets of attack by the State or a vendetta by the State because they committed an offence and they were deported, some persons have, in fact, turned their lives around and—[Interruption]

Sen. Ramlogan SC: Well then, they should have nothing to fear in giving the sample if they turned their life around.

Sen. Al-Rawi: Famous last words. Do not listen to him.

Sen. C. Robinson-Regis: Some persons have, in fact, turned their lives around and are now—[Interruption]


Sen. C. Robinson-Regis: Could be! Mr. President, we also had a concern about the DNA board being abandoned, because we felt that there should be some level of, for want of a better word, insulation, in terms of what the board can determine for accrediting the labs and so on. We feel that there should be some proper system in place especially since, at this time, we are not sure about the mechanism for accreditation. We would like to hear something more about what system would be put in place to ensure that there is proper accreditation.

Mr. President, we feel that the DNA legislation is important for crime fighting. We also feel that the DNA legislation must not make citizens of Trinidad and Tobago fearful or more fearful of the Government of Trinidad and Tobago [Desk thumping] especially when, at every turn we see this Government trying to create or conjure up plots, plans and programmes that have no basis in fact. We have the assassination plot and now we are seeing that there is, if I am not mistaken, a plot to embarrass the Prime Minister. I do not know if we have to plot to do that. [Interruption]

Mr. President, the citizens of Trinidad and Tobago—whoever is in government—must be clear in their minds that the Government is operating in their interest because despite the fact that essentially this legislation is to deal with the criminal element, there is always the possibility that innocent persons will be caught under this legislation. And that is the possibility that we must guard against as a Parliament, and that the Government must guard against as the Government of Trinidad and Tobago.

So, Mr. President, I want to ensure that whatever legislation is passed in this Senate today, is fair to the citizens of Trinidad and Tobago, makes people believe that their interest is what is being served and that the innocent people are being
protected by this legislation. We want to ensure that there is no political interference in any aspect of this legislation. We also want to ensure that the legislation is not so broad, that it infringes on the rights of innocent citizens of Trinidad and Tobago. We also want to ensure that the amendments that are brought today would not be better served in a redraft of the legislation, so that we have a Bill that fully expresses the concerns that have been raised by the Members of the Senate. And we also want to ensure that whatever is done in the interest of the people of Trinidad and Tobago, does not have any spin-off, in terms of being singular in its interest only for those who support the Government, or singular in its interest for persons who feel that they are being unfairly targeted.

Mr. President, with those few words, I would like to thank you for this opportunity to contribute. [Desk thumping]

Sen. David Abdulah: Thank you very much, Mr. President, for allowing me to participate in this debate on a very important piece of legislation. I think everyone who has spoken has agreed that good DNA legislation is absolutely necessary if we are to address, in a more effective way, the issue of conviction of persons who had been engaged in or who engage in criminal activities, given the very worrying crime situation in our country.

Mr. President, I think we would all agree, hopefully, that passing legislation is a very important responsibility, and, therefore, all Members who have the honour and privilege of sitting here, whether on a very short-term basis or otherwise, have a responsibility to contribute to the process of the passage of legislation that would make our country a better place.

Listening to some of the debates over the period, not only on this piece of legislation but, more particularly, on the issue of DNA generally, one can be reminded of that famous saying that “the law is an…” and I am sure, Mr. President, you would be familiar with the last word. And I say that, and remember well, Explainer’s calypso about “kicksin’ in Parliament”, because for the ordinary citizen of Trinidad and Tobago who has seen violent crime multiply exponentially over the years, and who has not seen concomitant with that, persons being arrested, tried and convicted for those crimes, meaning that, and as has been said before, the detection rate and the conviction rate in this country are very low; those ordinary citizens must ask themselves the question: with the DNA legislation that was passed way back in the 1990s and then revised in 2007, how come the security forces, the police, were unable to use the legislation, use that tool, to assist them in bringing persons who were guilty of those crimes to justice? [Desk thumping] That, to me, would be the key question.
And, if citizens note that DNA legislation existed on the books of this country, yet was never seen being used—because we all read the newspapers when matters go to trial and so on, and we would see that people give evidence, police officers and others investigating would give evidence, and they would say that such-and-such a thing happened, and the statement would be tendered into evidence, and at the end of the day, many of the people brought before the courts would be released because of insufficient evidence. But we do not read in the newspapers that DNA evidence of this nature was tendered, and on the basis of that DNA evidence, such-and-such a thing happened, and the jury could then deliberate upon it and bring in a verdict, one way or the other. We do not read about that.

The ordinary citizen will hear in this debate that one person won his freedom because of DNA samples, and that is good. Anyone who was wrongly convicted and can use DNA evidence to be freed, that is positive. That is very important. There have been celebrated cases in the United States with persons who were convicted and jailed for 10 years, 15 years and 20 years on various cases, who have been freed, after all of that time, because of DNA technology and DNA legislation.

4.00 p.m.

That is important because we have to ensure that innocent persons do not pay for crimes that they did not commit. But, on the other side of the equation, we cannot use that one example, as Sen. Camille Robinson-Regis did a moment ago, to then suggest that the law, as it exists now, was somehow working. Because the question has to be asked: if the law was working, why was it not applied, and the technology applied in such a way to bring in convictions for all of those other cases that persons who were guilty have never been brought to trial or have never been convicted, and so on?

So, ordinary citizens listening to this and wondering, well, if we have this DNA legislation all we needed to do perhaps, was, to tweak it little. They must be wondering, and asking that question or making that statement, well the law must really be this thing, because if it were not, then we would have had excellent conviction rates with the legislation that is on the books.

So, Mr. President, the Government decided to address the issue by looking at the law and approaching DNA legislation in a comprehensive way, in an attempt to get it as right as possible, this time around. In that process when we were here the last time in which this piece of legislation was being debated, colleagues on the Independent Bench, as well as the Opposition Bench, raised very many important concerns, criticisms and fears, even, about the legislation that was before the Senate.
One of the tests of governance—and there are many tests of governance—is whether you simply proceed with business as usual, faced with those concerns and criticisms that are very legitimate and genuine, or whether you take a step backwards and review and come again. What the Government did was, in fact, take a step backwards, review and come again. And as the Attorney General articulated—by way of intention, indicated that most of the concerns and criticisms that were raised in the debate on the last occasion, are going to be addressed with various amendments to be brought at a later stage.

Now, one takes Sen. Prof. Ramkissoon’s point, Mr. President, that the ideal thing, perhaps, would have been to have had that process of debate and discussion before the formal debate in the Senate, so that the criticisms and concerns could have been addressed and we would not, perhaps, have had to go through two debates, if you wish, or to come back on a second occasion with major amendments, and so on. So one takes that point and it is a valid point and one would not disagree with that, but I think that the very fact that significant amendments are going to be tabled for consideration at the committee stage, is an indication of two things.

Firstly, as was stated earlier, the Government listened and took seriously the concerns and secondly, really and truly what the Government wishes to do is to have the best possible DNA legislation on the books of Trinidad and Tobago, to ensure that the police and those involved in the criminal justice system have the best possible chance of success in getting persons who are guilty of serious crimes convicted and for them to pay the penalties for their transgressions. That is really what the objective is; the objective is not to attack the rights of citizens or things like that. The objective really is, at the root of it, to attempt to have the best possible legislation.

Mr. President, in this regard—because we heard a little quip a moment ago from one of the Senators opposite about procurement—as we go about a process of trying to have the best possible legislation and good law, it is quite amazing that two things: one that Senators opposite would critique the anti-gang legislation, the law that we all unanimously passed in this Senate after a long debate. That law was passed following the very extensive work of a joint select committee of Parliament in which Senators opposite participated.

So, really, the anti-gang law is not the law of the Government, it is really the law that all Members of Parliament contributed to and thought in our own best deliberate judgment was good law. Whether it was flawed or otherwise, we will have to take collective responsibility for the flaws. If it was implemented badly, that is the responsibility of others.
It is quite amazing that we would critique the law that we sat and agreed to, and when we talk about “kicksin’ in Parliament” really you are playing politics in a way to mislead the population into believing that it is the other side, when really we all sat in a joint select committee. There were Members of the Opposition, Members of the Government—[Desk thumping] and Members on the Independent Bench contributing to it. Then following that process of extensive discussion at the joint select committee, it came to both Houses of Parliament and it was extensively discussed and there were amendments again. So, it was really our collective decision as a Parliament which saw that legislation coming onto the statute books of Trinidad and Tobago. And if it is flawed, Mr. President, then we all made a mistake and we will all have to try to correct it, but we ought not to play politics with a matter such as that. I wanted to make that point.

The other issue in relation to responsibility as legislators, Mr. President, in trying to get good law, is when the Opposition decided to withdraw completely from the process of the joint select committee for public procurement legislation. You cannot on the one hand be shouting to the Government that you are unhappy with or you have concerns about—or you think that public procurement is done badly, that may be true, I do not know. It may be true, but assuming that to be so, but not admitting that to be so, then you have a responsibility to try and put good public procurement legislation on the books of the country. That is what the responsibility is as legislators. [Desk thumping]

Sen. Camille Robinson-Regis was making the point a moment ago, Mr. President, that the Opposition is there to ensure that the interests of citizens and the national interests are protected and advanced, or words to that effect. If that is the case, assuming that to be the case, then the responsibility is to participate in the process of the joint select committee on public procurement to ensure that we get good public procurement legislation. [Desk thumping]

**Sen. Deyalsingh:** Mr. President, Standing Order 35(1). We are not debating public procurement.

**Mr. President:** I think it was a matter which was justifiably raised by the Senator. [Desk thumping]

**Sen. Ramlogan SC:** “Yeah, yeah.”

**Sen. D. Abdullah:** Thank you very much, Mr. President, because I am really talking about process. I am talking about responsibility which was raised by Senators opposite as legislators. That is what I was really referring to. We must, therefore, take our responsibility seriously. And when you withdraw from a
(Administration of Justice) Bill, 2011

Tuesday, February 07, 2012

[SEN. ABDULAH]

process, what you are really doing is abdicating your responsibility, and at the same time that you abdicate your responsibility, you attack others, because you think that we are doing it badly. Do not play those political games.

Mr. President, I really was just going to be very brief, but Sen. Camille Robinson-Regis, I suppose, stoked some fire. I have not seen her for a little while; she seemed to have come in from the cold. [Desk thumping] I was reminded of a book I read as a young boy. I think I got a small prize at school for something, and I went to a book store and bought a book. It was written by an author by the name of John le Carré, I think, The Spy Who Came in from the Cold. Not having seen Sen. Camille Robinson-Regis—[Desk thumping] for such a long time and knowing that her last posting was in Ottawa, which is very cold at this time of the year, I said she must have come in from the cold and, therefore, wanted to, perhaps get some warmth.

I was going to remark, Mr. President, that we were missing Sen. Fitzgerald Hinds this afternoon, because he usually provides, particularly at this time of the afternoon when things are a little bit slow, some life in the Senate with his barbs and his comments and that kind of thing. Then I realized that we had Sen. Camille Robinson-Regis and really the DNA of the both persons seems to be very similar, politically. [Desk thumping and laughter]

It seems like once—[ Interruption] DNA legislation. And we got a good lecture from Sen. Prof. Harold Ramkissoon about the fact that we share 99 per cent of the same DNA, only 1 per cent is different. Well, I could not tell the difference in truth, politically, the 1 per cent difference between Sen. Camille Robinson-Regis and Sen. Hinds. The PNM DNA seems to be one very similar running through their veins.

Coming back to the point very seriously, Mr. President, the hon. Attorney General indicated the intent of the Government to address a number of concerns. In a sense, we were disappointed and we take the point that while the amendments are not before the Senate at this time, the indication of intent by the hon. Attorney General ought to have been enough to assuage the concerns made by some Senators subsequently, for example, with respect to the custodian and so on. The hon. Attorney General signalled that the issue of the custodian was going to be changed, in terms of the process and manner of appointment. Yet, we heard the point coming back again on the other side; unnecessary. Like they want to score political points when we had passed that stage; we have already passed that stage.
Similarly, the issue of the registry, the hon. Attorney General signalled that we had passed that stage, but they felt that they needed to repeat the points. Well, if you have to repeat the points, repeat the points, but you should at least give credit to the Government for having addressed those concerns and indicating an intent to pass that stage.

Similarly, with respect to the length of time in which samples will be taken, the Government has indicated that it intends to address that in a very specific way and, therefore, to assuage the concerns of Senators hopefully, sufficiently.

The issue of political interference, Mr. President, it is interesting to hear about political interference and every citizen ought to be concerned about political interference, in terms of the justice system. Because if we are to have a system that is not only fair but appears to be fair to each citizen, that does not discriminate and appears not to discriminate, then there ought not to be any semblance of a process that would facilitate or enable political interference. I think that point can be accepted generally.

But what is surprising is that the Opposition would make this point and forget that they set up a process that—with the concurrence of the Opposition at the time—would have led to the appointment of a Commissioner of Police and that process was effected by law. The Commissioner of Police was recommended through that process and then when it came to the House of Representatives, the Government had a difficulty with the individual whom the process threw up and “dissed” the whole, to use the language, process. [Desk thumping] They shut down the whole process, because they politically were not happy with the outcome of the process and amended the process by law.

When the second process threw up somebody, it fell not to them to have the final approvals effected, it fell to this Government because of May 24. When this Government said: “Well, this is the process that had been established by law, we cannot now politically interfere with the process, and “dissed” the process and “dissed” the outcome of the process, because it happened to have thrown up somebody from Canada;” the Opposition then said: “Well, look you brought a Commissioner of Police from foreign.” It is the doublespeak on these matters, Mr. President—[Desk thumping]

Hon. Senator: Forked tongue!

Sen. D. Abdullah:—that is of concern. And quite clearly, the political interference in that regard was when the outcome of Senior Supt. Williams, as was his rank at the time, was thrown up as Commissioner of Police and they were
not happy with that outcome. They then went in and changed the process and restarted, and so on. So, you know, yes, we do not want political interference, but it goes across the board. [Desk thumping]

Mr. President, I am sure that during the committee stage we are going to have a very useful discussion about the amendments that the Government has signalled it wants to bring, in response to the concerns, the criticisms and the fears raised by Senators in the debate on the last occasion. I certainly would appeal to everyone to really, during that committee stage, focus on the text and the technical aspects of the law, as presented on the draft Bill, so that we can get the best possible piece of legislation. Because that is what we need, the best possible DNA legislation to ensure that there is one more tool in the toolkit, perhaps, of the police and the law enforcement officers to ensure that we can deal with crime in a more effective manner in Trinidad and Tobago. That really has to be the outcome; to deal with crime, so that citizens of this country can feel safer and those who are either involved, or are considering criminal activity, would think twice because they know the chances of them being caught and convicted are higher.

4.15 p.m.

If I believe that there is very little risk in terms of crime; that there is a 1 in 100 chance of my being caught, convicted and punished for the crime, then I will work the odds. I am sure that Sen. Dr. Henry, as the economist, as an investor, would work the odds, if there is a 1 in 100 chance of failure. Put the other way around, in a 99 out of 100 chance of success for an investment opportunity, it is a good investment. So, if in a criminal undertaking, which, of course is an economic undertaking in many cases, if there is a 1 in 100 chance of being caught, then it is good business.

We have to change those odds and if we get good DNA legislation and we can begin to change those odds, then the country will be better off for it. [Desk thumping] That really has to be our objective as legislators.

Lastly, Mr. President, on a personal note, I was quite happy that the issue of deportees giving compulsory samples has been amended. I myself was deported, not once, but twice. I went to Guyana in 1980 when Walter Rodney and others were on trial in Guyana and I spoke at a public meeting in Georgetown organized by the Guyana Human Rights Association, which was at that time jointly chaired by the then Bishop of Guyana, Bishop Randolph George, who previously was the parish priest at All Saints Anglican Church and then became Bishop of Guyana. It was also co-chaired by Gordon Todd, who was a well-known trade union leader.
I spoke at this public meeting in Georgetown, not about Guyana—I spoke only about Trinidad and Tobago, but the similarities in 1980 between Trinidad and Tobago and Guyana were quite amazing. So, although I spoke only about the struggle for pensions by workers represented by the OWTU at Texaco and other matters dealing with Trinidad and Tobago, the Guyanese audience thought I was talking about their problems as well and so the authorities came looking for me the next day, detained me and took me to the lock-up at the police station at Timehri Airport and held me overnight.

It was reported on that afternoon’s radio news—I heard it in the police station—that I had been deported that afternoon and I was very much in Guyana that afternoon. People were calling the police station and the police officers were saying that there was nobody there by that name; “I know nobody by that name.” They hung up the phone and said: “Ay, somebody just called about the fellow we have in the back there!”

It was quite interesting because our then Trinidad and Tobago High Commissioner to Guyana was seeking information about a citizen of his country and was denied that information by the government of Guyana. Other persons, including my legal representative, were looking as well. Suffice it to say that the next day I was in fact deported and told never to come back to Guyana.

I, of course, waited out Burnham and Hoyte, and after Burnham died, I then went back into Guyana. Having been deported, I suppose the law would have required me, on arrival in Trinidad and Tobago, to take a compulsory DNA sample.

I went to Grenada sometime after the assassination of Maurice Bishop and others and the US invasion and when I landed at the airport I was promptly told to get the next flight back out, in which case I may also have been required to take a DNA sample. So I was very glad, Mr. President, speaking personally, that that section on deportees and the requirement for compulsory DNA samples has been removed because certainly the net had been cast way too wide.

Thank you very much, Mr. President.

Sen. Pennelope Beckles: Thank you very much, Mr. President and my colleagues, for the opportunity to contribute on this DNA Bill, 2011. I hope that my good friend, Comrade Sen. Abdullah, would record, for the purpose of history, some of those experiences that he has had. If he were not in the Senate, some of us would not be aware of them. I am. It is very important for us to know some of these things that have transpired. I say that in all honesty because so much of our history is not written anywhere and it is so important for us, as we develop as a country, to know about experiences that have taken place.
Sen. George: Yes, and he was jailed here too, in the not too recent past. Under which government again?

Sen. P. Beckles: Do you want me to sit so you can speak?

I must say that I was looking forward to contributing on this Bill because I think this is a very, very important Bill. I agree with Sen. Abdulah that what we should all strive for as Senators is good legislation. At the same time we strive for good legislation, it does not mean that we should compromise on issues of competence, quality and standards.

Clearly, if the Government has had to bring 34 amendments, it means that the Bill that was laid some time ago was substantially defective. I think one must give credit to the fact that in bringing these 34 amendments, clearly notice has been taken of a number of the criticisms that have been raised.

I am not sure, when I look at some of the amendments, that the Government has gone far enough. As a matter of fact, when one compares the 2007 Bill, the 2011 Bill and the amendments, it makes it a real challenge to contribute effectively to the debate, but I will try my best.

The debate has been pretty extensive. I will try not to be too long, but there are some points which I must make. I want to endorse the comments made by Sen. Abdulah in relation to what is the test of governance. He spoke about whether you should proceed with business as usual or whether you should take a step backwards and come again.

If we follow the debate in the other place, we see many of the amendments that have been circulated; many of those criticisms were made in the Lower House, but for some reason they did not take many of the suggestions seriously. Unfortunately for the Minister, he has to return to the Lower House with these amendments to debate again when, in some instances, it could have been avoided.

The first issue I want to deal with is: in the Bill, it talks to the issue of DNA profiles being stored and kept indefinitely. Now, Mr. President, I would like the Minister to give me an idea which country in the world still has this provision. We know there is serious debate taking place internationally as it relates to whether or not DNA profiles should be stored indefinitely. The issue is balancing one’s right to privacy with having a safer society.

In England, the United States, Europe and some other countries, it is a very big issue. The difference with us is that they have been more definitive in terms of the nature of the offences for which, if at all, they would use the word “indefinitely”. When I come later on, I will deal with the issue of “suspect”.
In the United States, following the recent ruling of *R v Chief Constable of South Yorkshire Police, ex parte S and Marpa*—Mr. President, just allow me to read a bit of it. The claimants appealed against the decision to retain their fingerprint and DNA samples after they were cleared of criminal charges. It was argued that this was a breach of Articles 8 and 14 of the European Convention on Human Rights. The case has been heard in the Divisional Courts, the Court of Appeal and House of Lords.

The Court of Appeal dismissed the appeal ruling that although there was a breach of Article 8(1), this was proportionate and justified under Article 8(2) and that there was no breach of Article 14. The House of Lords also dismissed the appeal. Now, the case went to the European court and all 17 judges ruled in favour of *S and Marper* and indicated, first of all, that the DNA samples should not be kept.

England, which has, within the last couple years, been increasing the number of samples and profiles, has now had to follow suit by developing legislation that is in keeping with the European Commission.

If I can just refer to an article from the national database in relation to England, it says—and this deals specifically with retention of profiles.

“Retaining profiles of the unconvicted and uncharged has led to profiles of a greater proportion of the population being held on the NDNAD and has been criticised. It has been subject of a Judicial Review...The Information Commission of Scotland believes that the indefinite retention of DNA profiles of individuals arrested but not convicted of any offence, and where there are no longer any policing concerns about them, is an ongoing intrusion into their private lives.”

Under the present Scottish law an individual profile is removed from the Scottish database following acquittal. It is argued by the Home Officer that the benefits of retaining the profiles can be clearly demonstrated. Around 181,000 DNA profiles currently held on database would have been removed prior to this ruling.

It goes on to say, Mr. President, and now this is dealing with retention of the DNA samples because when you look at our legislation, they really have not sought to differentiate between the retention of samples and the retention of profiles.
Now, there is also the issue of how long profiles should be retained. Some suggest that they should not be retained indefinitely except in the case of serious and sexual crimes. For lesser crimes, samples could be destroyed and profiles deleted after a defined time. This is the case of some European countries.

Now, as it relates to the retention of samples:

“DNA samples...are retained primarily to enable profiles to be upgraded as new technology becomes available. They are also used for quality assurance purposes and in case of disputes regarding sample processing. Samples are stored by the laboratory that profiled them, but”—they are actually—“owned by the police.”

The Home Office has recognized that DNA sample retention is a sensitive issue but has concluded that any intrusion on personal liberty is both necessary and proportionate to the benefits for victims of crime and society...The HGC”—that is the home office—“would like more discussions about the justification for retaining samples, in particular those from unconvicted individuals and volunteers.”

I am saying that it is a very active debate that is taking place, but clearly they have now followed the ruling of the European court and this issue of indefinitely keeping samples is a matter that the government of the United Kingdom has had to adjust. I suggest that this is a matter that the Minister should consider in a very serious way.

4.30 p.m.

Now, Mr. President, when one goes to the definition of a “suspect”, it means a person whom the police have reasonable grounds for believing may have committed an offence, and who is investigated by the police in relation to that offence. What is interesting here is the fact that “offence” is not defined. Unlike most other countries where they deal with either acquittal, conviction, serious offences and not so serious offences, this Government has sought to deal with a suspect. If I could just repeat it; it means a person whom the police have reasonable grounds for believing may have committed an offence, and who is being investigated by the police in relation to that offence.

No definition for “offence” was given. I think those of us who are very eager to support this legislation need to take a very, very, careful look at that. Whilst we agree that we now have a definition for “suspect” that we did not have before, what it does is, it basically gives to the Commissioner of Police extremely wide powers in terms of taking samples.
Now, in England they talk about a recordable offence, we have no such definition.

**Sen. Al-Rawi:** Only in relation to deportees and indictable offences.

**Sen. P. Beckles:** Yes, we only have it in relation to deportees and in relation to persons with indictable offences. Now, Mr. President, if I can go to an article written in the United Kingdom National DNA Database, there was a particular case that was referred to, and this case was a case of an attorney. It says:

“The issue of taking fingerprints and a DNA sample was involved in a case decided at the High Court on 23 March 2006. A teacher who was accused of assault won the right to have her DNA sample and fingerprints destroyed. They had been taken whilst she was in custody, but after the Crown Prosecution Service had decided to not pursue any charges against her. She should have been released expeditiously once this was the case and so her continued detention to obtain samples was unlawful, and thus the samples were taken ‘without appropriate authority’. Had they been taken before the decision not to prosecute, the samples would have been lawful…”

Mr. President, there is another case, and this is in relation to the attorney-at-law. It says:

“In July 2009, a lawyer, Lorraine Elliot, was arrested on accusations of forgery which were quickly proven to be false. A DNA sample was taken from her and lodged. She was cleared of the accusation a day later and completely exonerated. However, in spite of the commonly quoted mantra relating to the DNA database, (‘if you have nothing to hide, you have nothing to fear’). Mrs. Elliot subsequently lost her job (even though she was completely innocent of any crime) when the fact that her DNA profile was stored on the national database was discovered during a subsequent work-related security check. Only in 2010 was she finally able to have her details removed from the database, though by then the damage had been done.”

It is instances like these that cause us to think very carefully about how we have defined “suspect” and this whole issue of keeping samples and profiles indefinitely. I am not going to go through them, because I am sure the Minister would have had access to a lot of research from his staff, and that is why I am concerned as to which country in the world now is going in the direction of indefinitely. You have a situation where most of the countries are actually moving away from that, and we seem to be reverting to a situation which most countries are actually moving away from.
Mr. President, as a matter of fact and I quote:

“In 2009 the Home Office was consulting on plans to extend the period of DNA retention to 12 years for serious crimes and six years for other crimes. According to the official figures, enough searches...have been run on the NDNAD such that statistically at least two matches...should have arisen by chance. However, depending on factors such as the number of incomplete profiles and the presence of related individuals, the chance matches may actually be higher. However, the official position is that no chance matches have occurred, a position backed up by the fact that the majority of the searches will have been repeated, and that there are not 1 trillion unique DNA profiles on file.”

The point I want to make is that it is a very serious policy decision to me to take a decision as stated in the Bill about keeping these profiles indefinitely.

Mr. President, the other interesting thing is that they have been doing a lot of research in Britain as it relates to this whole issue of profile and maintaining profiles, and they have done some serious research. The research has come up with the fact that there are a disproportionate number of black males on the DNA database.

According to new figures...45,000 black children aged 10 to 17 in England and Wales have been added to the database in the past five years. In contrast, the DNA profiles of just fewer than 10 per cent of white youth have been added.

The most common explanation for the racial disparities has been accusations of police racism and racial bias…”

What the figures have suggested is:

“...the NPIA points out that of all the subject profiles retained...77.57% were ‘White North European’...7.83%...”were white south European.

Anyway, the figures are suggesting there is a serious disparity between the collection of profiles for blacks as opposed to whites. Mr. President, I now want to go to a matter—

**Sen. Maharaj:** Mr. President, on a point of clarification from the hon. Senator. Is the suggestion or the implication that there will be a similar bias in Trinidad if the Bill is implemented and there will be some sort of racial disparity in terms of collection of the DNA?
Sen. P. Beckles: I do not know where you came up with that from. I am saying that it is important to look at how other countries have dealt with challenges. I cannot say that without scientific data. The fact is Britain has collected their scientific data over the years, and that is what they have come up with. We have not done any such collection. It would be important when you look—this is a matter where the research has not only been done in Britain, but it was also done in the United States of America. As a matter of fact, Sen. Dr. Henry referred to Los Angeles, and that has been one of the major discussions. It has been an abuse.

We cannot say that unless the legislation is put in place, and we do our research, and come up with whether or not there is actually a bias, but I cannot say at this point. I am talking about the British system, because every time they talk about DNA profiling and sampling—part of the reason Britain is now reviewing the system is that they are saying now that even though these groups are in the minority, they are the ones for which the majority of profiles are kept. So I am not in a position to make that statement at this point in time.

Mr. President, I was going on to deal with the point raised by Sen. Abdullah in relation to the whole issue of the deportees. Whilst there have been some corrections or some amendments here, the real issue is that there is serious inequality in these two clauses. In relation to the person who is not a citizen and is detained, a non-intimate sample shall be taken from him without his consent by a qualified person.

In relation to the deportee where a citizen of Trinidad and Tobago is deported from any place outside of Trinidad and Tobago, and has been convicted or has served a term of imprisonment for an offence which would have been an indictable offence, and if it had been committed in Trinidad and Tobago, a non-intimate sample on that citizen’s arrival shall be taken from him without his consent by a qualified person. It maybe the hon. Minister may want to give us some reason for the inequality of treatment between those who are deported, and in the second category the non-citizens who are deported. That is in clause 17.

Mr. President, I just want to go back to the issue of destroying of a profile. I am talking about clause 27. Mr. President, I know that you normally follow very closely what is taking place, but this is an extremely, extremely important issue. It talks about the fact that the Commissioner of Police after consulting with the DPP—if he is of the view that he DNA profile of a complainant is no longer necessary. Mr. President, we are dealing here with the expungement of a profile in certain circumstances. This must be an error, because the only persons, from what I have seen here in this entire clause 27, who can apply for an expungement of a profile is a complainant.
Mr. President, when we go to the definition of a “complainant”, it means a person against whom an alleged sexual offence has been committed. That is the only person who can make the application. If you were to look at that clause, you would see that “complainant” is mentioned 17 times. Now, I do not know if it is a mistake but, clearly, if you go back to the definition of a “suspect”, it means that the person who would have been arrested as a suspect, that person, according to this legislation, cannot apply for expungement of a profile in certain circumstances.

Mr. President, if you look at the new 27 it says:

“(2) A complainant or his representative…

(3) Where a complainant or his representative…

(5) Notwithstanding section 7(2) and subject to subsections (6) and (7), a complainant…”

If you go later on:

“(7) the profile of the complainant

(8) Where the Custodian is informed, pursuant to subsection (7), that the retention of a complainant’s…

(b) notify the Commissioner of Police, in writing, that the complainant’s DNA profile has been expunged.”

4.45 p.m.

What happens to the other classes of persons who want to have their profile—what clause?

Mr. Volney: Clause 27. Subclause (11).

Sen. P. Beckles: Of the same one?

Mr. Volney: Yes.

Sen. P. Beckles: All right.

Sen. Al-Rawi: That one refers to sample.

Mr. Volney: Of the amendments, sorry. You cannot deal with the amendments.

Sen. P. Beckles: I know, but is it both profile and sample?

Sen. Al-Rawi: No, it is sample.
Sen. P. Beckles: Because my concern again is that even with the amendment—and whilst you said I cannot deal with the amendment, I think the Attorney General did raise the matter. A lot of times what happens in the Bill is you deal with either sample or profile, and you do not deal with either. This as it relates to the expunging, deals only with—[Interruption]

Sen. Al-Rawi: Subclauses (1) to (10) relate to profile.

Sen. P. Beckles: Only profile, it does not relate to sample.


Sen. P. Beckles: The clause that you have drawn my attention to only relates to sample.

Sen. Al-Rawi: After 10 years.

Sen. P. Beckles: I want to ask the question about this issue of 10 years. What influenced the Government in terms of their policy decision of 10 years? I am very intrigued by that because, again, if I go back to what I have spoken about in Britain as it relates to when somebody is acquitted, the determining of a recordable offence, or if you are looking at whether offences are serious, whether something is minor, they have been very specific as it relates to the expunging, but when we go back to the definition of “suspect” the minimum they are talking about is 10 years. I find that extremely harsh having regard to the definition of “suspect”, and I would really be happy for the Minister to explain why the Government has this policy decision of 10 years.

Again, as I have said, to deal with the issue of the complainant, because that means that you have excluded virtually every category of persons, other than a complainant who is a person charged with a sexual offence. So that has to be an error, save and except you can tell me something else.

Mr. President, the reason this is so important—and if we were to go to clause 32, it gives the Commissioner of Police a discretion—not 32, sorry, just one moment.

Sen. Al-Rawi: Clause 32 is the one where obstruction is not a crime except for the complainant.

Sen. P. Beckles: Right. Again, if we were to go to clause 32, which says:

“Where a person from whom a sample is to be taken under this Act, other than a complainant, refuses to give a sample, or otherwise obstructs or resists a police officer or a qualified person in the exercise of his functions under this Act, that person commits an offence and is liable on summary conviction to a fine of ten thousand dollars…”
Sen. Al-Rawi: Only complainants can expunge.

Sen. P. Beckles: So again, at the end of the day it is only complainants that can be expunged and if you read this clause together with 27, it really means that something is drastically wrong and has to be reviewed.

Whilst the Minister has said that they have listened and reviewed and this is pretty perfect now—because in essence, at the end of the day having regard to the definition of “suspect” means a person whom the police have reasonable grounds for believing may have committed an offence. If it is that these persons can apply to have their profiles expunged, then that to me is a serious injustice. I think that that in itself having regard to what has transpired over the last couple of months with the anti-gang, state of the emergency, the alleged assassination, I think that is a serious cause for concern for anyone who is reading and understanding this legislation.

Hon. Senator: Absolutely!

Sen. P. Beckles: I mean, yes, at the end of the day we all speak about safety and we talk about a safer society and we want to put the criminals behind bars, but the bottom line is the legislation has to make sense, and restricting that application only to a complainant, which only deals with sexual offences, does not make any sense.

Mr. President, the other issue that I want to raise is the giving of the Commissioner of Police a discretion where persons have been convicted. Whilst I think this in truth and in fact is a very good section because what it is purporting to do is bring some balance and ensure that you are not only giving an opportunity to persons who have been recently arrested, charged and convicted, but like most other countries in the world where you have challenges where people have been in custody for 20 years, 30 years, and they have still been able to access justice through the court system by virtue of the DNA. I think that the objective is good. Where I have a concern is what the clause says. The clause says that:

“The Commissioner of Police shall, in writing, inform a person who makes a request under this section of his decision to grant or deny a request within a month of receiving the request.”

Now there is not anything here that says if the Commissioner of Police should give to the person the reason for denial. So in order words, I have applied and the commissioner says: “I am not going to grant you”, what are the grounds under which he can refuse? Because as you know, to me, once you are saying that—
should not say a right, it becomes a privilege, if it exists to give an idea as to what is the reason why the commissioner could refuse. Is it because, for example, the exhibits have been destroyed? I do not know.

I mean, we are aware that there are serious challenges existing in the system. I am sure while sitting on the bench you would have come across a number of instances where exhibits have been destroyed, cannot be located; we had the famous one of rats eating the cocaine. Those things should not be far—hopefully you should not be hearing of many of those instances again, but the bottom line is that it still happens.

That brings me to the very, very important point of accreditation. Whilst the Attorney General spoke about the fact that the forensic staff are excellent and they do a lot of good work, within recent times since this Government came into office a lot of the forensic staff were actually fired. And the persons that were fired were persons who, over the years would have collected very, very important information as it relates to certain criminal activities that took place in the country.

**Hon. Volney:** [Inaudible] I did not fire anybody.

**Sen. P. Beckles:** I never said you. I said they have been fired. I never said the Minister fired them.

**Hon. Volney:** You did not read the contracts; that is what you mean?

**Sen. Al-Rawi:** No. No. No. The contracts were terminated.

**Hon. Volney:** Not by me.

**Sen. Deyalsingh:** She did not say you.

**Sen. P. Beckles:** I never said the Minister fired anybody. Right. Good. Well you need to check on that, because if I can talk about one person, that is John Gad. Mr. President, if I can just follow up on some of the challenges and why the issue of accreditation is so important. When you look at a lot of sections in the Act they talk a lot about “as soon as is practicable”, and in our country we have developed a habit over time, that things could happen if and when, while people wait for justice.

I am not sure why the issue of accreditation is not a policy decision, but almost every country that you have done any research as it relates to DNA, the accreditation of their forensic laboratories, or even the private laboratories which are now given the responsibility to deal with DNA research—absolutely,
absolutely, there must, must, must be accreditation. It is a matter that the Government needs to look at, even if you do not want to treat with it now for whatever reason—I do not know if there is a reason why you cannot treat with it now, but it is a matter of urgency to deal with the issue.

The forensic laboratory should have been ISO certified by September 2011. I do not know what is the status of that but I am sure it is a matter for which we would love to hear some comment by the Minister.

I know that the Attorney General in his practice would have been very familiar with the issues of exhibits taking a long time; actually, he answered a matter here in relation to that. One of the matters, both the Attorney General and the Minister of Justice, is the fact that even as I speak now there are persons who are going before the court where they cannot get a simple return of their fingerprints.

Now, I know you would have thought that that had long gone. It is a matter you need to look into because we have been bringing legislation over the last couple of months to deal with the issue of justice. I am making it abundantly clear, I have no reason not to believe that by bringing the legislation and all that is being put in place that the intentions are not very genuine and honourable, and that in a few years we would see improvement of the system. I do not subscribe to the view that we are going to see a drastic change within a short space of time; it is going to take a little while.

What I am concerned with is two weeks ago I was in San Fernando and it was the third time the people were appearing, and they could not get fingerprints because they said the machines broke down. And not only the fact that the machines broke down, but the fact that the persons who had to repair the machines were coming in from aboard. They said this has been happening. I really cannot tell because I am not an expert in that field, but clearly, it is a matter that we have to look at.

There was an incident on June 11, 2011, a DNA testing machine broke down.

“Rajwantee Judy Sookram yesterday said that she was told that the machine used to carry out deoxyribonucleic acid (DNA) testing at the DNA/Biological Unit of the Forensic Science Centre in St. James is not working.

As such she is still waiting for tests to be done on charred remains found in Central Trinidad to verify if it is her missing daughter Anita Ramsaran. Ramsaran who disappeared in March has not been seen or heard from since and police who believe the remains could be that of Ramsaran and relatives submitted DNA samples for testing.
Only last week”—she said—“I spoke to officers at the Anti kidnapping Unit and they informed me that the problem is still with the machine. They told me that they have sent a letter to the relevant authorities asking that something be done about this machine...”

I am just saying that whilst we speak today about improving the service, here it is this is a living example of a person having gone through all that pain and probably thinking: “This is my daughter”, then you are told; “The machine has broken down” and they have written to somebody to deal with it. I do not know why they would write, I would think that is a matter which they would bring urgently to the attention of the Attorney General or Minister of Justice.

Mr. President, the final matter that I wish to treat with is again this issue of the 10 years minimum. I really have a concern about it. The Attorney General spoke about what happened recently at Panorama, about which I think we all have concerns. We talk about all the persons who of course travel to and from the United States; he spoke about the ease with which people allow their fingerprints to be taken with the system in the United States, but one of the concerns that I have is that we know now how difficult it is to get a visa to travel whether it be to the United States—

Mr. Speaker: Hon. Senators, it is now 5.00 p.m. I propose to take the tea break at this point. We will resume at 5.30 p.m. This Senate now stands suspended until 5.30 p.m.

5.00 p.m.: Sitting suspended

5.30 p.m.: Sitting resumed.

[MADAM VICE-PRESIDENT in the Chair]

Madam Vice-President: Hon. Members, by my count—well at least by Mr. President’s count—I believe you have four minutes, Sen. Beckles, of your speaking time.

Sen. P. Beckles: I will try and stick to my four minutes. I was actually just wrapping up, so I should wrap up in my four minutes.

Madam Vice-President, as I close I want to go back to a point that Sen. Abdullah made about the whole issue of the test of governance, and taking a step backwards. Having regard to some of the serious policy statements that the Government is making, and that is why I made the point earlier about—in the very serious way—his reminding us of what he experienced in Guyana and
Grenada and why it was so important. Because those experiences—when you talk about adjustment from what was there before to what is now, sometimes it is persons like him who have had those experiences who could help, even his own Government, to make changes.

That is why at the end of day I think that notwithstanding the fact that you had the 2000 and 2007 legislation and then the 2011, the issue of some more consultation would have helped, particularly with the policy aspects. The Minister indicated that he had consultations, but I believe that on the issue of the retention of the samples, the profile, and the expunging of the profiles, those are matters for which some consultation would have been helpful.

Now, we follow the Westminster system a lot, but when we look at the fact that they have parliamentary committees, and they have the home office, they continuously review these things; it is not only when the legislation is done. They pass legislation and they have active committees of Parliament that continue to monitor. That helps the government and the Opposition, I think, to be able to keep abreast of what is happening. When the Parliament looked, for example, at what happened in the European court, they were able to quickly make the adjustments in terms of the changes. Therefore, I think the issue of greater debate and consultation is healthy.

I would just close by referring to an article, “The National Database”, in relation to the United Kingdom. It stated the need for greater debate.

“There has been criticism of the lack of parliamentary and public debate about the National DNA Database and its use, and a call for greater discussion of any future proposals. In a public consultation conducted by the Home Office, strong support existed for collecting samples in serious crimes, but less minor offences such as shop lifting. Mixed responses surrounded the length of time samples and/or profiles should be stored. The Home Office recommended improved public dialogue and that any proposals to use sensitive genetic information should be subject to a full public debate. The House of Commons Science and Technology Committee highlighted that no research has been conducted since to assess public attitude towards the retention of DNA samples. The Scottish Executive recently held a limited public consultation on the retention of DNA samples: 44% supported the retention of samples, from those arrested or detained on suspicion of recordable offence irrespective of whether they are later convicted; 47% were against. The majority were in favour of the—“
Madam President: Hon. Senators, the speaking time of the hon. Senator has expired.

Motion made: That the hon. Senator’s speaking time be extended by 15 minutes. [Sen. F. Al-Rawi]

Question put and agreed to.

Sen. P. Beckles:—“proposal to maintain the current Scottish position on volunteer elimination of samples whereby written consent must be given for them to be held on databases and can be withdrawn.

“the Select Committee in both Houses have recommended that independent ethical oversight with lay input is needed to ensure that samples and profiles are used appropriately. The Home Office is currently establishing and Ethics Committee to advise on new proposed uses of the database and research proposals, and to review decisions it makes. The composition of this panel is as yet unknown.”

Madam Vice-President, as I close, I am saying that one of the things we could look at very closely, even as we pass legislation, is to look at committees from time to time, that we would be reviewing, so that whenever Bills have to be amended, the data, the search, the collection, the discussion, and the debate would be a continuous activity that would allow us to make the best legislation possible. Thank you kindly.

The Minister of Justice (Hon. Herbert Volney): Madam Vice-President, I am happy to rise in order to conclude this thought-provoking and insightful debate that has engaged the attention of the Senate.

My brief moment here to present certain bits of legislation pertaining to the criminal justice system, has awakened my perception of constitutional law safeguards. Having come from the other estate, I am rather fortunate, if I may say so in all humility, that I am now serving or have served in all three estates of the Constitution, and for that reason I want to start on the premise that we have heard, all the concerns expressed by Members present in the Senate.

I recall the opening salvo, if I may so refer to it, that had me shell-shocked for some time afterwards, and awakened me to the true meaning of independence of the Independent Bench in the Senate. It caused me to appreciate the true meaning of the constitutional instrument, and why it is that while the framers of the Constitution in sections 4 and 5 provided and declared the existence of certain rights, they also provided inferentially that those rights are absolute. That the
Parliament is enabled by the Constitution to abrogate and to infringe certain rights, provided that they are—the abrogation, the measure that abrogates or infringes—reasonably required in a country with a respect for democracy, public order, and the lot, Madam Vice-President.

In fact, in order to achieve legislative measures that require abridgments or encroachments on constitutional rights, it is imperative that the constitutional framework of our Legislature be put to the task, and this is one such example, where those who have followed this debate and those who have participated in this debate would realize that the cut and thrust of the politics in the Lower House is not the same as the defining moments in the Senate, and where the Independents are really the safeguards against arbitrary governance, when it comes to infringing basic human rights of persons declared under the Constitution.

So that when I sit here in the course of the debate—and it is not the first time I have listened to the contributions of those opposite—I am afraid that given the experience I have had of the Front Bench taking its orders from elsewhere, that I have to be myopic in what I see beyond me, and to look to the reasoning and the wisdom on the other side.

The other thing I want to say is that when we have Senators, independent thinkers as we have here today, none can write an article as well as Sen. Helen Drayton. [Desk thumping] When we have senior counsel of the ilk of Sen. Elton Prescott, [Desk thumping] I do not have to go into flattery to deceive, but we really have to understand that the time has come in this Parliament when we have to stop talking only about precedent, that is to say, “The British do it this way, so if we do not do it that way, it is not suitable, it will not work.” We have to stop thinking that way. We have been independent as a nation for 50 years, and as a nation we are well equipped to start thinking in our own way, outside of the box, in which colonialism has left us. We must make our own laws.

That is why as I stand here today with great pride and in all humility, I say that what is coming out of these deliberations is not the Ministry of Justice’s Bill, Act or law, it is not the People’s Partnership’s law or Bill, it is law coming from the Legislature, the Senate of Trinidad and Tobago.

So that at the end of the day when there are 35 pages of amendments, of course, others could say it is the original Bill that is so flawed—look all these amendments, but that I thought would have been a healthy matter, not an unhealthy situation. It is healthy, it shows that the Senate is thinking, the Senate is
alive. The comments that were made in the House have been taken into account. This Bill is not my Bill, because in the first place I only led the direction of my technocrats to produce the policy. The drafting was done in the Ministry of the Attorney General by people whose job it is to draft. It was not my Bill; I only piloted the Bill for the people of Trinidad and Tobago, and it is but one of a number of measures that this Government has introduced in the House in order to provide to the nation a new way of thinking, of dealing with problems that confront us.

5.45 p.m.

As I stand here today I do not want to be confrontational. I would love to have the support for this Bill from the Front Bench of the Opposition. I know I am unlikely to get it because it was opposed in the Lower House, and that is why, with regret, if I cannot have it from the Front Bench opposite, I shall have to appeal, particularly, to the better reasoning and wisdom of those opposite on the Independent Bench.

Hon. Member: Well said. [Desk thumping]

Hon. H. Volney: And I pray for the people of this country that they would save the day of this legislation. I have grown so accustomed to objections upon objections; I do not want to anticipate it. It is 5.45 p.m.; the amount of work that has been done with the amendments that would come at the committee stage, my staff has worked overtime. They have done everything to try to present a Bill that has the face of Sen. Drayton in it. [Desk thumping] [Laughter]

While the Bill may be stronger in some cases it would be weaker in others, but it is a Bill that comes from the Senate of this country, that would have to go back to the House—

Sen. Al-Rawi: Mamaguy! Mamaguy!

Hon. H. Volney: Madam Vice-President, you know—

Sen. George: Do not take him on, continue, do not be distracted. Do not take him on.

Hon. H. Volney: The point is that we have done everything to make this Bill happen. You know, there is something that those opposite do not understand, that we on this side are the Government and we have the responsibility to deal, among other things, with the criminal situation, the crime that is a problem. We inherited it. We noticed among other things that the rate of detection of crime was too low, was approximately 10 per cent, and there have got to be reasons, and so our people looked at the reasons, looked for the reasons—why was the detection rate so low?
We read the judgments of the court. I do not want to speak of my own personal experiences in the court; I can, but I do not have to. There is a cry for us to change the paradigm of how we do things in the criminal justice system. In that regard, I like to remind those who can pontificate at every turn and every bend that I have made a personal sacrifice. I have left earnings that I do not earn as a Minister to come here and get the job done, and to get the job done in five years. And one of the things that we found was that the DNA Bill of 2007 was like a toothless tiger, a bulldog without a bite, and we had to address that issue.

We have found certain proposed amendments that were in the works from the last administration. When we looked at them they did not address the problems that were confronting us, that were confronting law enforcement in raising the detection rate. We tried and we considered whether the plaster on the existing 2007 Act would have solved the problem, and when we realized that it would not have, we decided to develop a new philosophy, a new policy. We did not go and look at what Barbados had or Jamaica had, we considered what they had, but we did not look at it and put the cursor on it, press copy, drop it on a page and say that this should work there, it worked there so it should work here, we did not do that.

We thought of what we were about—10 years for example—10 years seem to be a puzzle to those opposite. Why? Because they have not yet seen the paradigm shift in the criminal administration legislation that is being brought to Parliament. If you look at the criminal proceedings, that is the Administration of Justice (Criminal Proceedings) Act, which has been assented to by His Excellency, we used the 10 years as the period by which the system must bring closure in any matter, except cases of blood crimes, murder, rape, treason, as well as kidnapping and sundry other offences carefully selected.

So, if the system does not bring closure in 10 years, it means that those persons can make an application to be released and to be freed, because if the State cannot, with all its resources, prosecute someone in 10 years, then trust me, the jury of this country, after wasting a lot of judicial time, will hardly ever convict someone after 10 years, because, to do so would be basically unjust. I have seen it. I have lived the life there and I know it. We used 10 years as the cut-off point.

Of course, there are other cases where someone commits an offence and goes into flight, well rest assured no matter how far he/she flies when he/she comes back, the warrant would be waiting for them because we have also dealt with that. So, cases that get cold because of flight, cases that are not prosecuted, where
persons have been able to avoid detection, 10 years is the period that we are working with, and that is why we talk about 10 years. That is before the expungement of the profile of the samples.

Now, Madam Vice-President, those citizens who give their DNA, those citizens whose DNA is taken because they are the victim of crime, have nothing to fear for the reason only that a profile taken from them is in the hands of the State. What has been happening consistently is that institutions of the State have been lashed and lashed and lashed in the Parliament. Everybody seems to think that the Commissioner of Police is going to authorize persons to be beaten; everybody thinks that the Commissioner is going through overriding procurement because he buys or he leases an aircraft.

Everything that is wrong they attack institutions, persons. Why is it that the DNA lab that existed, and up to today, still exists, has not been lashed. Why? Is it because it was established at the time when the PNM was in government? Why is it that now that we basically strengthened it institutionally in its framework, why is it that the public must now feel that their profiles are not going to be kept confidential? Why?

Madam Vice-President, we have created the positions of custodian and deputy custodian. We understood the concerns of the Independents, and also of the hon. Senators on the other side, that the Minister should be not involved in the appointment of these people. Not a problem. I am happy. I do not have to come under unnecessary scrutiny in any appointment. No Minister likes to have to pick anybody to work in any office. No Minister likes that because it puts him under unnecessary public scrutiny. But when you have commissions that are so overloaded with work that they cannot deliver appointments in a timely way, the Government has the responsibility of ensuring that the work continues, that the job is done, and hence, in this legislation there is a provision, that while the position of custodian is a public office and that of deputy custodian, until such time as an appointment is made, the Minister may, by contract, following all the proper procedures, make an appointment.

It is no mystery in it. It is just a device to make sure that we get on the go, from once the President assents that everything is moving—takes over from what is there now. So, what we do now? We have an Act that can work. It addresses all the problems of the past, and as well, it addresses all the concerns in its amended form, in the proposed amended form of Senators opposite. What else can we do but fight and strive for consensus. That is what the Senate, I think, is about. That
has been my experience, consensus building. We have tried to address every concern. There are some that we cannot concede on, because they will affect the strength of the legislation that we have to keep strong to deal with the criminal activity out there.

Fighting crime is no “soft man” thing. [Laughter] It is no “soft man” thing. You have to be hard in your fight against criminals. They are organized people. They have “bow wow”, they have guns, and you see the way to catch them is to provide yourself with the tools out there to detect what they leave in their unguarded moments. They sit down after they have spread the spoils of crime and criminal activity and take a cigarette and drop it on the side; that is evidence. That is capable in the world of DNA to put them behind bars. But, unless you have the framework, the legislative framework to make use of that bit of evidence, it is of no use to you.

A man rapes a woman, during that session, that illegal and atrocious act, there is—what should I say—the emission of seed as the Act says. That is the deposit of evidence. As it now stands, it can only be used to establish the fact that there was emission of seed and no more without DNA intervention.

As established, this lab will be using DNA for the purpose of identification. This is a criminal DNA lab. It is not a lab for geneticism. It is not a lab to develop to see whether my colleague is in fact a Brahmin or not. [Laughter] This is a lab to say that Sen. Maharaj is, in fact, Sen. Maharaj, and nothing more.

6.00 p.m.

So all these concerns about what the product, and what the profiles could be used for, is just a lot of idle rhetoric, with all due respect, idle rhetoric. It takes us nowhere, but it consumes valuable Senate time, and we have heard it over and over. But then they say that the Government has its way, the Opposition has its say, you know. But not in this Senate; without the good people behind, the Government cannot get its way. So I think I have to now convince Senators opposite, why this legislation is so badly required.

Without the tools with which this legislation enables law enforcement agencies; without the tools thereby provided in it, evidence would remain unused, would be wasted. Those persons who commit crimes and leave evidence, if they are not in a database, they could walk the streets with impunity, because they know that their connection with the crime is not institutionalized for the purpose of crime detection. They could walk and beat their chests because they know the State does not have anything to match, and unless there is some other evidence
like “I see” witnesses—and what is happening with “I see” witnesses is that they are killing them. People are found at the side of the road. Witnesses are being culled in the heights of Laventille all the time, you know. [Interruption]

**Sen. Maharaj:** Like the cows in Cedros.

**Hon. H. Volney:** Not like the cow in Cedros. This is a serious matter hon. Senator. These are human lives we are dealing with. [Interruption]

**Sen. Al-Rawi:** Well said!

**Hon. H. Volney:** So when criminals know that they have their DNA in a lab, and they leave anything by chance on the scene, rest assured, when the analysis is done, their DNA on the inside would match what they left on the crime scene, and they would then be brought in and placed in the system, and placed on an identification parade. They would never have thought that they could have been detected so readily. That is the value of DNA to our criminal justice system. That is just one little example, but there are other sides to it.

It works equally that those persons who are innocent, who are accused wrongly, can be exonerated. Somebody goes with two other men—two men rape a young woman and he is connected because she makes the mistake and says that all three were together. She said “two of them raped me”, or she may say, “All three of them raped me. All three of them had emission of seed in me.” The DNA is taken from her, matched against the suspects and only two DNAs are found. What does that say? It means to say that one person was wrongly accused of having coitus with her, Madam Vice-President. That is the end of that case. It is a sword that comes to fight criminals and to defend the innocent, and that is why it is so important that this measure receive unanimous support in this honourable Senate.

Now, as I said, I can go on. There are so many things that I have heard in the course of the debate. I really do not think that I need to address them, because when it comes to the issue of the proposed amendments I have no doubt, given my experience with Sen. Al-Rawi, that we would have another debate. And we would want to encourage him, but with somewhat clipped wings this evening, so that we could get on to our families. As I had to tell him, I am a man—although I am a man going up in some age, I have a young wife. [Laughter and desk thumping] I have to get home to her.

**Hon. Senator:** To deposit some seed. [Laughter]

**Hon. Senator:** Some DNA.
Hon. Senator: That makes two of us.

Hon. H. Volney: I have to get home. My children are home waiting for me, so I do not want any lengthy discussion, when we have fought the battle beforehand.

Sen. Prof. Ramkissoon, we did have consultation with the stakeholders who are actually involved in the use of DNA. While I take the point that in the future when we have this kind of legislation we could widen the consultation, I must say that we did have consultation and basically, you must understand, you must appreciate that this Bill really has built upon what we had before. It has not totally reinvented the wheel. It has made the wheel more efficient and relevant to what is happening today.

I heard about a survey in the Newsday; about 60 per cent of those interviewed had no confidence in the Bill, or something like that. Well you know I can, this evening, manipulate a survey to get 100 per cent, it is very easy. In my constituency I reach 20,000 persons with the “flick of a Bic”, to send my message to them. Everyone has a cellphone. It is not difficult to manipulate surveys. So one has to look at the scientific basis of these surveys. Do they go to people? Where do they go? So that one has to be careful on what basis these surveys return these 60 per cent. Well, certainly, I can tell you that after the demolition job by Sen. Drayton on the last occasion on my Bill as it then was, I am surprised I got as much as 60 per cent. [Laughter] I thought I would have been much lower. But now it is no longer my Bill, it is our Bill, so that I anticipate that the stakes would have become more favourable by this time.

All the concerns are genuine. I have no doubt, that they are all very genuine, and I think that, by and large, we have tried to address all of them. Let me assure all hon. Senators, that in the processes for producing court evidence of a DNA report that could either lock up or could free someone, the ultimate decider of what becomes of that evidence is the court, the judge, the magistrate, and there is something called the “chain of circumstantial evidence”. In order for anything to have any value, attorneys are entitled to question how the report came about. Who took the sample? What became of the sample when it was taken? How did it get to the Forensic Science Laboratory? What happened at the Forensic Science Laboratory? What are the procedures? These are matters of evidence. And with all the reports that could be damning and condemning, if the prosecution cannot satisfy the court that everything is above board, that all the t’s are crossed and the i’s are dotted, rest assured the DNA evidence is going absolutely nowhere.
[MR. PRESIDENT in the Chair]

So there again you have the safeguard of an independent Judiciary under this People’s Partnership Government. You see, it is not under attack like I knew it was when I was a judge thereby causing me to leave the bench to come and get rid of people of the ilk of the former Senator who sat here as Attorney General. I knew as a judge there was interference or attempted interference in the Judiciary, because I was called up and shown a letter from the then Senator, questioning how I could have allowed Imam Abu Bakr to go to Venezuela on a religious pilgrimage. That was interference in the functions of the Judiciary. That, I can assure you, does not happen under this People’s Partnership Government. [Desk thumping] So you could rest assured that all the concerns about evidence and what could be done with DNA evidence has to go through the scrutiny of the court before it comes to anything.

I brought my Cabinet notebook, which is very small and really there is not very much for me to respond to. Regrettably, I think that out of deference to hon. Senators, I have responded in the amendments that are to come. I would not want to hold us up. As I said, I have a young wife at home waiting for me and I am hoping to be home by 9.00 tonight, so, Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

PROCEDURAL MOTION

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Mr. President, in accordance with Standing Order 9(8), I beg to move, that this Senate continue to sit until the completion of all the stages of this Bill; its finalization.

Question put and agreed to.

ADMINISTRATION OF JUSTICE (DEOXYRIBONUCLEIC ACID) BILL, 2011

Bill committed to a committee of the whole Senate.

Senate in committee.

6.15 p.m.

Mr. Chairman: I understand that amendments have been circulated. There are amendments circulated by Sen. Helen Drayton; amendments circulated by the Minister of Justice. I take it that Senators have these before them. So there is an amendment by the Minister of Justice and there is an addendum to it, as well as an amendment circulated by Sen. Drayton.
Sen. Prescott SC: Mr. Chairman, before we commence, may I just make an enquiry? It might assist us in removing some confusion, as there are so many iterations of the documents before us and they are not dated. Which should be our base document? Which versions of the amendments should we work from?

Mr. Chairman: That is a fair statement. I will get clarification on that.

Sen. Ramlogan SC: It is the thicker of the two.

Sen. Prescott SC: The one with “30-how-many” pages?

Sen. Ramlogan SC: The one with 14 pages, the list of amendments.

Sen. Prescott SC: The one that is captioned, “List of amendments to be moved in the Senate by the hon. Minister?”


Sen. Prescott SC: Okay. There are two such, but the thicker of those two?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: And then the addendum as well?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: And if we could just go back briefly to the Bill itself, is it the 36-page one—

Mr. Chairman: As amended in the House of Representatives.

Sen. Prescott SC: —or the 37-page one?


Mr. Chairman: The actual Bill before us is the one from the House.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Mr. Chairman, may I also, for the purposes of orientation so that we are all on the same page relative to considering the amendments, point out that I hope to make reference to the very helpful document provided together with the list of amendments, being the Bill as marked up in bold and as—

Mr. Chairman: Sure, absolutely. That is very convenient, but, of course, we are making the amendments relative to what has come from the House.

Sen. Ramlogan SC: Mr. Chairman, do you have a copy of that Bill?
Mr. Chairman: I have.

Sen. Ramlogan SC: We all do then. We are on the same page.

Mr. Chairman: Yes. Thank you. I take it everybody has that.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

*Question proposed:* That clause 4 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, there are several observations relative to clause 4 that I wish to refer to but which will come about in the context of discussions in clauses later, for instance, the inclusion or amendment of certain clauses when we see them in context. As has been the practice here sometimes, may I propose that we consider clause 4 later insofar as it may be affected?

Mr. Chairman: I am prepared to defer clause 4 if that is fine with the Committee. So clause 4 is deferred. We will come back to it at the completion to see how it lines up with the actual documentation amendments.

*Clause 4, by leave, deferred.*

Clause 5.

*Question proposed:* That clause 5 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, what I am about to say affects the policy in relation to the certification of the Trinidad and Tobago Forensic Science Centre. Both clauses 5 and 6 fall under Part II, Forensic DNA Laboratories. My question, really for consideration is: why are we not, in the legislation, dealing with the accreditation of this institution openly, particularly insofar as we are tied in to the schedule which accredited institutions, and that is referred to in clause 6?

Sen. Ramlogan SC: Sir, I believe we had addressed this matter in the debate and it was felt that the Forensic Science Centre, given the extensive and rigorous training that they undergo and the frequent testing by a foreign body from the United States of America, and given the stringent requirements in terms of professional qualifications to be part of the Forensic Science Centre, we felt comfortable that they be the national Forensic Science Centre for Trinidad and Tobago.

Sen. Al-Rawi: So that the concept of what I harbour a concern over is made clear, the position that I have is, or the position that I am concerned about is that we are moving from legislation in the 2007 legislation, which contemplated credentials, moving into a very vast and expansive DNA database construction, and I fear that
unless we take the caution now to include some reference to certification—for instance, in Trinidad and Tobago certification of institutions is done through the Bureau of Standards. I am wondering why we are accepting that certification from Bureau of Standards right now. The fact that they undergo rigorous training does not mean that they will uphold standards for certification by use of, for instance, “I shall be accredited by relevant institutions”. We use the word, “accredited” in clause 6 and in the schedule when we speak to institutions that are accredited, but we are conspicuously silent on accrediting our own institution.

Sen. Ramlogan SC: This is a policy matter. The previous legislation did not work because we tried to transplant what obtains in other countries, in Trinidad and Tobago, which is a tiny island in the Caribbean. The reality is that we must have regard to our legislative experience in this matter. The previous Bill, which was brought to this Parliament under a former administration, was rendered virtually inoperable by virtue of the stringent requirements that they put in place. They could not appoint a DNA board. For three years no DNA board could have been appointed because of the qualifications they put in the legislation for the composition of that board to actually operate, and that being the case, it is clear that the Forensic Science Centre in Trinidad and Tobago is extremely well respected.

I indicated that countries in the Caribbean are now soliciting our assistance to establish their own DNA labs, and we have to demonstrate our confidence in them. There is no reason to doubt their integrity and professional competence. In fact, I believe it was Sen. Camille Robinson-Regis who championed its cause by pointing out that under their tenure in government people were actually freed because of the integrity of that DNA process at the Trinidad and Tobago Forensic Science Centre. So the Government’s policy on this matter is very clear. We do not intend to complicate this matter and we stand by the legislation as is.

Sen. Al-Rawi: Mr. Chairman, if I could—

Mr. Chairman: Sen. Al-Rawi, what I suggest—because we could keep going in circles—if you want to propose an amendment at this stage, I will be very happy to put to the Committee the amendment you would like.

Sen. Al-Rawi: Mr. Chairman, the reason I raised the suggestion that I did in the course of the debate was to address the very need to obviate the kind of discussion that is about to ensue. So not having the right to have discussed it in the debate where I should have, it is incumbent upon me to put my policy now.

Mr. Chairman: Sen. Al-Rawi, I do not think so. I think this is the Committee of the Senate. What you can do is present to us an amendment that you would like the Committee to consider and we will vote on the issue.
Sen. Al-Rawi: But, Mr. Chairman, where do I articulate the rationale for it? The Attorney General has, with the greatest of respect, just given several untruths, and let me explain where.

Mr. Chairman: No, you cannot say that to the Attorney General.

Sen. Al-Rawi: But, Mr. Chairman—

Mr. Chairman: Sen. Al-Rawi, I am ruling. You may put an amendment before us which the Committee can consider. This is not a time for debating the question of the policy behind the specific provision. I think what you have said so far gives the Committee a fair indication of the policy behind what you are saying and, therefore, it is open to you to put forward an amendment.

Sen. Al-Rawi: Mr. Chairman, there were several factual inaccuracies put forward by the Attorney General a moment ago which I must address. The ISO certification in the last Bill was upon us in 2011; the issue of an appointment of a board which the UNC proposed to be included in the 2000 legislation did not work. He is correct about that. But that is a separate issue from the ISO certification, and in keeping with your ruling, I propose that a formulation of words relative to the accreditation of this institution is imperative to be included here.

Mr. Chairman: Please proceed to formulate your wording and I will put it to the Committee.

Sen. Al-Rawi: Mr. Chairman, the formulation of words that we are looking for is a consensus formulation, as we have done in many debates previously. If the Government is going to be resolute in its position: simple, that is policy, then we cannot move on, because my point is that the ISO certification, being an actuality, can happen. Surely clause 5 can include something. I do not want to press upon the idea, but there is a joint perspective that we can come to here, as we have done in every debate we had had so far.

Mr. Chairman: I have heard the Government state their policy, and I continue to repeat. If you would like—

Sen. Al-Rawi: Mr. Chairman, then I would suggest that the Trinidad and Tobago Forensic Science Centre shall be an official accredited forensic DNA laboratory for Trinidad and Tobago, as shall be accredited by international standards, or by some other institution, by the Trinidad and Tobago Bureau of Standards. It is wide open. It depends upon the palatability of the concept, firstly.
Sen. Ramlogan SC: Mr. Chairman, the problem here is this. Time and again we pass laws without regard to our own unique social reality and our social and intellectual reality. The Trinidad and Tobago Bureau of Standards standardizes and deals with standards in relation to certain types of goods and services that we are accustomed to. But, really, if there are people in this country who can accredit the national Forensic Science Centre, then they would have been working in the Forensic Science Centre, because—

Sen. Al-Rawi: Which is why I used the term, “international body”.

Sen. Ramlogan SC:—we have been looking for people to work there. The reality is that we have for some time now been utilizing the services of Collaborative Testing Services which is an accredited institution out of the United States of America. We are quite happy as a Government and satisfied, because the services under the old law that they have been providing in the courts have stood the test of time, withstood rigorous cross-examination, and there has never been a complaint or challenge to the credibility of the DNA evidence that has been admitted in our courts thus far. We are prepared to stand by that experience on the basis of what has happened before the courts thus far and the absence of any complaint.

Furthermore, the training and education programmes that we have in place, that have been ongoing, will continue. The periodic and intermittent testing by the US-based organization will continue and the capacity will be strengthened and reinforced by virtue of new staff that are being brought in. So we are happy as a matter of policy from the Government to stand by the Trinidad and Tobago Forensic Science Centre as is.

Sen. Al-Rawi: So an international certification included here is being rejected.

Mr. Chairman: That is what I understand.

Sen. Ramlogan SC: It was never there in the 2007 legislation; it will not be here now and it will continue to function as it has without any complaint.

6.30 p.m.

Sen. Dr. Tewarie: I was just going to say the insistence on accreditation within the legislation is not necessary, and there is nothing that prevents legislation which includes an already established body, nothing that precludes that institution mentioned in the legislation from seeking accreditation afterwards. It need not be legislated.
Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clause 6.

Question proposed: That Clause 6 stand part of the Bill.

Mr. Chairman: Sen. Prescott.

Sen. Prescott SC: Would someone on the Government side tell me whether there is a suite of services, which is caught in the phrase, “forensic DNA services?” I am thinking that there might be a need to define it, unless there is some known suite of services that must necessarily come within that description.

Sen. Ramlogan SC: We are advised that is a recognized part of the jargon that they use in the forensic industry. That suite of services would be known to those who operate in that industry—

Sen. Prescott SC: Yes, I am fine with that.

Sen. Ramlogan SC:—because, this is really, Senator, one of those highly specialized fields. So, I think we are okay with that. “Yeah.”

Sen. Al-Rawi: Mr. Chairman, an enquiry relative to clause 6(a). It says:

“accredited by an international accrediting body…”

Keeping in mind, the Government’s rationale with respect to clause 5, should we now eliminate the words international accrediting body?

[ Interruption][Inaudible] I know it is more or less a rhetoric point; I understand the point. The position is that if you can use “international accrediting body” with respect to this, I still cannot understand the rationale for excluding it with respect to clause 5.

Mr. Chairman: We have passed that stage, Sen. Al-Rawi.

Sen. Drayton: Mr. Chairman, could I seek clarification? Clause 6 says:

“The Government may,”—it does not say shall —“for the purpose of obtaining forensic DNA services, enter into an agreement with a laboratory that is—

(a) accredited by an international accrediting body…”

Does this imply that there will be forensic DNA services, for which you will not enter into an arrangement with an international accredited body?
Sen. Ramlogan SC: No, I think it is the other way around and that is to say, we have our own national DNA lab, in the unlikely event, that you needed to resort to any external assistance, you may; it is not that you have to go to someone on the outside. It is that you have a discretion to go, depending on your own capacity. That is the way, I read it. So that depending on your own capacity, you may or may not need to have resort to an external agency.

Mr. Chairman: But if you do go, you have to comply with (a) or (b)?

Sen. Ramlogan SC: Yes, that is correct.

Sen. Drayton: So, in other words, if we do not go to an external agency, would the result of our work be accepted outside of Trinidad and Tobago? Assuming that this goes to the Privy Council or something like that—this is what I am asking—would they accept work that is not accredited to an international standard?

Sen. Ramlogan SC: Remember, thus far, as I have indicated, we have had DNA law since 2000, and for the past decade, we have never had any complaints. The courts have been regularly admitting DNA evidence. You heard from Sen. Robinson-Regis, for example, that one person was even freed by virtue of the DNA evidence that was allowed to stand. So the integrity of our DNA process and our Forensic Science Centre has never been questioned in relation to these matters at all.

In fact, from the feedback that we have been getting from external partners, the quality and standard is so high in Trinidad and Tobago, that they are seeking to partner with us to have a transfer of expertise, to be able to help them to establish their own DNA labs. So that Trinidad and Tobago Forensic Science Centre is pretty well respected even beyond our shores. We feel very confident that when we share DNA data and profiles, with international agencies, that the credibility and integrity of it will be well respected and received.

Mr. Volney: I think also, that we have to provide for situations where our own lab may not have the capacity in cases of catastrophe, it could be a hurricane or where there is a need for help with the volume of what needs to be analyzed. Or if for example, a machine goes down, or there is an explosion in the lab, we have to have the legislative framework to allow us to enter into an agreement with someone external to back us up, and that is what this provision here. [Interruption]
Sen. Al-Rawi: I wish to support the inclusion of the accredited listed at paragraph (a) because, I think it is wise to have a wider ambit than narrower, certainly, because it is going to be a heavily utilized system, in view of the scope of the application of the Act. I am somewhat concerned, however, about the inclusion of any other laboratory by virtue of paragraph (b), which is a laboratory—

“(b) approved by the Minister by Notification.”

Seeing that we have a very high standard for the Trinidad laboratory and international accrediting do we want to open a back door for a lesser standard for an institution that is not accredited?

Sen. Ramlogan SC: We will change “or” to “and”, that is a typographical error—and that will cure, Sen. Al-Rawi’s concern.

Sen. Al-Rawi: Thank you, Sir.

Mr. Chairman: In the actual Bill it was “and” I believe. So, it was reproduced as an error here.

Sen. Al-Rawi: I am grateful for the inclusion of “and”. It meets the concern that I had. Thank you, Sir.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 7 be amended as circulated:

In subclause (2)—

(i) insert the words “Subject to section 27,” before the word “DNA” in the first place it appears; and

(ii) delete the word “may” and substitute the word “shall”.

Sen. Drayton: Mr. Chairman, let me say, I certainly want to be part of the approval of this Bill, but I do have a serious concern with this section, from the point of view, that I do not believe that the DNA profile of an innocent person, a person who has not been charged with any crime, being kept for any period of time. And the reason for this is that this is a criminal DNA bank, and by virtue of
the fact that it is a criminal DNA bank, I think it blurs the line between guilt and innocence. I certainly believe that, where you have convicted a person, particularly of a serious offence, I have no problem whatsoever, of the bank retaining the DNA profile indefinitely. But an innocent person—[Interruption] is that or under clause 7(2)?

Sen. Al-Rawi: If I could assist my colleague, the hon. Independent Senator. The creation of the bank, which is what clause 7 seeks to do, can be considered independently from those persons who ought to populate the bank; the information with respect to those. There was, in the past, a discussion as to the bifurcation of the bank between alleged persons and actual persons convicted. The literature behind that suggests that keeping those two separate databanks was cumbersome and costly, et cetera.

I join Sen. Drayton in her commentary as to the inclusion of innocent persons but that can actually be taken later down, relative to the expunging aspects in clauses 26 onward, where we could consider that; just a suggestion for her. I would like to echo, however, at clause 7, a concern that it only relates to profiles first of all, it does not relate to samples and the DNA databank itself—my thought is: how are we going to store the reference to samples at this bank?

Now, the reason I am raising this is there is an intersection between the Data Protection Act and data management, and the confidentially sections, in particular, as they relate to this Bill failing to define who owns the information on the bank and who is responsible for it. You may argue that it is the custodian. So, the question is: where are we articulating in Part III, clause 7, the storage of reference to samples as distinct from profiles? How is that going to be managed? How is the confidentially, in relation to that bank, going to be managed? Because, it is only profiles that are sought to be dealt with in clause 7, which is the vesting section to create the bank.

Sen. Ramlogan SC: We are advised that the practice has always been that the samples are retained by the Trinidad and Tobago Forensic Science Centre. If it is a concern, I would be more than happy to say that in subclause (2) we say “the DNA samples and profiles.”

Sen. Al-Rawi: Thank you, hon. Attorney General. If we look at clause 7(1) in the third line it states:

“…comprise an electronic or other collection of DNA profiles…”

and samples, because other collection would include some physical storage mechanism. It also contemplates the paper management for the Data Protection Act for cataloguing. It does, under the Act, hold samples. Forgive me for eavesdropping.
Sen. Ramlogan SC: The technical experts are advising that the databanks actually do not store the samples. What they deal with, they store the profiles. And I see Sen. Drayton, nodding her head in approval. I think that distinction is important administratively, so that the samples are kept elsewhere in a storage facility.

Sen. Al-Rawi: Here is the problem just in discussing the idea. If we look to the definition section at page 3 of the marked-up Bill:

“‘DNA data’ means information obtained from the Forensic DNA Databank;”

We go into “sample.”

“‘Sample’ means non-intimate or intimate sample.”

And this Act says that the data commissioner must comply with any other written law. Under the Data Protection Act “data” as defined under that Act includes physical things. So the problem that I have here is that nowhere in this databank of information are we imposing a responsibility—and it comes up with a concern that I will raise later in relation to the duties of the custodian. Nowhere in here are we creating an obligation for him and, his people, to manage the confidentiality of the sample or to catalogue it, or maintain it. And, the samples albeit that they are kept in a fridge, still have to be managed and maintained in a proper way. If a profile is destroyed and you go to access a sample, the sample must be catalogued in a particular way as well.

Sen. Ramlogan SC: I think we have strayed from the point, Sen. Drayton really made without dealing with it. These are quite tangential issues that can be answered separately when the point arises.

But, if we can get back to, Sen. Dayton’s point for a minute, which is the retention of a DNA sample and profile from a person who is neither charged nor convicted, and therefore, ought to be presumed to innocence. I think that is the concern.

In other countries, where they have altered the law to either not keep the sample of someone who is freed whether by virtue of their case being dismissed, or dropped, or not being charged at all, the situation is such that the detection rate is very high; the investigative capacity and the state machinery to fight crime is very sophisticated and very well developed. So that, when you look at what they have, it can manage and justify that.
In Trinidad and Tobago, we are grappling and we are in the midst of a whirlpool of crime that has engulfed our citizenry. I think one of the Senators of the Independent Bench suggested that, with the advancement of time and technology, we may very well take a second look, perhaps, at the legislation.

6.45 p.m.

But, for now, could you imagine what would happen, given the high rate of recidivism amongst the criminal elements in our society, if you, as is often the case, have a defence counsel who, by virtue of some technicality in the law or some loophole, manages to get his client off on a murder charge or a rape charge, and that DNA sample has been destroyed, and there are other criminal investigations or other crimes that the person may have committed? Had that sample been retained, you could simply pick up on the fact that he has committed those crimes. You lose that valuable opportunity.

Whereas when you look at the suspect, the suspect suffers no harm by having that DNA sample retained. His status as someone who is before the courts, and who is freed of murder or rape, is known to the whole population, because he is freed, he is on the front page of the newspapers with both hands outstretched, praying to God, hugging his lawyer and doing all kinds of things. So that everyone knows about it, and there is no social stigma attached by the retention of the DNA profile and sample.

But the retention of the DNA profile and sample serves the extremely useful purpose of enhancing the comparative analysis and the checks that could be made of the DNA database, so that if that person is involved in a life of crime, it can be detected. I think the bottom line position is, if you are innocent and your DNA sample is retained, well then—if you are innocent and you have changed your life, or you are not about committing crime, you really have nothing to fear because the thrust of this, really, is to deal with fighting crime. [Interruption]

Sen. Drayton: Sorry, I need to follow up here. I disagree with that by virtue of the fact I am not talking about a person who has been convicted and who has served a sentence and who is now out. As far as I am concerned, you have been convicted of a crime, particularly a serious crime, and if the State wishes to keep the DNA there indefinitely or 10 years, I have no problem with that. I am speaking about innocent people.

Let us assume you are parked on the wrong side of the road, you are taken down to a police station, you are charged, a DNA sample is taken, now, that case would be resolved, maybe there and then, a fine or whatever. Why would that
person’s DNA profile—I am not talking about the sample, be kept indefinitely in a databank? It is a criminal databank and as long as your profile is in that databank, you are a suspect. [ Interruption ]

**Sen. Oudit:** Mr. Chairman, could I? I am hearing what Sen. Drayton is saying, but that clause 7(2) starts off clearly, and it is bold, “Subject to section 27”. If you go to clause 27, there are 11 items that deal with when someone—and it says clearly, “in relation to a matter where the complainant is no longer able to”—[ Interruption ]

**Sen. Al-Rawi:** I am sorry to interrupt you. That relates to a complainant only; that is, persons guilty of sexual offences as defined in clause 3. A complainant, in the whole of clause 27; only a person who is dealing with a sexual offence can move to expunge a profile right now. So that is of no assistance.

**Sen. Oudit:** No no, that is very remiss.

**Sen. Ramlogan SC:** Look at clause 27(11).

**Sen. Al-Rawi:** Yes.

**Sen. Oudit:** That is very wrong, with all due respect, Sir.

**Sen. Drayton:** “…where a sample is taken from a person who is exonerated in relation to a matter under investigation…the Custodian shall cause the DNA profile derived from that sample to be expunged…after 10 years…”

So I am charged for a parking offence and you are keeping my DNA profile! You are keeping me there as a suspect for 10 years! I have a problem with that.

**Sen. Ramlogan SC:** Well, Senator, I think that is where the problem lies. You are not—[ Interruption ]

**Sen. Drayton:** You could say, “not a criminal databank”.

**Sen. Ramlogan SC:** It is not that your DNA is being kept there as a suspect. You must remember as well, people can volunteer to have their sample taken. The sample and the profile are retained in connection with the investigation and detection of crime.

Let me give you a real life example and perhaps this might assist in persuading you. In 1996, there was a celebrated case which supported the rationale for the retention. It was the case of 16-year-old Nicola Dixon. In 1996, Nicola Dixon was raped and brutally murdered. She was on her way to a New Year’s Eve party at the material time. The police took 6,000 statements after they had interviewed 11,000 persons, and they took DNA samples from over 4,000 men. Despite that mammoth effort, the killer was not found.
Six years later—it was from 1996—in 2002, a routine swab was taken from a guy called Mr. Waite, for a totally unrelated offence, some minor offence. It was in connection with a road rage traffic offence, so it is a real example on point with the one you have illustrated, just a traffic offence. Because the DNA sample was taken at the traffic offence, that person turned out to be the rapist and the murderer six years later.

The point that was made in that case, and in other cases, was that there is a distinct correlation between criminal activity on the lower end of the scale and the higher end of the scale. Al Capone, for example, was a notorious gangster and mafia man, but he was never caught murdering anybody, robbing anybody or anything, he was caught on tax fraud. Likewise, in the international law enforcement and policing theory, they are telling us now, that if you implement a proper system for trafficking offences, for low threshold type criminal offences, nine out of 10 times, when you back-pedal in that pool, there are persons who have committed more serious offences.

So that the Government, as a matter of policy, supports at this present time in our society’s development, and given the whirlpool of crime that has engulfed us, the retention of samples of suspects, persons who would have been accused or even charged for a criminal offence. Because of our low success rate in securing a conviction in the court, and because of the number of dismissals and discontinuance we have had, because of the weak machinery we have had in place for some time now for prosecutions, it is a fact that people who are freed, whether by some technical loophole being exploited, whether for lack of evidence, or whether they murdered one of the prosecution’s witnesses and they won their case, we think that to err on the side of caution, we prefer to retain their DNA sample so that it can be of use in the future investigation and detection of crime, and we maintain that policy position for this reason.

The harm that is done to the person who is presumed innocent, who was a suspect or who was charged for an offence, when one looks at it, is minimal and modest. If any harm at all is being done by retaining their sample and profile, as compared to the vast possibilities of meaningful contributions it can make in the fight against crime. When you weigh them both, side by side, ask yourself: what harm is being done to the accused person by retaining his DNA? And on the other side, ask yourself: what harm could be done to society if we allow that person’s sample and profile to be destroyed? And there may be crimes that they have committed that we would never detect, because we did not retain that sample as in the case I just mentioned.
Sen. Drayton: Let me just follow up with one comment. I listened to you very carefully and every single example you have given me was an example where there was a process ongoing in terms of investigation. I am talking about the rank and file population, who, whatever it is, at Carnival, you break a bottle or whatever it is, your DNA—I am talking about a person who is not a criminal—profile is in a databank. I am not talking about somebody who was arrested, or somebody who is a suspect for murder or rape. I am not talking about the person who has been released from jail, no. I am talking about the rank and file population, and that is the difference. That is why there is a trend worldwide now, including Britain which the hon. Minister and Members of the Government cited, removing that, based on the mandate of the European Human Rights Commission. Throughout the United States it is the same thing; throughout Canada, it is the same thing. I know that Trinidad and Tobago is different and I know that we have serious crimes that we are reckoning with. But on the one hand, I think it is good that there are some of us who want to strike a balance between the need to detect and catch the criminal and, at the same time, protect the rank and file innocent population.

I heard what the hon. Minister and hon. Attorney General said. It is logical, it makes a lot of sense, but he was speaking about people who were suspected of crimes. The person who volunteers to give his DNA, that is his or her right. The average person would have no right to say, “Remove my DNA”, and that is the difference. I will consider what has been said.

Sen. Prescott SC: Very grateful, Mr. Chairman. May I intervene? I am very much supportive of what I understand Sen. Drayton to be saying. And through you, Mr. Chairman, I am directing this to the hon. Attorney General and the hon. Minister. It is better, they say, and I agree, that one guilty person gets away, than to trample on a man’s innocence and his right to proclaim that innocence. It is that that is troubling me, because having been relieved of my sample, and having been exonerated, either by the Commissioner of Police or by the State, does not render me a person who got away; I am still an innocent person. There really is much to be said for coming out on the Hall of Justice steps and proclaiming my innocence. I am not proclaiming that I got away, I am saying that I am still innocent. My sample really ought to be removed from the hands of those who took it.

If you look at clause 26 in the Bill, there is a part that we could probably try that could assist in removing the concerns that you are now hearing. It is clause 26(2). I hope I am calling the right number. The one that says, “Notwithstanding subsection (1)…”
Sen. Dr. Armstrong: That is clause 27(11).

Sen. Ramlogan SC: Clause 26(2).

Sen. Prescott SC: Clause 26(2). Thank you. It is slightly unrelated but it allows for a court to say if satisfied that the sample might be required for investigation or prosecution, and in the example that the Attorney General used, the sample is required for some good reason to be held on to. Then the commissioner goes to the court and says, “Permit me to hold on to this a bit longer. Prescott isn’t quite as innocent as he looks.”

Sen. Ramlogan SC: What I am not hearing is: what harm does the individual suffer?

Sen. Prescott SC: Oh, pardon me, I intended to answer that question.

Sen. Ramlogan SC: Let us take the analogy: fingerprints. It has always been the case in our country that a man, whether he is freed, not charged, case dismissed, you won your case, you lost your case, the police do not destroy your fingerprints. Your fingerprints remain with the police service for all time, and that has been the case in this country forever, no one has ever complained.

7.00 p.m.

No one has ever complained. “I never hear de murderer who get loose on the steps ah the Hall of Justice say: Well, I am a free man, I have been freed of murder, now de police should geh meh back meh fingerprint or destroy it.” When we talk about DNA, it is the modern scientific analogue to fingerprints. A fingerprint is “ah” unique identifier, just like DNA. In the same way that no one has made the case for the destruction of their fingerprint, why are we now making the case for destruction of the DNA? That fingerprint database has proven to be so useful, and in the same way this DNA law by retaining the sample of someone who was suspected of the commission of a crime, can also be very useful.

In the case I cited just now, the point that is being missed is that person, the police had no way of knowing that this person was even around when the rape was committed, he was not a suspect. So they could not go to him and say: “Well, look, geh me ah fresh sample; your sample is required in connection with an investigation.” He was off the police’s radar completely, but by charging him for “ah traffic offence,” and taking the man’s DNA, they solved a six-year-old case, where a 17-year-old child, somebody’s daughter, somebody’s sister, somebody’s niece, somebody’s granddaughter was brutally raped and murdered.
Now, when I put that against the accused who suffers no harm by the DNA sample being retained by the State, I do not see why on the scales of justice we want to balance it in favour of the rights of the accused and ignore the State’s capacity to improve its detection and prosecution rate.

**Sen. Prescott SC:** Through you, Mr. Chairman, we are approaching this from two different positions. Mine is that I am innocent and, therefore, you are not weighing the rights of an accused person against somebody else. You are weighing my right as an innocent person against the duty of the State authorities to go after those who are, in fact, guilty. I do not want to challenge the AG’s knowledge on this, but it probably is that if anyone chooses to demand the removal of his fingerprints from any records, he might be able to do that successfully.

**Sen. Ramlogan SC:** But they have never—[Interrupt]

**Sen. Prescott SC:** He might be able to do that successfully.

**Sen. Ramlogan SC:** The point is that we legislate here, and we cannot do this in an academic manner. The fact of the matter is, Sen. Prescott SC is saying that if someone wants to apply to get their fingerprints destroyed, he or she could do it. I could agree with you, but the point is that no one has ever applied for that to happen, and the reason is because it really does not bother them. It does not bother them because it simply does not affect them.

**Sen. Drayton:** If I may, Mr. Chairman, a fingerprint and a DNA are two different things, and if—[Interrupt]

**Sen. Ramlogan SC:** Not when they serve the same purpose.

**Sen. Drayton:**—fingerprinting was adequate, then I do not think the world over would go through the expense and the technology to implement DNA legislation and DNA samples, they are totally different. I think the point with respect to fingerprinting is a moot point. We are trying to get the best law possible. We are trying to get a balance. We want to get the criminals, and we want to make sure that the innocent are not caught up unfairly.

**Mr. Chairman:** Just to get all the opinions, Sen. Prof. Ramkissoon, do you still want to respond or was it taken already? Sen. Deyalsingh.

**Sen. Deyalsingh:** Thank you, Mr. Chairman. I just want to start off by saying we are here to work with the Government to get the best possible law passed. However, I think the point Sen. Drayton was initially making was that you have a range of offences and under this piece of legislation a person’s DNA would be kept for very minor offences. Now, we could go to the Criminal Offences Act which lists all the
indictable offences, if this is the sort of route to determine which offences DNA would be kept for. In this Act you have offenses like publishing or printing material. So when Sen. Abdullah was in Guyana what he was doing, is that proportional to keeping this DNA legislation? I think not.

The Act goes on to speak in section 6: if you are caught selling unwholesome provisions, it is a criminal offence. So if I sell rotten tomatoes, I have committed a criminal offence under this Act, and my DNA is kept. I think that is the proportionality Sen. Drayton was trying to get to.

If you remember, Mr. Chairman, in the original debate in November, we were pointing out to the Government that there needed to be some sort of classification of offences that fell under this Act. So that crimes like printing and publishing material do not fall under it. Crimes like selling rotten tomatoes and unwholesome provisions do not fall under it, which is the law. I think that is the problem we are looking at here, and Sen. Drayton’s original point was railroaded and went off on a totally different tangent.

Mr. Chairman: At that point may I indicate really we are not on clause 6 at all, we are on clauses 26 and 27, and so we are ahead of ourselves.

Having said that, Sen. Dr. Armstrong, you wanted to make—[Interuption]

Sen. Dr. Armstrong: Mr. Chairman, the point that I was going to make is really to support what my colleagues on the Independent Bench had been arguing, because I picked up on clause 27(11) which refers to the same thing, but as you said we are not there as yet. But I also have a concern about the retention, and I picked up on it really in clause 27. If someone is innocent, why are you really holding on to it? And if we were to take the argument being made by the Attorney General, I see one of two things: either we expunge it or we keep it indefinitely. Why 10 years? What is 10 years? Suppose you discover in the 11th year, as you say, that you held someone for a minor accident? It is either we get rid of it or—why 10 years? Because you might pick up the person in the 11th year, the 12th year, the 13th year, how did you arrive at 10?—notwithstanding what the Minister of Justice explained with respect to the 10-year window. So that is the concern that I have really, but as you said we have not really reached—[Interuption]

Mr. Chairman: We have not really reached—[Interuption]

Sen. Prescott SC: Mr. Chairman, I should like to have a go again please.

Sen. Ramkhelewan: Mr. Chairman, if I may. If you resolve this problem now, when we get to clause 27 and so on, we would run past it very quickly. I want to raise a point for the attention of the hon. Attorney General. He spoke to the
question of the size, scope and capability of our law enforcement agencies. But on the other hand very often I see and hear in the news that we know this fellow, he is a well-known criminal, and we know this one, and we know who the criminals are. Therefore, in terms of trying to balance the situation, if we know who the criminals are and we take the case of the tomato vendor selling rotten tomatoes, and so on, we know that it is—I do not know if there is such a thing as a minor crime, but it is not a serious crime in nature, then why can we not—once it is established that someone is innocent and in a small-island society, which you have claimed would have different levels of sophistication, but you know who the criminals are—set this one aside?

I am listening to your case, but I have not heard a sufficiently convincing argument. I have heard your argument repeatedly, but I have not heard a sufficiently convincing argument for holding on to those records, especially as we see the modern practice evolving in other areas with regard to the expunging of those records.

Sen. Ramlogan SC: Well, you see, there are several things. The reason we read that the police—and I see it all the time too—know that this one is a criminal, they know that one is a criminal, and they are not behinds bars, it is because the present toolkit they have does not contain this kind of law.

Sen. Ramkhelewan: But now they will have a toolkit to deal with suspects.

Sen. Ramlogan SC: Hold on. If when they do that, you then have to destroy it, you lose again the vital tool of trying to link them with crimes that they might commit in the future.

Sen. Ramkhelewan: You are destroying it only on the basis that the person has been deemed innocent; you could take another sample.

Sen. Ramlogan SC: May I just point this out. Do you know that the law as it currently exists—to deal with Sen. Dr. Armstrong’s point—which was passed by Parliament in 2007, allows for the samples to be retained indefinitely. So when we moved it from indefinitely to 10 years, in light of the concerns expressed during the debate, we were trying to respond positively to a criticism that was advanced by the Independent Bench. Maybe we should have left it as indefinitely.

Sen. Al-Rawi: Mr. Chairman, first of all, relative to clause 7 itself, there are two issues. The AG took us back to the issue of linking back, in fact, not only clause 27, but clause 26; relative to the structuring of the bank there are two points I would like to make. Relative to the databank itself, I think the clause is
missing the cataloguing of samples per se, and we need to factor a reflection on clause 26 as it is currently suggested. Not only clause 27, but cause 26 which deals with samples. Relative to the Attorney General’s last point, the reason it could have been held indefinitely as well was that it was given with consent, and there was a process in the 2007 law to actually approach the court as well, Mr. Chairman. So we are not comparing apples with apples, in fact, it is far from the case.

Mr. Chairman: I would like to suggest, there is the question of samples; I do not know if the Senator is saying that clause 26 deals—or he wants to deal with it at 7. But can we restrict the debate at this point to clause 7?

Sen. Al-Rawi: You see—[Interruption]

Mr. Chairman: The question, I understand, of samples arising, we could treat with that issue—[Interruption]

Sen. Al-Rawi: You see, Mr. Chairman, because clause 7 refers to—is subject to 27, there is an inextricable link. Now, it can intellectually be divided, we can deal with the structure of the bank, per se, and then decide whether it is eliminated upon acquittal into clauses 26 and 27. I do think that it is possible, subject to what all Senators have to say, to this aggregate the discussion of clause 26 and clause 27 from this clause but, I do think that clause 26 needs to be factored, because it is clause 26 that says—[Interruption]

Mr. Chairman: Are you saying it should be “subject to sections 26 and 27”, is that your point?

Sen. Al-Rawi: Yes, Mr. Chairman. And that is because clause 26 deals with, subject to sub sections (2) and (3) where a sample is not destroyed the Trinidad and Tobago Forensic Centre shall keep the sample for a minimum period of 10 years. So without getting into a discussion about how palatable keeping it for 10 years is, clause 7, which establishes the databank, does not contemplate the management of a sample, per se, and if we are creating—this is in a sense, enabling legislation, we must at least have provisions that dictate how the sample is to be dealt as well.

Mr. Chairman: I understand. You want to introduce “subject to sections 26 and 27’ those are under consideration?

Sen. Al-Rawi: Yes, Mr. Chairman.
Sen. Deyalsingh: Mr. Chairman, if I may just be heard. To soothe the Attorney General’s concerns about repeat offenders, and I agree with him, and to soothe persons who do not want their samples to be kept indefinitely, would clause 14, hon. Attorney General, give you enough wiggle room, which is the taking of a repeat sample so that even if samples are destroyed before 10 years, you still have the option of invoking clause 14 to take a repeat sample?

Sen. Ramlogan SC: The concern I had with that, Sen. Deyalsingh, was that the person first had to be a suspect, and many times, as in the case I just cited, you do not even reach the stage of suspecting the offender, but you pick them up on some other routine “kinda” thing. You might “pick up ah man” for burglary, only to find out that when you match it with the DNA database, he had raped somebody five years ago and that is the concern.

One Senator said: “Well, look this”—I hear Sen. Drayton, that other countries have gone in a different direction. We can cite examples between poor, rich, developing, First World, Second World. The question is: where are we in Trinidad and Tobago now with respect to crime? And the simple issue it boils down to is this, and I asked the question before, how is the man going to be adversely affected by the retention of that sample? Sen. Prescott SC, you said that you were going to answer it, and you did not get back to me on that.

I am telling you how the State in the dispensation of criminal justice can be affected, and it can be affected because someone who is guilty of a crime could escape prosecution, because they would escape the detection of that criminal offence. What I want to know, when we put that benefit on one side of the scale of justice, we have to now consider the right of the accused and the right of the innocent, as the case may be. Now, in considering that right, what harm comes to that person by retaining that DNA sample and profile, given the fact that the only use to which it is going to be put is to run the database against any DNA samples picked up at the scene of a crime, to see if this person is linked to the commission of a criminal offence?

7.15 p.m.

That is the only purpose for which this thing will be used. In other words, if the guy is deemed to be innocent because the case get “throw out” or somebody “kill off” the prosecution witness and so on, he really has nothing to fear unless he commits another offence.
Sen. Dr. Tewarie: Mr. Chairman, I just want to make another comment because this has gone on so long. I am very sympathetic to the arguments on the Independent Bench which speak to the issue of democracy and to the issue of presumption of innocence, or proven innocence and, therefore, you do not have to carry the burden. I am even sympathetic to some of the arguments on the Opposition Bench, but I want to say this. I think that there is a premise that is being taken for granted, which I do not think is correct, and which is that the purpose of a databank, whatever the nature of the data, is to be as comprehensive as possible. That is the first thing.

The second thing is that the pool that this Bill addresses is not the pool of the entire nation, but the pool which comes into contact with the law, at the very minimum, on suspicion of a crime.

The third thing I want to say is that the whole purpose of going to DNA is that the technology now allows us, on the basis of DNA, to say yea or nay with certainty and, therefore, there is no danger to the innocent in the existence of a DNA sample in a bank; nor is there a danger to democracy. I do not understand the premise of the argument, therefore all the subsequent arguments, in my view, do not hold the weight that they are presumed to have.

Sen. Prescott SC: Firstly, in an attempt to answer the hon. Attorney General, I was thinking anecdotally of persons who, today, are required very often to obtain certificates of good character. They are required to go to the Commissioner of Police for that.

It is a fact that the Commissioner of Police merely reports on a prior conviction, but if, as we are predisposed to do, I come, a person who is known to the police because of, probably, some domestic violence activity which has brought me into connection with the police, I run the risk of the commissioner delaying or refusing to issue a certificate of good character, notwithstanding that I have not been found guilty of any offence, because I am what is called, “known to the police”.

So I thought maybe we should endeavour, unless it is the Government’s view that we ought to be really starting—and I think the term came from Sen. Baynes, I am not sure—a popular national databank—I cannot remember how he put it—unless we are starting a databank of DNAs. Let us tell the country that: “Everybody, as you get to a certain age, you will go into the databank. It is not going to harm you in any way. You are still innocent.” I do not know that is what we want to do. We are sending a message out there that everybody can find his relevant DNA data stored somewhere in the event that he should beat his wife, Minister of Justice. We do not want that.
I am proposing that we consider—maybe an assurance that we will come back to it—introducing something along the lines I was pointing out in 26 where the court may say, or the forensic people we just looked at—

**Sen. Ramlogan SC:** It was 26(2).

**Sen. Prescott SC:** It was 26(2) and we had come to another clause where, after 10 years, the custodian himself may say: “I am going to expunge data”. That is a part of clause 27 also. Let us look for a formula that says that there will be some institution that may say, even before the 10 years have expired, in relation to that person who has not been found guilty or who has not been charged at all, we shall remove it. There is no reason to keep it. Why? Because he is not known to the police.

**Sen. Ramlogan SC:** Can you help us with 26(2)? How would you formulate 26(2)?

**Sen. Prescott SC:** If you assure me you will come back to it, I will take my time and write it up.

**Mr. Chairman:** Can we go back to clause 7?

**Sen. Al-Rawi:** Mr. Chairman, I am specifically proposing, in terms of an amendment, that clause 7 include, in the third line of 7(1), reference to “sample” and that there be some form of inclusion of a provision by way of reference to clause 26 as well. That is the section that deals with samples in similar fashion to clause 27 dealing with profiles.

**Mr. Chairman:** What does that have to do with databank that form a collection?

**Sen. Al-Rawi:** Clause 7 says:

“There shall be a DNA databank to be known as ‘the National Forensic DNA Databank of Trinidad and Tobago’ which shall comprise an electronic or other collection of DNA profiles attributed to individuals or crime scenes.”

I have caught your point that your databank is meant to deal with profile management, but nowhere in the Bill is there anything that says how you are to manage and imposing an obligation on the person to manage relative to the samples, save in respect of secrecy later on or non-disclosure; but the management, collation or integrity of that sample is not dealt with.

**Sen. Ramlogan SC:** Could we, perhaps, look at that when we come to Part IV, which deals with the samples?
Sen. Al-Rawi: The only reason I raised it is that I thought that Mr. Chairman was going to ask whether clause 7 was going to be accepted as it is.

Sen. Ramlogan SC: Part V, which deals with samples, might be the appropriate place. It is not that we are totally against it, but the appropriate place to look at it might be Part V. Your concern is that there is nothing that speaks to the management of the samples that are taken.

Sen. Al-Rawi: Yes.

Sen. Ramlogan SC: And Part V deals with the obtaining and we can deal with it there; the management of the samples, if need be.

Mr. Chairman: Is it a question of adding clause 26?

Sen. Al-Rawi: Mr. Chairman, through you to the hon. Attorney General, I refer to the fact that many cases have arisen in relation to who you hold accountable for breaches; whose property the information is. This is actually something that has come up in England because, in creating the databank in England, they vest it in a particular institution and they give that institution ownership, ownership also in terms of responsibility, so if I wanted to compel—

Sen. Ramlogan SC: Would I solve your problem if in clause 5 we said:

“Trinidad and Tobago Forensic Science Centre shall be the official forensic DNA lab for Trinidad and Tobago which shall have ownership over all samples and profiles.”

Sen. Al-Rawi: That may be a little complicated. I will say why. If you borrow the concept from copyright law, the moral right to the sample may vest somewhere else as opposed to the physical right.

Sen. Ramlogan SC: We want to vest it in the TT Forensic Science Centre.

Sen. Al-Rawi: If I could think about that; I am grateful for the concession in thought. I am not sure.

Sen. Ramlogan SC: Custody, power, possession, control, ownership, management, whatever words, but the point—

Sen. Al-Rawi: I was thinking, hon. AG, that when we got down to clause 10 for instance, when we go down to the “custodian shall maintain forensic DNA databank”, I was going to make the observation relative again to samples and responsibility for data management. So clause 10 was probably the place where I could have vested it.
Sen. Ramlogan SC: Why do you not formulate it and we will consider putting it in clause 10?

Sen. Al-Rawi: The problem then remains with respect to clause 7 and how it ties back to, for instance, 26 and the concept of sample inclusion. If we are going to vest it into 10, there is a correlation between 7, 10 and 26 therefore.

Sen. Ramlogan SC: If we put it in 7, there may be a consequential amendment that needs to take place in 26 and 27.

Sen. Al-Rawi: The problem is the vesting of responsibility to the hon. Vice-President.

Sen. Ramlogan SC: We are minded to consider that when we come to clause 10, the responsibilities of the custodian.

Sen. Ramlogan SC: [Interuption] Mr. Chairman, we are prepared to accept the point. The question is whether or not it ought to detain us at this point in considering the Bill. I do not know if the Senator is prepared to consider it later on in clause 10.

Sen. Al-Rawi: I think that we may have stumbled upon some of the confusion. The hon. Minister of Justice has pointed out to the fact that the custodian manages the Forensic DNA Databank and that the Trinidad and Tobago Forensic Science Centre would manage the samples. In trying to consolidate the provision, we have two different authorities. The question is how the two articulate.

We are creating the authority to take samples under this Act, we are sending that to one institution and then we have a bank which manages profiles. We then, later in the Act, come on to deal with destruction of samples and destruction of profiles. The question is: how do we maintain the management of these two things, whether they should be included in one or not?

Mr. Volney: Well, clause 5 covers the DNA lab, you know.

Sen. Ramlogan SC: Clause 5 would cover both. They both fall under the Trinidad and Tobago Forensic Science Centre. So, if you want to tack on anything at the end of clause 5, we are prepared to consider it. We think, as drafted, it is implicit in clause 5 that the Trinidad and Tobago Forensic Science Centre will be in control, have custody, possession. [Interuption]

Mr. Volney: For purposes of this Act, the Director of the Forensic Science Centre shall have control, custody of all samples submitted for DNA purposes.
Sen. Ramlogan SC: The place you appoint has to be included, if anywhere, it could be in 5, but you are not telling us how you want to consider its inclusion.

Mr. Volney: For the purposes of this Act, the Director of the Forensic Science Centre shall have all custody, et cetera, et cetera, of all samples submitted.

Mr. Chairman, while the drafting is being done here, to allay the concerns of Sen. Drayton and Sen. Baptiste-Mc Knight, given my experience in criminal practice at different levels, the fact that someone has been found not guilty does not mean that they are no longer a person of interest to the State. Most cases are dismissed on the basis of want of prosecution.

7.30 p.m.

Alternatively, you may have a case that starts off with all the witnesses. Some are culled in the process, and once you get rid of the sample within which closure must be brought—that is the 10-year period—a sample is critical to be kept just in case it is used to corroborate either that crime or to link back to that crime by similar fact evidence.

So, it is so important that you appreciate that when somebody is found not guilty, it does not mean to say that they are necessarily innocent. This is carried to the extent that when someone applies for bail, a judge is entitled, not just to consider whether the person has been convicted, but his antecedents. The antecedents include how many times he has been charged. There are many persons who know how to beat the system.

In fact, any lawyer will tell you, when you have a bad case against your client, you run it out in the system until the witnesses no longer show interest and the case is thrown out. That does not make the person innocent of the offence, and it can always be brought back if it is on indictable information.

So nothing is closed except when the evidence has been heard and the case is dismissed on its merit. So, having said that I want you to be careful of this notional concept of innocence and the criminal law; when we come to discuss the other issues, I want you to be mindful of that, hon. Senators.

Sen. Ramlogan SC: And just to follow on Sen. Prescott’s illustration about the police certificate of good character. If the police have reason to believe a man may be involved in a life of crime, or he is known to the police, whether they have a DNA sample or not, the police, right now, as things stand, may have paused for a cause before they issue that certificate of good character and they do have a discretion as to whether to give it to you or not.
In fact, I may say on the contrary, the police may be more likely now to consider giving the man a certificate of good character having regard to the fact that they have his DNA sample, and they cannot connect him to any investigation of any crime. They might give it to him, rather than what exists now, which is, that they operate on the basis that I think you are a person of interest and, therefore, I am not going to give it to you.

I repeat the question, if that is the lone illustration or example of the harm that is likely to be suffered by the person who was accused or suspected of committing a criminal offence, is that really good enough to jettison the benefit that could come from the retention of the sample by the distinct correlation that exists in all the empirical data that says that recidivism is such—you get people for big offences by holding them for small offences? The Waite case I cited was a road traffic incident that led to a rape and murder suspect being held, prosecuted successfully and convicted. That is what we are dealing with.

**Sen. Al-Rawi:** One of the harm factors also includes students who are applying for visas to go to universities, certificates of character. In the Marper case, for instance, it included a request to expunge not only DNA profiles but fingerprints as well, because there was a hit in respect of certificates of character for employment. So, if you look at it from the veil of the innocent, there are complications with respect to it. I accept and applaud the concept there, but it is the difficulty in the proportionality that I am concerned about. Just to jump back to a previous point though, I have looked at considering an amendment to clause 5, and just to throw out an idea here for the conceptual understanding first, one of the problems in this Bill is that we are splitting sample and profile between two institutions. We are regulating that the DNA databank is to be managed by the custodian, and we are providing certain powers and safeguards in relation to that.

When we come to clause 30, for instance, we deal with offences for disclosure of DNA profiles and DNA data, which exclude the disclosure of a fact of a sample being done. The problem is when we deal with the Trinidad and Tobago Forensic Science Centre, all of the authority to be dealt with there or the caution to be dealt with there, much of it is implied as opposed to expressed. So the problem that I have there, in this enabling Bill—forget whatever existed before, if we are dealing with the concept of who owns the responsibility to manage, not only the profiles but the samples, that is the problem that I am having here.

**Sen. Ramlogan SC:** There are two points, just to respond briefly to your point. If that is the second example of the harm that will come to the suspect whose sample is being retained, that he will not be given a visa because his DNA
sample is in the DNA database, again, I say two things: presently, the United States of America Embassy or any embassy, there is no complaint that a man whose fingerprint was retained by the police was ever refused a visa, and there is no provision in the law to authorize the provision of that information for the purpose of a visa application in any event.

**Sen. Al-Rawi:** Under a certificate of good character.

**Sen. Ramlogan SC:** In fact, the offences section may make it expressly an offence, and we can treat with it there if you look to say that the closer of that—we can say in law that the disclosure of anything to do with persons’ DNA profiling or sampling otherwise than for the purpose of and in connection with a criminal investigation is a serious criminal offence for which you can be jailed and so on. You can put that there. In other words, anytime you disclose a person’s sample or profile, other than in connection with the investigation of a criminal offence, we make that an offence.

**Sen. Drayton:** Did we not agree that Sen. Prescott SC will do an amendment for us to consider?

**Sen. Ramlogan SC:** Yes, I see he is busy writing so I do not want to disturb his thought process. Sen. Al-Rawi, we formulated an amendment that may take care of your point and it is to put in clause 5(2) if we insert in 5(2)—your concern is about who manages and so on that:

> The Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA profiles and samples.

This is what we want. Clause 5(2) will read:

> The Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA profiles and samples.

You can even put ownership if you want. Sorry, what does that do to—?

**Sen. Prescott SC:** Clause 7(1), are they unrelated?

**Sen. Ramlogan SC:** They are unrelated to the extent that the DNA databank falls under the jurisdiction of the Forensic Science Centre.

**Sen. Prescott SC:** So they are related.

**Sen. Ramlogan SC:** Well, depending on which side of the coin you look at.

**Sen. Prescott SC:** Is this a good time for my suggestion?
Sen. Ramlogan SC: Well, while Sen. Al-Rawi is pondering on what I said, in the meantime, yes certainly.

Mr. Chairman: Which clause are we on?

Sen. Prescott SC: Actually, the way I have worded it does really suggest that we should look at it when we get to clause 26, so I do not mind waiting, but I could mouth it now, and maybe the technical people can look at it. May I just dictate it and it could be looked at in the interim?

Mr. Chairman: Sure.

Sen. Prescott SC: It is to delete clause 26(2) and substitute it with the following:

“Upon application by a person from whom a sample has been taken under this Act, the court shall order—”

Sen. Ramlogan SC: Is it “shall” or “may”? 


“—that the sample be destroyed unless the court is satisfied that the sample might reasonably be required for the investigation or prosecution of an offence.”

Now, the only thing that I would have liked to say there is who this person that will satisfy them is. It will either be the CoP or the DPP, but I do not think it is absolutely necessary, because investigation and prosecution belong in this stance. So should I read it again?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: It should read:

“Upon application by a person from whom a sample has been taken under this Act, the court shall order that the sample be destroyed unless the court is satisfied that the sample might reasonably be required for the investigation or prosecution of an offence.”

It is something we will come to when we come back to clause 26.

Mr. Chairman: What I propose to do is, usually we will come back to clause 5, which you have now proposed another amendment to. So we will mark that for later. Of course, Senators may take cognizance of the fact that there is before us a wording put forward for consideration that might address other issues that might arise in your minds as we go along. The matter actually before us is clause 7 and, of course, we will do the same and take into consideration Sen. Prescott SC’s suggestion at clause 26(2).
Sen. Al-Rawi: Mr. Chairman, relative to clause 7, insofar as the Trinidad and Tobago DNA Databank—the National Forensic DNA Databank of Trinidad and Tobago will be a division of the Trinidad and Tobago Forensic Science Centre, and insofar as we are contemplating the inclusion of subclauses (2) to (5), would it be possible to consider in clause 7, after the word “shall” it should read:

There should be a DNA databank to be known as the National Forensic DNA Databank of Trinidad and Tobago, which shall comprise an electronic or other collection of DNA profiles attributed to individuals or crime scenes.

If we were to include the fact that this National Forensic DNA Databank of Trinidad and Tobago is specifically a division of the Trinidad and Tobago Forensic Science Centre; state it that way so that it is a part of the institution, we would be taking care of where it is housed, who manages it, what the form of inter-articulation is between the two institutions, and we will be marrying some concerns relative to the management of samples versus profiles. Right now, as it stands, I do not know; is it possible that this databank which is being created by this Bill can move to some other place—the anchoring of this Bill into someone other than the custodian?

Sen. Ramlogan SC: If that will make you happy, we are prepared to consider it.

Sen. Al-Rawi: Not happy, but what works for you as well, in terms of will it make sense.

Sen. Ramlogan SC: We think it makes sense as it is, but we are prepared to consider that amendment in the interest of a compromise, because we say it is implicit but clear that it all falls under the Trinidad and Tobago Forensic Science Centre.

Mr. Chairman: Should we, perhaps at clause 5(2) say, “including the National Forensic Databank of Trinidad and Tobago.”?


Mr. Chairman: It seems a little awkward bringing it into clause 7(1).

Sen. Prescott SC: Mr. Chairman, putting it where you suggested does appear to me to be awkward. I think we need to establish the bank in the way that clause 7 has said it, “there shall be a bank”. It is really only a question of where you put it. Do you put it in alignment with clause 5?

Sen. Ramlogan SC: I think it should be in 5(2).
Sen. Prescott SC: Okay, let us combine clauses 5 and 7 and make a proper alignment. That is my only intervention.

7.45 p.m.

Mr. Chairman: Well (2) could come in as a (3) in 7. Clause 5(2) could come in as (3) and then add on the “National Forensic DNA Databank”.

Sen. Prescott SC: Once it flows.

Mr. Chairman: And then we do not have to come back to 5, I mean that is part of the benefit of it.

Sen. Al-Rawi: Mr. Chairman, I very much like the idea of coming back to 5 to include that the Trinidad and Tobago Forensic Science Centre shall have custody and control over all DNA purposes.

Mr. Chairman: We will do that. I am saying that but that clause is suggested to come in as 7(3), and be expanded to include the National Forensic DNA Databank. I think the point being made by Sen. Prescott SC is that we are referring to the National Forensic DNA Databank before it had been dealt with under the Act.


Sen. Volney: We will have to change the heading for Part III, also.

Mr. Chairman: The question is really that clause 7(1), be amended as circulated, and also further amended to include a further subsection (3) that reads:

“—the Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA samples and profiles, including the National Forensic DNA Database of Trinidad and Tobago.”

Sen. Volney: Yes.

Sen. Ramlogan SC: That is right.

Sen. Al-Rawi: Mr. Chairman, I am sorry. I like the language of the clause, but I do think in terms of establishing the architecture that would better be fitted into clause 5; only because you go first to create the centre as the official DNA laboratory; so we should then say what should be in there and then establish the bank. I follow the intellectual difficulty in saying: “Well look, let us create the bank first and then vest it somewhere.” I mean, it is a matter of how we do that.

Sen. Prescott SC: This is where the architects sitting next to the Minister come in.
Mr. Chairman: Which one you all prefer?

Sen. Volney: Could we move on and then the technocrats would sort that configuration out and then come back to 5.

Mr. Chairman: If we do that we would have to come back to clause 7 and defer it. We can move, he is right. We will move on.

Sen. Ramlogan SC: Well, I think we have agreed on it, it is just where to put; it is either in 5 or 7. The Government really, you know—


Sen. Ramlogan SC: We prefer 5, that is fine. I see no difficulty in putting it in 7, but 5 is fine as well, equally. Clause 5(2)

Mr. Chairman: Clause 5(2); so we would come back to 5 at the end of it.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.

A. In subclause (1) insert the words “a public officer and shall be” after the word “be” in the second place in which it occurs.

B. Delete subclauses (2) to (6).

C. Insert the following new clause after subclause (1) and renumber accordingly:

“(2) There shall be a Deputy Custodian of the Forensic DNA Databank who shall—

(b) be a public officer; and

(c) in the absence or incapacity of the Custodian, act in his place.”

Sen. Al-Rawi: Mr. Chairman, I am sorry. Much of what we are about to discuss now relates essentially to the profiles. Until we come down to destruction of samples at clause 26, and then clause 27(10) the profile from a sample, and then clause 30 which relates to offences for tampering with samples; nowhere else in here do we deal with samples.

So the problem is, logistically, we are going to be dealing with the collection of samples by authorized persons and by police officers. Those samples then run through a chain of custody. They get up to the Trinidad and Tobago Forensic Science Institute. When we get there we have nothing in this Act which deals with
DNA samples, which manages the collation and registration of those samples when they arrive there. If I use the example, let us say in Mayaro, a DNA is taken, a buccal swab is taken, and they log it into the police diary, “Look, we took a buccal swab, it is now in the correct container and we are sending up to the lab”; surely when it is entered into the diary at the station, there should also be a call made to the centre to say, “Well look, you can expect this come tomorrow.”

So there is some form of reporting from satellite division into central division. When I get to central division now where do I catalogue this thing? Who do I put in charge of making sure that it is done properly other than having to rely upon the Data Protection Act? This Act is silent on how we deal with all of those things and that is what concerns me, and why I was reluctant in allowing clause 7 amendments, and now 8.

Mr. Chairman: Is there room for regulations to be made. I would have thought that those matters were fit for regulations.

Sen. Al-Rawi: Sure, but at least there must be the parent clause to put the responsibility somewhere, because if we cannot measure it or define it then somebody is relying upon an implied invocation to deal with it.

Sen. Ramlogan SC: Mr. Chairman, I think that is a matter that should be left under the regulations. Alternatively, these are administrative matters that really can be more appropriately addressed outside of the legislation itself.

Sen. Abdulah: Mr. Chairman, clause 23 does specify what the police officer must do. Clause 23, says:

“(a) place the sample in a container;
(b) seal and label the container with an identifying mark;
(c) place the container in a package”—and so on.

Sen. Ramlogan SC: That is the existing law.

Sen. Al-Rawi: The concept of DNA register that I am looking at, we have eliminated in the old clause 27 or 29 in these proposed amendments out there the whole concept of register. So it is one thing to say in the Trinidad and Tobago Police Service, “Take your samples, put it in the containers”, et cetera, but we must at least have points of reference for inspection.

Hon. Senator: They probably might have to use a diary.

Sen. Al-Rawi: Yes, I know, but there is no obligation in respect of it.
Sen. Ramlogan SC: But those things can be dealt with in regulations and are more appropriate to be dealt with in regulations. Remember the police standing orders have things about those things.

Sen. Al-Rawi: I am just thinking about it. I am just thinking.

Sen. Ramlogan SC: Chair, I think Mr. Ramkhelawan and Mrs. Drayton wanted to say something.

Mr. Chairman: Mr. Ramkhelawan do you have a comment?

Mr. Ramkhelawan: No, nothing.

Mr. Chairman: Mrs. Baptiste-Mc Knight?

Sen. Baptiste-Mc Knight: Mr. Chairman, I am fully in agreement with what Sen. Al-Rawi is saying. In the original Bill at clause 27 there is a DNA register, my objection to this clause as it stood was the fact that it did not deal with a register. It was a plethora of registers kept wherever a sample was taken.

Sen. Ramlogan SC: Yes, and all the police stations would have had to have a register each.

Sen. Baptiste-Mc Knight: Right. My point is, that there is need for a central register which simply means that each receiving station reports whatever samples they have taken for the day to the central register, which I assume would be at the forensic centre, so that the forensic centre has a register of how many samples are taken each day, each week, each month, that they can net off with the samples when there are actually received.

Sen. Volney: But the Forensic Science Centre has its own protocols for recording and registering the intake.

Mr. Chairman: But what we are saying is that the custodian shall be responsible for receiving, registering and storing, would that satisfy the—

Sen. Volney: Why the Custodian?

Mr. Chairman: Well, I assume he was the person to do it.

Sen. Volney: The custodian does not deal with the sample.

Sen. Baptiste-Mc Knight: As a matter of fact, it could just be the centre, so that the director of the centre makes arrangements like government chemists receives samples every day from all over the place. It is not specifically in their Act to say how the samples are dealt with, but they have to keep a register of the samples.
Sen. Dr. Tewarie: Is not that covered in 24(2); subclauses (a), (b) and then (i) to (v). All these things—

Sen. Baptiste-Mc Knight: That again deals with profiles.

Sen. Abdulah: Samples.

Sen. Dr. Tewarie: All the reference to name and designation et cetera, would it not be assumed that they are a documentation process?

Mr. Chairman: Record it in a log.

Sen. Al-Rawi: Perhaps we could blend if we think of it this way in terms finding a solution. In the deleted paragraph old 27, which is at page 22, of the marked-up Bill, the one that has the amendments:

“A register to be known as ‘a DNA register’ shall be established and maintained”—and we could have said for instance, “by the Trinidad and Tobago Forensic Science Centre.”


Sen. Al-Rawi: That then creates the register and then the mechanisms in 24(2) could perhaps deal with that.

Sen. Ramlogan SC: The truth of the matter is that register will, in any event, be maintained, so that we have no difficulty putting it in, because as a matter of administrative normal management, that register would have to be maintained. So we have no difficulty with that. Sen. Baptiste-Mc Knight?


Sen. Ramlogan SC: Okay, that is fine. And I think it is actually useful to put that in the law so that it is a requirement by law.

Mr. Chairman: Are you suggesting that at clause 8?

Sen. Baptiste-Mc Knight: No, that is 27.

Sen. Al-Rawi: Chairman, you are actually correct, because clause 7 creates—if we look at architecture, clause 5 recognizes the Trinidad and Tobago Forensic Science Centre as the head having its division, clause 7 we go to create the bank and then we see where that is dealt with, so perhaps somewhere around clause 7 perhaps a new clause 8, we could deal with the creation of the register and then clause 24 then comes to feed into that register. In fact, it could be 5(3).

Sen. Volney: So where should that fall?
Sen. Al-Rawi: Perhaps, just for discussion, it could be in clause 5 in a new subclause (3). If we are contemplating a new subclause (2)—

Sen. Ramlogan SC: Well, we will give a (2) so we would put a (3) to it.

Sen. Al-Rawi: And then lift the language from the old clause 27 on page 22:
“A register to be known as ‘a DNA register’ shall be established and maintained by the Trinidad and Tobago Forensic Science Centre.”

Sen. Volney: I would think that that would come better under 24(2), when the package is received at the Trinidad and Tobago Forensic Science Centre.

Sen. Al-Rawi: Well then you could refer to it in 24, and say that it is to be entered into the register already created. Why am I suggesting 5, is that in 5 we are dealing with the Forensic Science Centre, so recognize it, say what its responsibilities are and then create the register.

Sen. Ramlogan SC: Yes. I think a 5(3) might solve the problem.

Sen. Volney: But you do not want the custodian to take charge of the sample.

Sen. Al-Rawi: No. No. He is not. In clause 5 we are dealing with the Trinidad and Tobago Forensic Science Centre, so they are keeping that register.

Sen. Volney: Okay, add clause 5.

Sen. Al-Rawi: Yes.

Mr. Chairman: He wants 5(3) to read—of course we would have to come back to this but I am taking a note of it. What is the wording?

Sen. Al-Rawi: Clause 5(3), only for discussion subject to agreement, of course, should read:

“A register to be known as “a DNA register” shall be established and maintained by the Trinidad and Tobago Forensic Science Centre.”

8.00 p.m.

Mr. Volney: For the purpose of recording receipt of DNA samples.

Sen. Al-Rawi: That could come after or you could include it as a definition in clause 4 when we come back to it, because we have left the definition clause open. So it could be either a definition included—I think it would be probably easier that way.

Mr. Volney: So what is the amendment you suggested again?
Sen. Al-Rawi: I am suggesting as a new subclause 5(3) that we say:—
a register to be known as “a DNA register” shall be established and maintained by
the Trinidad and Tobago Forensic Science Centre.

Mr. Volney: For what purpose?

Sen. Ramlogan SC: Well, let us just put in the purpose right there.

Sen. Al-Rawi: We could put a new purpose.

Mr. Volney: For the purpose of this Act.

Sen. Ramlogan SC: Yes, “for the purpose of this Act;” that way you would not
have to include anything in the definition section.


Sen. Ramlogan SC: All right.

Mr. Chairman: “for the purpose of this Act.”

Sen. Al-Rawi: You can even start with that, “For the purpose of this Act”.

Sen. Ramlogan SC: You might need to start with that. [Crosstalk]

Mr. Chairman: So we are going to come back to 5. We are on 8.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed: That clause 9 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I beg to move that clause 9 be amended as
follows:

Delete clause 9 and substitute the following clause:

9(1) Without prejudice to the power of the Public Service Commission to make
an appointment to the office of Custodian or Deputy Custodian, where
prior to the making of the first appointment, after the Act comes into
operation, the exigencies of service require a person to perform functions
related to that office, the Ministry may engage a person on contract, in
order to secure the interests of the Forensic DNA Databank.

(2) The engagement of a person on contract under subsection (1), shall be in
accordance with the guidelines for contract employment established by
the Chief Personnel Officer.”

Mr. Chairman: Sen. Deyalsingh.
Sen. Deyalsingh: I will give way to Sen.—[Interruption]

Sen. Prescott SC: To elders and betters. [Laughter] Mr. Chairman, I have a general question on 9, and that is whether the appointment of the custodian is subject to the Prime Minister’s veto under the Constitution? I am thinking it ought not to be. I know that there are some esoteric points about why it should be and not be. [Inaudible] [Interruption]—would determine that and we do not need to know that here. Is it being suggested that we do not need to know that here because it may not be in the range or it may be in the range? It is just for clarification.

Sen. Ramlogan SC: It is under; it is not within the range. No.

Sen. Prescott SC: It will never climb to that range?

Sen. Ramlogan SC: But even if it does—[Interruption]

Sen. Prescott SC: Pardon me. What prompted it is that we had made some very strong efforts earlier on to avoid the political reach into this general area.

Sen. Ramkhelawan: Mr. Chairman, if I may, on that point. Many public officers, permanent secretaries and heads of department, if I recall the Constitution, are subject to the question of veto. This person will be no different as a public officer, and therefore, I do not think we want to put the thing so far out of reach—[Interruption]

Sen. Ramlogan SC: No you cannot.

Sen. Ramkhelawan:—of the arrangements of the Constitution.


Mr. Volney: Leave it as is.

Sen. Ramlogan SC: Leave it as is.

Sen. Ramkhelawan:—public officer.

Mr. Chairman: Sen. Deyalsingh.

Sen. Deyalsingh: Yes, thank you, Mr. Chairman. Under the transitional arrangements, when the hon. Minister of Justice was closing, he expressly stated his desire not to be involved in the appointments of custodians and so on. It was one of the issues raised in the debate in November, but I see under the transitional arrangements, under “exigencies of service require a person to perform functions…., “the Minister may engage a person on contract”. It seems to me to be
bringing back the ability of the Minister to appoint someone through the back door, whereas all the debate was focused on insulating this position from ministerial appointment.

I am just questioning whether this transitional arrangement is necessary, if it is a feature of all Acts, and if not, if we allow this to creep in now, are we setting a precedent for it to creep in all future Bills.

**Sen. Al-Rawi:** Mr. Chairman, just before the answer is given, I do, in consonance with Sen. Deyalsingh, support the point. I do recognize the validity of subclause 2, where the proposal is that the engagement of a person under contract shall be in accordance with guidelines by CPO. Perhaps we can consider a time frame for appointment, because the transitional provision relates to the first appointment—prior to the first appointment. I do accept that for the exigencies of time, we need somebody to fill the role. What I am concerned about is repeat performers. I do not mean to beat the issue, but if we look at the feature that appears in WASA, for instance, we could come into some criticism along that line. Is it possible that we could consider a time frame with respect to that temporary appointment?

**Mr. Volney:** It says, “without prejudice to the power of the PSC to make an appointment”.

**Sen. Al-Rawi:** Then it goes on to suggest that the Ministry can make the appointment. What happens if the appointment is for three years or four years?

**Mr. Volney:** It is again without prejudice. They could override, they could appoint someone even during the currency and the contract would provide for that, until such person is appointed.

**Sen. Ramlogan SC:** The supremacy of the Public Service Commission is maintained, so there is no issue about that.

**Mr. Volney:** It would be in the contract.

**Sen. Ramkhelawan:** Mr. Chairman, if I may. To the point that Sen. Deyalsingh is making, I think we are creating an architecture that would help in the efficiency as we inject new laws into the system.

We had a lot of controversies with the FIU and the appointment, and I think to be fair, oversights were made on both sides, both administrations, but the first appointment which bridges the gap between the establishment of all the requirements for the position under the public service, and its very long-winded
(Administration of Justice) Bill, 2011

Tuesday, February 07, 2012

[SEN. RAMKHELAWAN]

approach to making appointments—if you want to increase the efficiency of the public service, it makes good sense for us to keep this architecture as we go along with new legislation. Therefore, I think that I support the idea of the contract—the first appointment only—until the Public Service sorts itself out. Or else we would have a great lacuna in terms of what you do in the practice. Well, the time frame is set by the time when the Public Service Commission determines the appointment.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed: That clause 10 stand part of the Bill.

Sen. Ramlogan SC: Mr. Chairman, I just wanted to insert one provision in light of some changes that we have made. In clause 10, I want to say that “the Custodian shall be independent in the exercise of his functions and shall:”

Sen. Prescott SC: [Inaudible] AG, understand by that?

Sen. Ramlogan SC: The concern raised was that the custodian should not be subject to the direction of the Director of the Forensic Science Centre as such, but should remain independent.

Sen. Prescott SC: Shall we say that?

Sen. Ramlogan SC: Sorry?

Sen. Prescott SC: Should we not say that?

Sen. Ramlogan SC: I did not want to put it that way, but I thought that by doing it this way, “the Custodian shall be independent in the exercise of his functions”, that should be sufficient, yes. Because if you specify “Director” there could be others that we have not thought of; so it would be better to leave it general.

Sen. Prescott SC: So he would be required to get up everyday and protect his independence by some court action? When does he—[ Interruption ]

Sen. Ramlogan SC: No, it is really just that you do not want him to be subject to the direction or control of anyone, and that would take care of the Minister even having political influence or control over the custodian. You see?

Sen. Prescott SC: Those words to me are so much more pointed than, “shall be independent of”.
Mr. Chairman: What if we say, “shall in the exercise of his functions act independently and on his own”.

Sen. Ramlogan SC: That is fine. I have highlighted the mischief that we want to avoid.

Sen. Baptiste-Mc Knight: Mr. Chairman, can I just ask, would anybody sort of monitor this custodian’s performance or anything like that?

Mr. Volney: Administratively, the director of the centre. [Interruption]

Sen. Baptiste-Mc Knight: But you just said that he has to be independent of the director.

Mr. Volney: In the exercise of his functions within the Act.

Sen. Abdulah: At 11, Mr. Chairman, “the Custodian shall report and the report must be laid in Parliament”.

Sen. Ramlogan SC: I think we said that “the custodian shall be independent in the exercise of his functions and shall”. Sen. Prescott SC, you are not happy with that?

Sen. Prescott SC: I like the formulae you were putting forward as an alternative, by way of explanation, the thing about “shall not take directions from”. The Chairman had language that—[Interruption]

Sen. Deyalsingh: His sole discretion. [Inaudible]

Sen. Ramlogan SC: I am open to ideas, we were going to approve it as is, but I am trying to strengthen it a little.

Mr. Chairman: The difficulty with language, I propose, it creates an anomaly unless you put it at the end after “(d)”, “the custodian shall do so and in carrying such functions shall act independently”—and in the exercise of such functions shall act independently”.

Sen. Ramlogan SC: As at 10(2).

Mr. Chairman: Well you could just read on.

Sen. Ramlogan SC: That is fine.

Mr. Chairman: “and in the exercise of such function”.

Mr. Volney: Put it as at (2).

Mr. Chairman: It is just the continuation.
Sen. Ramlogan SC: It is just the continuation; it is not part of “d”.

Mr. Chairman: No. It is not part of “d”. It governs everything that went before. It is to act independently. So he shall do these things “and in the exercise of such functions act independently”.

Sen. Ramlogan SC: You would have to take off the “and” in (c).

Mr. Chairman: I see, and put a “,” after “law”, I take it?

Sen. Ramlogan SC: Yes.

Mr. Chairman: So the question is that clause 10 be amended to remove the “and” after “(c)”; to introduce a “,” after “law”, and the end of “(d)” and introduce new language reading “and in the exercise of such functions act independently”.

Sen. Ramlogan SC: That is right.

Question put and agreed to.

Clause 10, as amended, stand part of the Bill.

Clause 11

Question proposed: That clause 11 stand part of the Bill.

Sen. Dr. Armstrong: Mr. Chairman, I was just wondering under clause 11 (2), do we need that discretion at the end where it says, “or as soon as practicable thereafter”? Is there some reason for that? Sometimes these reports come two or three years after.

Mr. Chairman: Sen. Baptiste-McKnight, you had an issue?

Sen. Baptiste Mc Knight: The identical point, but I was just going further to say, please omit from “or” to the end of the sentence.

Sen. Al-Rawi: The word “or” to “thereafter”.

Sen. Ramlogan SC: That actually comes from the wording of the language used the Freedom of Information Act. It has been repeated elsewhere and that matter is a case I had done at the Privy Council, and it was felt that from a practical perspective, that flexibility is actually useful to have.

Mr. Chairman: But should you add on “but not later than”.

Sen. Ramlogan SC: You can say, “but not later than six months” perhaps, and that would solve it. Yes.
Sen. Al-Rawi: Mr. Chairman, I understood those words to take care of a situation where, for instance, Parliament was not sitting, or it was impossible to lay it, but that in itself would have provided a legitimate excuse.


Sen. Al-Rawi: I am not sure that putting the fetter there—I thought that if the words were removed entirely, the fact that Parliament had not sat, would take care of the issue. It is the same way when we compute time for instance, for negating a Motion in Parliament, that we do not count days when we sat. So there is a formula in existence to deal with that. My preference would have been to eliminate the words entirely, “or as soon as practicable thereafter.” I do see the mischief that was intended to be dealt with.

Sen. Ramlogan SC: That is used in almost every single Act that we have passed in this Parliament, and I see no reason to deviate from it because it has proven to be quite useful, given the administrative flexibility that is required.

Mr. Chairman: Parliament is required to sit every six months.

Sen. Ramlogan SC: Exactly. So I am making the concession in the six months.

Mr. Chairman: So the question is that clause 11 be amended by adding in subclause (2) after the word “thereafter” the words “but not later than six months.”

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

8.15 p.m.

Clause 12.

Question proposed: That clause 12 stand part of the Bill.

Sen. Prescott SC: Mr. Chairman, I do have an issue. In the provisions under clause 12, I would like to recommend that it be a necessity that there be a witness who signs the form that goes with the schedule.

Mr. Chairman: So, you want it in the form though or in the Bill?

Sen. Prescott SC: Yes, but I am sticking the pin here.

Sen. Ramlogan SC: Could we look at Form 1 and simply provide for a witness to sign in the form?

Sen. Ramlogan SC: And that would solve it when we come to it?

Sen. Prescott SC: Yes, indeed, thanks.

Sen. Ramlogan SC: We would look at the form in the meantime; we can approve this as is. I presume that is to avoid the possibility of anybody being coerced by police or otherwise.

Sen. Prescott SC: All those kinds of things. He might be drunk.

Sen. Ramlogan SC: It would not solve it but I hear you.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13.

Question proposed: That clause 13, stand part of the Bill.

Mr. Volney: In subclause (2)(d) insert the words “and has been charged with or convicted of a criminal offence” after the word “facility”.

Sen. Prescott SC: Chairman may I? It is cosmetic and I always feel guilty of doing it, but I do not like these semicolons in clause 13(6) appearing all over the place. A semicolon before the word “and” grates on my tympanum. [Laughter]

Mr. Chairman: Sorry, clause 13 where?

Sen. Prescott SC: Clause 13(6)(a)(i), 6(c)—

Sen. Ramlogan SC: But there is no 13(6).

Mr. Chairman: I am having a little trouble finding (6).

Sen. Prescott SC: Am I looking at the wrong number? Oh, I am in 14, do forgive me. Forgive me, Chairman. [Laughter]

Question put.

Sen. Prof. Ramkissoon: Mr. Chairman, I am not very comfortable with the definition of “suspect”.

Mr. Chairman: What we did, we agreed to defer all of the definitions—

Sen. Prof. Ramkissoon: Okay, go back. All right, thanks.

Sen. Al-Rawi: Mr. Chairman, I was coming to that point to tag back to the
definition, but, even though if I leave aside my wholehearted objection to the fact that we are taking samples without consent, I was wondering why we wanted in clause 13 to limit it to only a police officer. It should also include a qualified person because there may be circumstances where that actually happens. So, clause 13: “a police officer or qualified person shall take”; now, if I get to the bigger issue, “without his consent”—I would understand that—

Mr. Chairman: You see subsection (2) has “a qualified person”? 

Sen. Al-Rawi: Yes, Mr. Chairman, “a qualified person shall take a non-intimate sample from a person without his consent”. But that is in the circumstance of admission to a hospital, prison, et cetera, that presumes, for instance, where a—

Mr. Chairman: Sure, I am just pointing that out.

Sen. Al-Rawi: I recognize that it was there, but there may be people in a formula yet to come. Let us say that the Government instituted in its new NIA some form of repeat of the sort. You may have qualified persons acting under that position who may want to take avail of this even though we have a definition of it. Then there is the large elephant in this particular clause of the “without consent” point.

Mr. Chairman: There are two issues that you have raised here, the question of whether “qualified person” should be included and you raised the issue about consent issues.

Sen. Deyalsingh: Mr. Chairman, on clause 13(2)(c), if I may? The person is an incapable person, who is admitted to a psychiatric hospital, et cetera, in accordance with the Mental Health Act—this provides for the taking of a sample of an incapable person without consent. I would like to suggest that we put in there “with consent of a parent, guardian, medical practitioner”, and it does not offend any other part of the Bill, because consent is built into clause 19 on complainants. So, I do not think it offends the Bill to have an incapable person held in a psychiatric facility, somebody acting on his behalf to give consent.

Sen. Ramlogan SC: I will deal with the first point. The first objection has to do with the police officer taking the sample. Is that correct, Senator?

Mr. Chairman: No, he just wanted to add.

Sen. Al-Rawi: Not an objection, to assist by having a qualified person also there.
Sen. Ramlogan SC: That is all right, fine. Sen. Deyalsingh you want to have—where are you proposing this amendment?

Sen. Deyalsingh: Also in (d) “of a juvenile residential facility”, I would still like to have people protected there, even a juvenile facility, that the custodian of that facility, parent or guardian, should give consent on behalf of that juvenile.

Sen. Ramlogan SC: And where they refuse then what?

Sen. Deyalsingh: Sorry?

Mr. Volney: Or if they cannot be found?

Sen. Ramlogan SC: Or if they cannot be found? You see, that issue came up and the problem is that in our consultation, what we were told is that there will be a great reluctance on the part of the head of the institution to sign any consent on behalf of its ward or charges, and then furthermore, there is a problem that a lot of these kids—sometimes, unfortunately, there is no one.

Sen. Deyalsingh: I know. But you see, the potential for taking DNA from an incapable person—[Interuption]—to do it on a crime scene, that is my concern here. Is there any other way we can seek consent from—

Mr. Chairman: Perhaps, Senator, it may be worth noting that the only person who could take the sample is a qualified person, and therefore, he is a medical practitioner, or mid nurse, or midwife, and that might allay some of your—I just bring it to your attention. It is only for qualified persons.

Sen. Deyalsingh: Again, Chairman, what if those same people are complicit in framing the incapable person?

Mr. Chairman: I just bring it to your attention. It is not a policeman, in other words.

Sen. Deyalsingh: I know it is a difficult issue.

Sen. Ramlogan SC: I think that is why we differentiated and took the police officer out of that picture, because we felt a medical doctor, a qualified person—if you are going down the road with a conspiracy then the head of the home could be part of the conspiracy too, you pay him a bribe and he sign the consent.

Sen. Deyalsingh: I am just concerned about incapable people being victims again and being taken advantage of.
Sen. Ramlogan SC: I think the protection we have afforded with respect to the qualified person, that should be okay.

Mr. Chairman: There is also an expectation that professionals would act—

Sen. Al-Rawi: Mr. Chairman, maybe we could solve it, in the specific case of an incapable person, by having a form attached in the schedule for which a witness participates.

Sen. Ramlogan SC: We could put in a witness.

Sen. Al-Rawi: The same way we deal with in clause 20, the taking of an intimate sample and we provide certain care, et cetera, with respect to the child at a juvenile facility and an incapable person, I think that we owe it to have a better form of interrogation over the process, albeit that it is done without consent.

Mr. Chairman: So, if we said in (2), “in the presence of”—so “a qualified person in the presence of a witness shall take a non-intimate sample”, for that matter it could cover all of them.

Sen. Ramlogan SC: Sen. Deyalsingh, would that be sufficient?


Sen. Ramlogan SC: “A qualified person shall in the presence of a witness”—is that fine?

Sen. Deyalsingh: Thank you.

Mr. Chairman: And that would govern all of them?

Sen. Ramlogan SC: It will. Thank you, Mr. Chairman.

Sen. Al-Rawi: Hold on. Mr. Chairman, (b) includes a person detained in prison; (c) is an incapable person who is admitted; (d) is a person who falls under supervision. The difficult fit here is the Prisons Act. Do we need to have a witness of a particular rank or position? We are dealing with somebody who is in jail who may be detained, what is the level of—

Mr. Chairman: If we have to comply with the Prisons Act then we have to comply, and if that says that the person has to be—

Sen. Al-Rawi: I do not know, Mr. Chairman, I am just asking.

Mr. Chairman: I do not know. All I am saying to you is I imagine if there is an Act which governs who can be a witness in a prison, then this section would have to conform to that legislation.
Sen. Ramlogan SC: You cannot over-legislate, you know. You have to leave some measure of administrative discretion as well in these things, or else, we would be here all week.

Mr. Volney: If you go in a hospital to get an execution a nurse has to—

Sen. Al-Rawi: And it is ill-thought law that caused it.

Sen. Ramlogan SC: We do not want to complicate it as well.

Mr. Chairman: So, I will put the question.

Question put.

Sen. Armstrong: Sorry, Mr. Chairman, I have a little concern with 13(2)(a) where it says:

“(i) admitted to a hospital; and

(ii) suspected, accused or convicted of an offence;”

Why do we have to put hospital in there? Because if you are any of the following, whether you are admitted to a hospital, you are on the street, or whatever—

Mr. Chairman: I believe it is because only a qualified person could do it and we are separating that out. Once you are in a hospital you do not want a policeman to be involved in taking the sample.

Sen. Ramlogan SC: It is also a practical point. If the police officer in hot pursuit of bandits, in an exchange of gunfire, shoots one of the bandits and he is rushed to the hospital, doctors may not really want police officers coming around to take a swab and so on—[Cellphone rings]—but the doctors themselves or the nurses would be able to do it.

Sen. Prescott SC: In that case you now put a different appreciation in my mind of what this is meant to do. This is really meant to give the qualified person the right to take non-intimate samples?

Sen. Ramlogan SC: The problem is that the protocol in the hospital once you admit someone, is such that there are problems with anybody else—

Sen. Prescott SC: No policeman may take it in a hospital. But what this says is that a qualified person shall take a non-intimate sample where you have been admitted to hospital and you are suspected—what it really wants to say is, “a suspect who has been admitted to hospital shall only have a sample taken by a qualified person.”
Mr. Volney: That is the same thing.

Sen. Prescott SC: It does not seem to me to be. Read (2)(a)(ii). It can stand on its own you know.

Sen. Ramlogan SC: But it has “and”.

Sen. Prescott SC: No, (2)(a)(ii) can stand on its own; (2)(a)(i) cannot stand on its own, it requires that you be suspected. But (2)(a)(ii), is that not what this means? “A qualified person shall take a non-intimate sample from a person without his consent where” he is suspected—

Sen. Ramlogan SC: If we reverse the order, put (ii) on top?

Sen. Prescott SC: Well, we have been fighting with this, and if the point really is that it is only a qualified person who may take a sample from a patient who is a suspect, then let us say that.

Mr. Chairman: Would it deal with no one other than a qualified person?


Sen. Prescott SC: Thank you.

Sen. Al-Rawi: Mr. Chairman, I do not know if I necessarily agree with that you know. [Laughter] I know that there is a haste for us to finish and I appreciate that, but—[Interruption]

Mr. Chairman: Sorry, you want to explain.

Sen. Al-Rawi: Yes, Mr. Chairman, because, since—

Sen. Prescott SC: Sen. Al-Rawi, pardon me. Just let me say, all I want to hear is that it says that it is only a qualified person. Whatever you may now say, but I hope you are grasping that.

Sen. Al-Rawi: I will leave your point as is. I withdraw.

Mr. Chairman: That was the mischief that you were trying to avoid, as I understood it. And it makes more sense in the context of the whole reframing of it.
8.30 p.m.

Sen. Ramlogan SC: Mr. Chairman, there is a suggestion with respect to the witness—[Interruption]

Mr. Chairman: The witness becomes awkward once you introduce that phraseology. I agree.

Sen. Ramlogan SC: There is a suggestion as well, what we had put at subclause (2) to make it (3), “in the presence of a witness”.

Mr. Chairman: Are we adding a new (iii)? Oh I see. In (c) add a (3) and that is the only place you would put the witness.

Sen. Ramlogan SC: Yes.

Mr. Chairman: Some take out the “and” after (ii). [Interruption]

Hon. Senator: No, it remains as a (ii).

Mr. Chairman: Senators, the proposition is that we had earlier raised two issues, one was introductory language which read: “No one other than a qualified person”. You will recall earlier we talked about putting “in the presence of a witness” after “shall”, but that became awkward once we introduced “No one other than”. So, the recommendation is that we have a new subclause (3) which reads:

“A sample under subsection (2)(c) shall be taken in the presence of a witness.”

Sen. Ramlogan SC: That is fine.

Sen. Prescott SC: Is there any change in subclause (2)?

Mr. Chairman: “Yeah”, “no one other than”.

Sen. Prescott SC: Oh, that remains? Thank you very much.

Mr. Chairman: “Yeah”, that remains. The question is that clause 13(1), as amended as circulated and further amended, to include in line one of 13(1) after “police officer”, the words “or qualified person”; and in subclause (2) introduce the words at the beginning “No one other than a qualified person”, and then to add a new subclause (3) which will read “A sample under subsection (2)(c) shall be taken in the presence of a witness.”

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.
Sen. Prescott SC: Before we move on, could I have the assurance that somebody would address this question of the ubiquitous colon? [Laughter]

Mr. Chairman: Oh, sorry, I did not know where your duplicitous—he escaped me.

Sen. Prescott SC: There is one for example, in 2(a) (i). I do not know that it is appropriate to put it as though it ends.

Mr. Chairman: 2(a)(i)?

Sen. Prescott SC: Yes, where it says “the person is admitted to a hospital.”

Sen. Al-Rawi: That is drafting language.

Sen. Prescott SC: Is that drafting English?

Mr. Chairman: Is it the semi-colon after “offence”? [Interruption]

Sen. Prescott SC: Pardon me, after “hospital”. It just does not—[Interruption]

Sen. Ramlogan SC: It is not drafting language. That is drafting grammar.

Sen. Prescott SC: Oooh. Well, I am yet to complete that course. [Laughter]

Mr. Volney: “They have it at Hugh Wooding”. [Laughter]

Sen. Prescott SC: Can you believe this thing?

Mr. Chairman: So, can we proceed then, having left out the duplicitous semi-colon?

Clause 14.

Question Proposed, That clause 14 stand part of the Bill.

“In subclause (6)(d) insert the words “and has been charged with or convicted of a criminal offence” after the word “facility”.

Sen. Deyalsingh: Mr. Chairman, clause 14(3):

“A notice given under this section shall be in the form set out as Form 2 in the Second Schedule.”

If we turn to that Form 2, Second Schedule, page 36—[Interruption]

Sen. Ramlogan SC: We will deal with the forms separately.

Sen. Deyalsingh: Well, just to note it, the issue of a person who is employed or applies for employment as an officer of the protective services, it seems to me we are now dealing with applying this thing retroactively to people.


Sen. Deyalsingh: Form 2, sorry.

Sen. Ramlogan SC: Page 30. You are off course as usual.

Mr. Volney: He is tired.


Sen. Deyalsingh: Sorry, I will come back to it when we come to that form. Sorry.

Mr. Chairman: So, we are still on clause 14.

Sen. Al-Rawi: Mr. Chairman, I am looking at matching the language between clause 13, as just taken and amended, with clause 14, taking a repeat sample and I am wondering aloud here, subclause (6):

“A repeat non-intimate sample shall, within twenty-four hours of the time of personal service of the notice, be taken from a person without his consent where—”

And then we go through the same particulars we dealt with in clause 13. So, I am just looking for the marriage of the language from clause 13 to clause 14.

Mr. Chairman: So you want to see a qualified person? Is that what you want?

Sen. Al-Rawi: Yes, Mr. Chairman. So it could be for instance in the second line of subclause (6) “be taken by”—[Interruption]

Mr. Chairman: “be taken by a qualified person” and then, perhaps, we need to add the witness.

Sen. Ramlogan SC: Can we just say cross-reference it rather than repeat it all over again?[Interruption]

Sen. Al-Rawi: Because we separated the whole concept of non-repeat and then went through the whole circumstances again. In fact, clause 6(a) to (d) is exactly the same as clause 13. I mean—not complicated, “be taken by a qualified person” in the second line of subclause (6), and then you continue, “from a person without his consent where”; that stays the same, and then you are putting in a clause 7, which says, as we did for clause 13(3), a sample to be taken under subclause (6), “shall be taken in the presence of a witness”.
Mr. Chairman: So, we will add after “be taken by a qualified person” and we will repeat the same wording as at clause 7 that we have in subclause (2) (iii) of clause 13. And the reference would change.

Sen. Al-Rawi: Subsection (6) in general, Mr. Chairman.

Mr. Chairman: As a witness?

Sen. Al-Rawi: Yes, Mr. Chairman.

Mr. Chairman: The question is that there would be a further amendment to clause 14 to introduce at subclause (6), “by a qualified person” and to introduce a new subclause (7) which will read, “A sample under subsection 6(c) shall be taken in the presence of a witness.”

*Question put and agreed to.*

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15.

*Question proposed,* That clause 15 stand part of the Bill.

Sen. Deyalsingh: Mr. Chairman, this is where I should have come in. Under clause 15(2), it refers to the Third Schedule on page 36, and I think I am correct now:

“A person who is employed, or applies for employment as an officer of the Protective Services...”

My question is, and I am not an expert in Industrial Relations (IR): if we have people already employed in the protective services, hired under particular terms and conditions years ago, are we now saying that those terms and conditions have now in fact been changed and we are taking your DNA sample? It is retroactive. How does this affect the membership of the protective services who are unionized? How do the unions feel about this? Would this be struck down on the issues of constitutionality, and so on? I am just questioning the retrospectivity of this particular clause which gives the agencies the permission to take police officers and other members of the protective services. So, maybe Sen. Prescott SC here could assist or Sen. David Abdulah, who is an IR expert in his own right.

Sen. Ramlogan SC: Well, it does not really constitute an alteration of the terms and conditions, because it does not actually take anything away, that the officers currently enjoy, in terms of their remuneration package as such. It does not take anything away.
Apart from which, it is a proportionate measure that is reasonably justifiable in the interest of a democratic society, because this Bill requires a constitutional majority. And if we cannot purge the police service, or take measures to ensure the integrity of the police service such as this, then the detection rate and investigation rate will remain where they are now. This is a measure to weed out the bad apples and to act as an effective deterrent to those officers who may be inclined to go that way. But we have had police officers before the courts and it is for that reason we ask that police officer submit a DNA sample to be part of the database. It is an interesting point, but I do not think—because you are not taking away anything that they currently enjoy as part of their remuneration package—it would really cause any trouble.

**Sen. Prescott SC:** Mr. Chairman, I do have an intervention. The AG is right in that you are not taking away. I imagine, however, that an association that is alert to distinctions between its members will foresee this as the first step in introducing a new set of terms and conditions for all police officers. But, they would have to deal with that. My concern though, may I introduce it is that clause 15 is now saying that an applicant for employment who wishes to withdraw from the process leaves his sample behind. And that cannot be good. Do I lose my right to withdraw from the process, untainted or as whole as I came in?

**Mr. Chairman:** Just those persons that you maybe want to retain the samples.

**Sen. Ramlogan SC:** That is the point. We have to be careful about whittling down this. If you know beforehand by law, if you are going to apply to become a police officer you have to submit yourself to a sample. So, if you know that, you submit it and then you remember, “wait nah I did rape somebody 10 years ago”, well too bad.

**Sen. Ramlogan SC:** But more than that—can I just refer to what the law is at the moment?

**Sen. Prescott SC:** Hear the example.

8.45 p.m.

**Sen. Prescott SC:** Let me just give you the example before we proceed.

**Sen. Ramlogan SC:** “Yeah, sure.”

**Sen. Prescott SC:** On my morning programme I heard a man say—he is now a retired schoolteacher—he went and submitted an application for the police service and when he got home his father was very incensed by it and told him to withdraw it immediately. Now this is a child of 18. He might have been 21 in
those days, because to be an adult you had to be 21, who has gone, out of enthusiasm, perhaps, and has found himself delivering of himself a sample, when nobody at home knows that he was going to be doing this nonsense. He does not even have in mind—

**Sen. Ramlogan SC:** Well, I take your point, that the law when passed will improve parental relationships between fathers and sons—

**Sen. Prescott SC:** No. I am sorry—

**Sen. Ramlogan SC:** And I am sure that there is effective prior consultation before they embark upon such an important career move.

**Sen. Prescott SC:**—there might be a later point in the application process where you can do it, for example, after he has been invited to become a recruit or something—

**Sen. Ramlogan SC:** After he has passed the examination, for example.

**Sen. Brig. Sandy:** Mr. Chairman, if I may, in the military, the last thing you do is your medical exam, so that could be part of the medical exam. You have already been selected and you do a medical exam. It is the last thing you do.

**Sen. Ramlogan SC:** That is a good idea. We could put it later down. That is not a problem.

**Sen. Deyalsingh:** What about the [Inaudible]

**Sen. Ramlogan SC:** That is something different. We have to have that.

**Sen. Deyalsingh:** That is where my concern is.

**Sen. Ramlogan SC:** We have to have that, otherwise we “spinning top in mud.”

**Sen. Deyalsingh:** Originally, it was meant for elimination purposes and, as I understood, when the Bill was being piloted in November the rationale for taking DNA samples from existing police officers was for elimination purposes. Now I am hearing it is for purposes to detect criminal elements within the police service. Either way, but I am just concerned—

**Hon. Senator:** It is a flip side—

**Sen. Deyalsingh:** Yes, it is a flip side, but I am just concerned—and now that Sen. David Abdullah is back, maybe he can guide us. Is it good IR practice like for the protective services now? Are the unions on board with taking DNA samples of people already in the protective services?
Sen. Ramlogan SC: Chair, the law as currently stands in section 12 of the existing Act, mandated officers of the protective services, not just the police, but the police, fire and prison. That is the law right now, that they have to submit themselves and provide a sample. Now that sample could be used, yes, for elimination purposes, but the point is the sample would have been retained indefinitely under the existing law. Now you could use that sample not just for elimination, but also for detection of crime that police, fire and prison officers would have been involved in.

Now we have actually narrowed it down and we are dealing with police officers, in particular. We have taken off the FUL persons and we have narrowed it down to—we have kept the protective services, but we think that that is necessary.

Mr. Chairman: What I would point out, Senator, is that many organizations in the energy sector now make it mandatory that you have to go for certain testing in order that they know you are free from drugs, and that expands to their subcontractors’ employees, the whole works. [Interruption]

Sen. Deyalsingh: If I may just raise one more point. Do the protective services include the coast guard?


Sen. Brig. Sandy: The coast guard is defence force.

Sen. Deyalsingh: So should we not broaden it to include that, because the coast guard is actually on the seas and that is where all the— [Interruption]

Sen. Ramlogan SC: When we did that, there was objection to that, but we are happy to widen the net if you all will support it.

Sen. Deyalsingh: No, I am just trying to understand the rationale behind the—[Interruption]

Sen. Ramlogan SC: The rationale was that we were trying to be receptive and open to suasion and we listened to the objections, and some of your colleagues on the Opposition Bench said well, you should not—Independents and Opposition in the other place said that it was too wide; why do you want to include the army; why do you want to include customs; why do you want to include immigration; why do you want to include all these people.

Sen. Deyalsingh: Well, that is my point. Why do you?

Sen. Ramlogan SC: Well, you see, the Independents are saying, you know—
Hon. Senator: They want it widened.

Sen. Ramlogan SC: If you all want it widened, we are happy. Can I tell you what originally we had proposed in this matter, and the Independents are saying leave it so and we are prepared to support them—

Sen. Deyalsingh: No, Mr. Chairman. I think the AG is missing my basic premise here. I am just asking about the Constitution, whether this thing could be struck down on unconstitutional grounds, where people already in the protective services are now being asked to give up their DNA, whether it is army, coast guard, it does not matter.

Sen. Ramlogan SC: And the short answer to that is, no, for two reasons: one, the Bill is being passed with a constitutional majority; two, there is nothing unconstitutional about asking them to subject themselves to provision of a DNA sample, because it is reasonably justifiable in the interest of a functioning democratic society such as ours, given the fact that you are trying to weed out bad elements from law enforcement agencies with the majority.

Sen. Dr. Balgobin: Attorney General, if I could just make a suggestion. It might be worthwhile to widen it to include members of the defence force because of the amount of interagency work that you have going on now.

Sen. Ramlogan SC: Absolutely, because you have joint army and police patrols. So let us widen it, yes—agreed. I am grateful to Sen. Deyalsingh for raising the issue—

Sen. Deyalsingh: My argument is, why widen it?


Sen. Dr. Tewarie: AG, are you going to widen it?

Sen. Ramlogan SC: Yes, we will. We are happy to do that. The original list reads as follows: it was an officer of the protective services, a member of the municipal police service, a member of the special reserve police service, a constable within the meaning of the Supplemental Police Act, an officer of the defence force, a customs officer of the Customs and Excise Division, or a private security officer. If the Independents like that, we will go with that.

Sen. Dr. Tewarie: Could we include all of those, AG?

Sen. Ramlogan SC: Yes, we are including all of those, and we are including as well, a member of the defence force, as opposed to an officer.
Sen. Prescott SC: And may I just, for the purpose of my own—Chairman, we are still at the application for appointment process?

Mr. Chairman: Well, I do not know. I think it had been suggested that you do a medical after you—

Sen. Prescott SC: At the medical stage, yes. All of these are going to be at that stage?

Mr. Chairman: Well, there are different instances. Those who are already in the force are not going to be—

Sen. Prescott SC: Yes, and this provision deals with persons who are applying for positions.

Mr. Chairman: This is “employed or applies for”. So there needs to be some language, I imagine. This is the schedule we will come to later. I imagine we will work on language that will cover the point in time when the sample is taken.

Sen. Prescott SC: Prudence would suggest that if the person is already employed you need to speak with the trade unions, the relative associations.

Mr. Chairman: Certainly in the energy sector, they have not considered, and they have not run up against difficult times.

Sen. Prescott SC: Well, I would recommend some negotiation with the unions.

Sen. Ramlogan SC: You see, the nub of the matter, really, is this: those who may be concerned about giving the samples are the very ones whose samples we may want to have. Look, this is a serious matter. Customs officers, for example; the containers that we are finding with all the drugs that are coming in at the port, it is not the police alone. I think Sen. Dr. Balgobin was correct, and Sen. Ramkhalawans, and others, that it is the interconnectivity and we will not be able to break it without that. I was one who advocated, together with the Minister of Justice, for that wide net and I am happy that we are in agreement to bring it back now.

Sen. Robinson-Regis: They just have to say, “It is not my drugs.”

Sen. Ramlogan SC: Let us hope that the customs officer, if we find their DNA inside the container when it is still locked, and for the first time being opened, something different may happen.
Sen. Prescott SC: Chairman, may I just ask the AG, is he concerned that he may well find that this cuts across the constitutional right of the worker who is represented by an association, or the right at law to have some kind of negotiation about persons who are employed and whose terms you are changing?

Sen. Ramlogan SC: The answer is yes, it is a concern. But the thing is that this is a Bill that requires a constitutional majority and it is reasonably justifiable, in my respectful view, because it is proportionate to the end, aims and objectives which is to fight crime.

Sen. Prescott SC: That is going to be your defence?

Sen. Ramlogan SC: That is correct, yes.

Sen. Prescott SC: To the Privy Council?

Sen. Ramlogan SC: Yes.

Sen. Robinson-Regis: Mr. Chairman, maybe Sen. Abdulah might be able to help us on this.


Sen. Robinson-Regis: You asked?

Sen. Ramlogan SC: Yes, he did.

Sen. Robinson-Regis: Okay. And he did help us?

Sen. Ramlogan SC: No, he did not help. He remained silent.

Sen. Abdulah: No, no, I said something. I was going to respond to the Chairman when the Chairman indicated that it happens in the oil industry. It cannot happen where there is a recognized majority union unless there is an agreement as to how it would be done. We are talking about medical tests, substance abuse. The employer cannot unilaterally impose it in the energy sector, and I indicated that to the AG, but there are some categories that we are defining here which may be somewhat different, for example the defence force. There is no collective bargaining process for the defence force and so on, so there may be some differences in some of the areas. But, certainly, you cannot do that outside where workers are covered by collective agreements in other sectors.

Sen. Deyalsingh: Mr. Chairman, through you, if I may ask, what union is the police service covered by, the PSA?


Sen. Deyalsingh: Right. Okay, great. Would they look kindly—what is their view on this?

Sen. Abdulah: That was the question he asked.

Sen. Deyalsingh: With the consultation which I think the hon. Minister said he had with stakeholders—

Sen. Abdulah: Chair, that was the question that Sen. Deyalsingh asked earlier. That, I cannot answer. That is why I did not say anything because, obviously, I do not know what their view is.

Sen. Deyalsingh: That is the point I am making. Would this be struck down?

Sen. Ramlogan SC: Well, no, it would not be struck down on the basis of their view; it will be struck down on the basis of the law, and as I have indicated, we are passing the Bill with a constitutional majority. So it cannot be struck down—[ Interruption] Exactly. And I think Sen. Al-Rawi is correct in that. Sen. Al-Rawi, thank you very much.

Mr. Chairman: Senator, I notice in subsection (2) it is the “Commissioner of Police shall make arrangements.” Now when it was the protective services, then, of course, he was the ideal person, but now you have a larger range there.

Sen. Ramlogan SC: Well, we can say the appropriate head.

Sen. Prescott SC: So it is not essential anymore to say “without his consent”, if you are going to get into this job at all.

Sen. Ramlogan SC: What about those who are already in?

Sen. Deyalsingh: That is my argument.

Sen. Prescott SC: That fight is going to be settled on the streets, you know.

Sen. Ramlogan SC: Yes, I am sure. I think we cannot shirk from our responsibility in the matter. The interconnectivity and the interrelationships that occur for something big to happen must involve a number of persons. Take for example the kidnapping, we have soldiers before the court charged for kidnapping, but the ring that ran involved trucks with barrels transporting the kidnap victim; you had police officers involved in leaking information about the roadblocks so they would be able to avoid them; you have soldiers who are actually charged and before the court; you had people holding them captive; you had people in the ports who could get them to Venezuela and smuggle them out on a boat; you had drugs involved in terms of the ransom that they demanded. Everything is connected, and those are real examples I am giving.
Mr. Chairman: What we note is that, AG, in the original it was the Commissioner of Police, in any event, who was arranging for everything. Obviously, he will do it in consultation, I take it, with heads. But it was the Commissioner of Police. We are not dealing with the Third Schedule, until we reach that.

Question put and agreed to.

Clause 15 ordered to stand part of the Bill.

Clause 16.

Question proposed: That clause 16 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, relative to clause 16, I have serious concerns with clause 16. My problem is that it is undeniable that the Minister of National Security should have discretion of a certain type. The difficulty here is that the Minister of National Security has foreknowledge of an event. He then gives an instruction and a police officer, without a warrant, then arrests someone, so he forms a discretion there. So, assuming that there is at least sufficient time for him to form that decision—there was intelligence provided to him, et cetera—why is it not feasible for us to at least have the scrutiny of the court involved in this aspect?

9.00 p.m.

The literature in the Privy Council is very strong about the abuse of the label, “national security” and in the interest of national security.” The anti-terrorism cases, R v Ahmed, all of these cases, are strong and clear that this is a label which is open to serious abuse. We saw in fact extreme difficulty happened when we dealt with the detainees under the state of emergency.

The point is we have a recent example of it. And at the very least, this clause ought to include some form of safeguard through the judicial process. There is no reason why an ex parte application cannot be made, information put to the court. In fact, in England they have developed the whole concept of a special type of tribunal where only certain evidence is given. So, my request is that we have the scrutiny of the court in clause 16.

Mr. Chairman: Is it your objection that in subsection (2), the arrest by the police officer is without warrant?

Sen. Al-Rawi: No. My objection is (1); (2) comes after (1).

Mr. Chairman: I know. Would that in fact allay your fears, if you are required to have a warrant, then the court process would have been—

Mr. Volney: Well, that is not the way that the Government is seeing it, Mr. Chairman. This is a national security matter where expediency is key. If someone is suspected of coming into the country, or is in the country, and you need to verify who he is, you do not have time to go to the court.


Mr. Volney: And to go through a process.

Sen. Al-Rawi: I do it all the time.

Mr. Volney: You simply get it done, you get the job done.

Sen. Al-Rawi: The courts are open 24 hours a day. A judge can be moved. A magistrate can happen. There is no difficulty in going to the court. The point is that we have—[Interruption]

Mr. Volney: That is at the expense of potential loss of life.


Mr. Volney: Of life, people’s life.

Sen. Al-Rawi: If you have enough for a gentleman to go and arrest him without warrant, it is at the expense of liberty.

Mr. Volney: When you need to identify somebody quickly to know whether that is the man who has the bomb—[Interruption]


Mr. Volney: Yes, but the point of the matter is you are not just to detain him. You want to be able to verify that he is “Mr. Big” with the bomb.

Sen. Al-Rawi: Sure. And, if you have the ability under national security would strike serious issues—you are talking about bomb, you are talking about intelligence. The Minister of National Security would have had to have intelligence enough, to tell a police officer without a warrant: “Go and get a DNA sample.” So, there must have been some form of information scrutinized by the Minister of National Security, a political figure alone.

Mr. Volney: But you need to have it verified quickly.

Sen. Al-Rawi: And for that purpose a judge of the High Court can be moved at any point in time, a magistrate can be moved; any judicial officer is available to be moved to issue a warrant.
Mr. Volney: It is not as easy as that.

Sen. Dr. Balgobin: I have a concern with this, because in the history of our society, we have seen lesser powers abused by governments. And, I have no mastery of law to compare with any of my colleagues over there, but it occurs to me that, if you wanted to obtain a sample from someone who you felt posed a real threat, a clear and present danger, you could detain that person. You would have sufficient opportunity.

Mr. Volney: Not enough to detain a person. You need to verify that the person whom you have detained is the man whom you want.

Sen. Dr. Balgobin: What I am saying, hon. Minister, is that—if I may be allowed to finish my mental perambulation—you can entirely detain and then get a warrant, can you not?

Mr. Volney: Yes, but the that point is, you can detain the man suspecting him but your suspicion could be misplaced and the real man is out there still, while you are going to the court to get a warrant, or you are going to the court to get an order.

Sen. Dr. Balgobin: But you would have violated—[ Interruption ]

Mr. Volney: By the time, Chairman, that the process is followed, and you have confirmed, that no, this is the wrong man I have, the bomb has gone off.

Sen. Baptiste-Mc Knight: But you do not know who it is, that is why you got the wrong man in the first place.

Mr. Volney: But, that is why you need to rule out your suspicion, to move to other—

Sen. Baptiste-Mc Knight: You are taking my DNA to rule out your suspicion?

Mr. Volney: It will save lives. In this 21st Century world, you need to act quickly.


Sen. Drayton: Why I wish to certainly add my voice to support what Sen. Dr. Balgobin is saying all too often—I have mentioned this before—we are eroding constitutional rights, not to make the law any better, but to take care of the deficiency in our administrative systems. Our systems are weak and therefore, to deal with that weakness, we are bringing laws that erode constitutional rights.
If you have intelligence, you have gone through that whole process of having intelligence that something is happening that is a threat to national security, certainly, you would be taking a certain amount of pro-action in rounding up these people, not just one. If you do not know who it is, then you do not have the intelligence to do anything in the first place.

**Sen. Dr. Balgobin:** I do not understand. I am just confused about what improves our preventative capacity by being able to impose this test on someone on a Ministers whim, as opposed to detaining the person and getting some sort of judicial permission to do the same test.

**Mr. Chairman:** Mr. Prescott.

**Sen. Prescott:** Thank you, Mr. Chairman. May, I present this question to the Attorney General and the Minister.

**Sen. Ramlogan SC:** May I preempt you by saying that having had discussions with the hon. Minister of Justice, I propose to delete the provision.

**Sen. Prescott:** We are stunned. [Desk thumping]

**Sen. Ramlogan SC:** I think the rationale advanced by Sen. Balgobin, I see merit in it, because once you detain someone you can take that person’s sample in any event.

**Sen. Prescott SC:** So you have this 4(1) under 13 already?

**Sen. Ramlogan SC:** Clause 12. Furthermore, Sen. Abdullah usefully pointed out that under the provisions of the Anti-Terrorism Act, you can detain without bail for a long period and you will have the time to do that.

**Sen. Prescott SC:** Well done, Sen. Balgobin!

**Sen. Ramlogan SC:** So, it is in those circumstances, I think we will accede to the points made by the Independent Bench and delete that paragraph.

**Sen. Robinson-Regis:** And what about the points made by the Opposition?

**Sen. Ramlogan SC:** And, with respect to the points made by the Opposition, we dismiss those outright. [Laughter][Interruption] I am only teasing you do not worry.

**Sen. Robinson-Regis:** Is a good thing I am only here temporarily. [Laughter]

*Question put and agreed to.*

Clause 16 deleted.
Mr. Chairman: Is it that the numbering will have to change throughout the remainder?

Sen. Ramlogan SC: Yes.

Mr. Chairman: So we can assume that the numbering—we will go as the same numbering, but it will be renumbered when the maths are done.

Clause 17.

Question proposed: That clause 17 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 17 be amended as circulated:

A. Delete subclause (1) and substitute the following subclause:

“(1) Where a citizen of Trinidad and Tobago—

(a) is deported from any place outside Trinidad and Tobago; and

(b) has been convicted of, or has served a term of imprisonment for, an offence which would have been an indictable offence if it had been committed in Trinidad and Tobago, a non-intimate sample shall, on that citizen’s arrival in Trinidad and Tobago, be taken from him without his consent by a qualified person at any port of entry.”.

B. Delete subclauses (3) to (8) and renumber accordingly.

C. In the renumbered subclause (3) delete the words “a “citizen of Trinidad and Tobago” has the meaning assigned to it by the Immigration Act.” and substitute the words ““citizen of Trinidad and Tobago” and “port of entry” have the meanings respectively assigned to them by the Immigration Act.”.

Sen. Al-Rawi: I raise the issue of the inequality of treatment between a Trinidad and Tobago citizen and a non-citizen as it is set out between subclauses (1) and (2).

Sen. Ramlogan SC: I made an enquiry about that when you raised it and the answer to it is as follows: in subclause (2) it refers to a citizen who is detained under the Immigration Act and that is at the Immigration Detention Centre. They have special rules that apply to that detention centre and that is why you have a qualified person going into the detention centre to take that sample.

Sen. Prescott SC: Chairman, I have an intervention. [Interruption]
Sen. Ramlogan SC: Sorry. Subclause (2) is not just a deportee per se. It is not as simple as that.

Sen. Prescott SC: Chairman, I have an intervention that maybe the Attorney General could address. Subclause (2), it appears, from the Immigration Act, embraces a person who is suspected of homosexualism. Is that what we want to be seen to be doing? Persons who may be detained under that Act include such persons. [Crosstalk] The Immigration Act, yes, section—something.

Sen. Ramlogan SC: Realistically, have we ever exercised that to detain someone on that ground under the Immigration Act?

Sen. Prescott: I would not want to answer it from that point of view, Sir.

Mr. Chairman: Senator, I imagine that the Immigration Act needs to be brought to the Senate.

Sen. Prescott SC: There would soon be such a time. But it is there so be careful.

Sen. Ramlogan SC: No, we are with you; noted.

Sen. Prescott SC: Let us go back to the question of consent. Why, again should we not invite the person to give the sample with consent?

Sen. Ramlogan SC: The way I read this is, implicit in the “without consent” during the course of the debate, I think that issue had arisen—is that you would really and truly first ask in a telling way, as it were.

Sen. Prescott SC: Your technical staff cannot find words to say what is implied, that the person would first be invited to give his consent?

Sen. Ramlogan SC: I have no objection to putting in that, if need be. But you know—[Interuption]

Sen. Prescott SC: Because if it turns out that we were wrong to have detained this person at all, it would be good if he had consented.


Sen. Prescott SC: Nice if he was asked.

Sen. Ramlogan SC: The problem is that most of the persons, we were advised, might not want to consent because they are hiding their identity.

Sen. Prescott SC: Okay. At least you asked, you know.
Sen. Ramlogan SC: But no harm in asking first. It is not a person who is detained. A non-intimate sample shall be taken from him without his consent if he refuses.

Sen. Prescott SC: If he refuses.

Sen. Ramlogan SC: But if we say “if he refuses” that would connote that would it not?

Mr. Chairman: If he refuses to do so voluntarily.

Sen. Ramlogan SC: That is all you need to put in.

Mr. Chairman: After “consent”?


Sen. George: Well, it will be really hard to have to consent.

Sen. Ramlogan, SC: You might have to put it a little higher.

Sen. Prescott SC: I merely throw out the concept you know.

Sen. Ramlogan, SC: Shall we say after the words “Immigration Act,” “and refuses”, if you put it in there. “Where a person who is not a citizen of Trinidad and Tobago is detained, under the Immigration Act, and refuses”—

Sen. Prescott SC: He shall be invited to give consent to a non-intimate sample being taken and if he should refuse—[Interruption]

Sen. Ramlogan SC: “…is detained under the Immigration Act and refuses to provide a voluntary sample, a non-intimate sample shall be taken from him without his consent.” That is fine.

Sen. George: He refuses to give a sample voluntarily, suggests that he is asked. [Interruption]

Sen. Ramlogan SC: That is what I was saying. “Yeah”.

Mr. Volney: Refuses to give means he is asked.

Sen. Baptiste-Mc Knight: Is it possible, is it legal language to say that this person would be required to give a non-intimate sample?

Sen. Prescott SC: Shall be required. I think, that is as clear as day.

Sen. Baptiste-Mc Knight: That sounds like English, I do not if it is legalese.

Mr. Chairman: I have no problem with that. It is just the question of architecture in terms of where you introduce it.

9.15 p.m.

Sen. Ramlogan SC: “Where a person who is not a citizen of Trinidad and Tobago is detained under the Immigration Act and refuses to provide a voluntary non-intimate sample—


Sen. Ramlogan SC: “—that sample shall be taken from him without his consent by a qualified person”.

Sen. Prescott SC: AG, could we not simply say, he refuses to do when he is required to do so?

Sen. Ramlogan SC: “Where a person who is not a citizen of Trinidad and Tobago is detained under the Immigration Act and—

Sen. Prescott SC: “Refuses to”

Sen. Ramlogan SC: “—refuses to provide a voluntary sample—”

Sen. Prescott SC: No, “refuses to provide it when required to do so”.

Sen. Ramlogan SC: Well, it means the same thing really, does it not? So let us leave it as is.

Sen. Dr. Tewarie: Yes.

Sen. Drayton: If we are applying that—I am a little confused here. Why is it that we would treat our citizens in an inferior way to the way we treat non-citizens? Here, all along, from the initial debate, we were saying why are we using language that you are going to take DNA samples without consent. Now, you are saying for foreigners entering here, you want to “nice-up” the language that they are going to be asked to give it voluntarily and if they do not, then you take it. I want to know why you are treating citizens differently?

Sen. Ramlogan SC: I agree with you, Sen. Drayton, but, in the spirit of compromise, we were trying to accede to the point made by Sen. Prescott SC. If you all are not supporting Sen. Prescott SC with respect to that issue—

Sen. Prof. Ramkissoon: Attorney General, I think we need to be consistent.

Sen. Drayton: Yes.
Sen. Ramlogan SC: All right. Well, in that case, I withdraw Sen. Prescott SC’s proposed amendment, on his behalf. [Laughter]

Sen. Ramlogan SC: I think Sen. Prescott SC is happy to leave it as is in the circumstances.

Mr. Volney: Leave it as is.

Sen. Ramlogan SC: Leave it as is. That is fine.

Mr. Chairman: So there is no change from what was circulated? Is that what I think it is?

Sen. Ramlogan SC: That is correct.

Mr. Chairman: So the question is that clause 17 amended as circulated now form part of the Bill.

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Mr. Volney: Mr. Chairman,

In subclause (3) insert the words “or a qualified person” after the word “officer”.

Sen. Al-Rawi: One moment please, Mr. Chairman.

Sen. Baptiste-McKnight: Mr. Chairman, would someone explain to me exactly what clause 18(1) involves?

“A police officer may collect...any item belonging to or used by a person who is reported missing.”

Mr. Volney: To could get DNA from it. A specimen.

Sen. Ramlogan SC: When you find a decomposing body skeletal remains and you do not know—

Sen. Baptiste-McKnight: They cannot be missing if you find anything at all. If you find a skeleton, “it eh missing”.

Sen. Ramlogan SC: No, no, reported missing. But if the person is missing, you would want to know if the body that turns up in Tucker Valley or whatever, is that person, so you need to have a DNA to match it.
Mr. Volney: You need a specimen.

Sen. Ramlogan SC: You need a specimen: a hairbrush, a toothbrush—

Sen. Baptiste-McKnight: I assume this is from relatives or something?


Sen. Baptiste-McKnight: And that is understood here? Is it understood in this language?

Sen. Ramlogan SC: It could be anything that you would get the sample from. It could be the missing person’s hairbrush, their toothbrush, their relative, so that is why we did not want to specify, because, as well, technological advancements may make it possible to get it from other sources. It could be a wig.

Sen. Baptiste-McKnight: Once the lawyers understand, they will explain it to the people involved.

Sen. Al-Rawi: Mr. Chairman, could the hon. Attorney General also consider, through you, in clause 18(3):

“A police officer”—or a qualified person—“may collect and submit for Forensic DNA analysis anything attributable to a crime scene.”

When you look at the definition of crime scene at page two, a crime scene is a very, very, broad context set out between letters (a) to (f).

I am concerned about issues of ownership and other factors. [Crosstalk] I am asking if you would look at the nexus in clause 18(3), “collecting anything attributable to a crime scene”, and the definition of crime scene being anything.

Sen. Ramlogan SC: That is the existing definition so we have retained your definition.

Mr. Volney: Anything on the ground: cigarette butt, jockey short.

Sen. Al-Rawi: Mr. Chairman, it is 9.25 p.m., and if I rise from my chair at all, even separately and we are running through the Bill, I fear that I may miss a bit. Is it possible, for human reasons, that we could rise for even five minutes? The problem is when I leave, what happens. [ Interruption and crosstalk]

Sen. Ramlogan SC: I have to stand for my colleagues on the Opposition Bench and say, when you leave, we will progress and advance in a much more meaningful way. [Crosstalk] He is implying that he has no confidence in his colleagues.
Sen. Al-Rawi: Mr. Chairman, it would also allow us the opportunity to discuss a few issues a bit faster. [Crosstalk]

Mr. Chairman: Senators, I think that it would be worthwhile taking a comfort break, but limit it to 10 minutes.

Sen. George: Yes, a 10-minute break will do, Mr. Chairman.

Mr. Chairman: It is proposed that we take a break for 10 minutes.

9.26 p.m.: Committee suspended.

9.40 p.m.: Committee resumed.

Mr. Chairman: It seems that we got much closer since the break?

Hon. Senator: No one sounded your arrival?

Mr. Chairman: No. I am. Okay, straight into committee. So we had just completed—

Mr. Volney: We are still on clause 18.

Mr. Chairman: Clause 18? We were considering clause 18. Someone had raised the question of the crime scene, that had been explained. Are there any further matters?

Mr. Volney: We would like to suggest an amendment to clause 18(1) and it should now read:

“Where a person is reported missing a police officer may collect and submit for forensic DNA analysis:

(a) any item belonging to or used by that missing person; or

(b) any sample by which a familial relationship can be determined.”

Does that solve the concern?

Mr. Chairman: By which a familial relationship can be determined?

Mr. Volney: Can be determined.

Sen. Al-Rawi: Mr. Chairman, I am very grateful for that form of amendment it is very well thought out. Relative to the breadth of the crime scene and insofar as it may include things like a car, for instance, I am wondering about the return of items, because we are submitting for forensic analysis, but we do not impose any obligation to return anything; and I am just wondering about that.
Sen. George: Does the law say it should be returned?

Sen. Al-Rawi: I appreciate Sen. George has wisely asked the question whether it is the current law that it should be returned. But insofar as the purpose is limited to DNA analysis, the issue of return of ownership becomes an issue when it is something which is used or something which is substantial, like a car, for instance, which may be a crime scene, once it is swept and kept, unless it is required to be held for any other lawful purpose could be a caveat to the return, and whether it was in the law or not, I do not know.

Mr. Volney: For return? I do not think so.

Sen. Al-Rawi: We had the example the other day of the hon. Attorney General mentioning a Caterpillar which went missing, as an example.

Mr. Chairman: What about a butterfly? [Laughter and desk thumping]

Sen. Deyalsingh: Mr. Chairman, Mr. Chairman.

Sen. Al-Rawi: Thank you, Mr. Chairman.

Mr. Volney: You can sue for its return. I think we are starting to chase shadows now.

Mr. Chairman: I understand that an application is made for such a return.

Sen. Ramlogan SC: What they want is the DNA sample and the profile, they would have to return it, there would be no legal basis to hold on to it.

Sen. Deyalsingh: There are already procedures in place to return, let us say, a car again.

Sen. Ramlogan SC: Yes, the police in the normal course, they do. You would not have to legislate that.


Mr. Volney: Mr. Chairman, to amend further:

“…any sample by which a familial relationship to the missing person can be determined.”

Sen. Ramlogan SC: I think I would like to give credit to Sen. Corinne Baptiste-Mc Knight, we are including the point which you have raised.

Sen. Baptiste-Mc Knight: I am well pleased.

Sen. Ramlogan SC: You are well pleased? I am happy. [Inaudible] She is too much of a grammar police for me to say that.
Mr. Chairman: Can I get clause 18(b) is it? So it would read:

“or (b) any sample by which a familial relationship to the missing person can be determined.

Clause 18 as further amended be further amended to include at 18(1) at the opening:

‘Where a person is reported missing”; and after the word “analysis” in line two, the introduction of (a) going on: “any item belonging to or used by that missing person; or (b) any sample by which a familial relationship to the missing person may be determined.”

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the Bill.

Clause 19.

Question proposed: That clause 19 as amended stand part of the Bill.

Delete clause 19 and substitute the following clause:

19(1) Subject to subsection (2), where a complainant is medically examined by a qualified person in the course of an investigation of a sexual offence, the qualified person may take a sample from the complainant with consent.

(2) Where a complainant is a child or an incapable person, a qualified person shall obtain the consent of the representative of that child or incapable person for the taking of a sample.

(3) A qualified person who proposes to take a sample from a complainant shall—

(a) obtain the consent of the complainant or his representative in the form set out as Form 3 in the Second Schedule before the sample is taken;

(b) inform the complainant or his representative that the sample may be the subject of a search and that his DNA profile will be stored in the Forensic DNA Databank; and

(c) inform the complainant or his representative of his right to withdraw his consent before the sample is taken.

(4) Where the complainant or his representative has consented to the taking of a sample, he may withdraw his consent in the form set out as Form 3 in the Second Schedule.”
Sen. Prescott SC: Mr. Chairman, I have a question; why is clauses 19(1) and (2), the original, being removed? It seems to lend to the efficiency in the process.

Sen. Ramlogan SC: If you have the expediency, for the efficient administration as well, with the exception of the amendment to (2) to delete “without a consent”.

Sen. Prescott SC: Yes.

Sen. Ramlogan SC: Do you have any objections to that?

We have are no objection to that.

Mr. Chairman: What are we introducing?

Sen. Ramlogan SC: The old 19 which was crossed off.

Mr. Chairman: The old 19 and now appears at?


Mr. Chairman: Oh, I see, yes.


Mr. Chairman: So, you mean the side bar?

Sen. Ramlogan SC: We are saying that we will keep the old 19, with the change to subclause (2) to remove “without the consent” part of the alleged victim. Well, the consequential numbering will come after.

Mr. Chairman: So that what is 19(1) in the circulated document becomes (3). Is it?

Sen. Ramlogan SC: No. That would be a separate section, it would be 20.

Mr. Chairman: A new section altogether—[Interrupt]

Sen. Ramlogan SC: We said we will deal with the numbering later.

Mr. Chairman: I just wanted to understand. So that clause 19 as originally circulated in the original Bill, the amendment is to remove the words “without the consent of the alleged victim”.

Sen. Al-Rawi: Just a moment to read it through carefully, Mr. Chairman.

Mr. Chairman: Sure.

Sen. Al-Rawi: There are some inconsistencies. Oh, I see, hold on.
Sen. Ramlogan SC: We will have to change the words “alleged victim” to “complainant”.

Sen. Al-Rawi: Yes.

Mr. Volney: Complainant or virtual complainant?

Sen. Al-Rawi: Because “complainant” is defined in clause 4.

Mr. Chairman: So, you are taking out “an alleged victim” in (1) and (2), is it? And to be replaced by “complainant”; “to examine the complainant” and from a complainant, do you need to say “of a sexual offence” or all the complainants are sexual offence or related? Or just say from a complainant?

Sen. Beckles: Are you maintaining that definition of complainant?

Sen. Al-Rawi: Yes, you should, because it would amend the other clause after.


Sen. Al-Rawi: Mr. Chairman, if we are keeping clause 19(2) as it was, it should read:

“a qualified person may take such samples as he thinks fit from the complainant.”

Sen. Ramlogan SC: Mr. Chairman, may I just point out; Sen. Prescott SC, 19(2), we do not really need it in light of 19(1), do we? The old 19(2), we do not need that in light of the new 19(1)?

Sen. Prescott SC: Well, no, but you would now empower the qualified person to take it in (2). The policeman makes the arrangement and you empower the qualified person to take it.

Sen. Ramlogan SC: But 19(1) says to be examined by a qualified person.

Sen. Prescott SC: The old 19(2) says:

“and now the qualified person may take a sample.”

Sen. Ramlogan SC: Clause 19(1) already says that, the proposed 19(1)—[Interruption]

Sen. Al-Rawi: Clause 19(1) as recast, so if you kept the old 19(1) and then you move to the new 19(1) it flows without the (2).

Sen. Ramlogan SC: Mr. Chairman, I think your original suggestion is, in fact, valid. We will take off the old 19(2) and we will leave the old 19(1) which will just flow as part of the present redraft of 19. You follow?
Sen. Prescott SC: Yes.

Sen. Al-Rawi: And renumber the new 19(1) as 19(2). Correct.

Sen. Ramlogan SC: Are you okay with that Sen. Prescott SC?


Mr. Chairman: I will just look at the amendments again. The amendment is that 19(1) as in the original Bill is retained, save for the removal of the words at the end of that sentence “alleged victim” and replace them with the word “complaint” and thereafter, the clause as renumbered will read as circulated for the rest of 19.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: Mr. Chairman, on a separate point, I am looking at the issue on page 14 of the marked-up amended Bill. I am looking at the issue of the child in particular, and also at the form, even though we will get to forms separately, Form 3. In the architecture of this clause right now we have:

“a qualified person who proposes to take a sample from a complainant”, subclause (2) says on 13 (2), 19(2) which will now become 19(3): “where a complainant is a child or an incapable person, a qualified person shall obtain the consent of the representative of the child for the taking of the sample.”

Just to be sure, is it the thinking that (a), (b) and (c) in clause 14 take care of the interest of the child insofar as (a) has the consent of the complainant or his representative. Was that the thinking?


Sen. Al-Rawi: Then relative to the form at the back, Form 3, the issue of a witness may arise here.

Sen. Ramlogan SC: Form 3?

Sen. Al-Rawi: Yes, AG.

Sen. Ramlogan SC: Well, we can deal with that in the form by putting—we will ask the—

Sen. Al-Rawi: Just marking the spot.

Sen. Ramlogan SC: Yes, that is fine. We had said that we would look at it.

Sen. Al-Rawi: Thank you.
Sen. Ramlogan SC: That is fine, Mr. Chairman.

Mr. Chairman: So the question is that—

Sen. Brig. Sandy: Sir, if we go back to the new 19(1) which has become 19(2), we will have to change that to “subsection (3).”

Mr. Chairman: Yes. All the renumbering will be picked up.

Sen. Brig. Sandy: I mean within that whole subclause (2) itself.

Mr. Chairman: We pointed that out.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

9.55 p.m.

Clause 20.

Question proposed: That clause 20 stand part of the Bill.

Mr. Volney: Mr. Chairman, I beg to move that clause 20 be amended as follows:

In subparagraph (b), insert the words

“and, where the person from whom the sample is being taken so requests in writing, in the presence of a specified person of the opposite sex”,

after the second place in which the word “taken” appears.

Sen. Al-Rawi: We are saying, in clause 20(b), we are adding, gratefully, the provision for someone of the opposite sex to attend, for instance, with his wife as the case may be. We are saying that the request must be in writing. Do we want to consider a form for that or leave it that way?


Question put and agreed to.

Clause 20, as amended, ordered to stand part of the Bill.

Clause 21.

Question proposed: That clause 21 stand part of the Bill.
Mr. Volney: I beg to move that clause 21 be deleted.

*Question put and agreed to.*

Clause 21 deleted.

Clause 22 ordered to stand part of the Bill.

Clause 23.

*Question proposed,* That clause 23 stand part of the Bill.

Mr. Volney: Madam Chairman, I beg to move that clause 23 be amended as follows:

A. Insert the words “(1)” after the words “22”.

B. Insert after the proposed subclause (1) the following subclause:

“(2) Subsection (1) shall not apply where a sample is to be taken from a complainant.”

Mr. Chairman: The question is that clause 23, as amended as circulated, stand part of the Bill.

*Question put and agreed to.*

Clause 23, as amended, ordered to stand part of the Bill.

Clause 24.

*Question proposed,* That clause 24 stand part of the Bill.

Mr. Volney: Madam Chairman, I beg to move that clause 24 be amended as follows:

| “PART V  
PROCEDURE FOR TAKING NON-INTIMATE AND INTIMATE SAMPLES AND POST COLLECTION PROCEDURES” |
|---|
| Dealing with a DNA sample | 23. A police officer or qualified person who takes a sample from a person under this Act shall—  
(a) place the sample in a container;  
(b) seal and label the container with an identifying mark;  
(c) place the container in a package;  
(d) seal the package; and  
(e) label the package with the same identifying mark that is shown on the label affixed to the container. |
| **Storage and delivery of package** | **24(1)** A police officer or qualified person who takes a sample from a person under this Act shall—  
(a) as soon as practicable, submit the sample to the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis;  
(b) ensure that between the time the sample is taken and the time of delivery to the Trinidad and Tobago Science Centre, the package containing the same is properly stored; and  
(c) complete the form set out as Form 4 in the Second Schedule. |
|-------------------------------|---------------------------------------------------------------------------------------------------------------|
| **Form 4 Second Schedule**    | **(2)** A person who receives the package containing the sample at the Trinidad and Tobago Forensic Science Centre for forensic DNA analysis shall—  
(a) ensure that the package is properly sealed, labeled and identifiable both by him and the police officer or qualified person who delivers the package; and  
(b) record the following information in a log to be established and maintained at the Trinidad and Tobago Forensic Science Centre:  
(i) in the case of a police officer, the name, rank and service number;  
(ii) in the case of a qualified person, the name, profession and place of employment;  
(iii) the identifying mark which is affixed to the package;  
(iv) the date and time the package was delivered to the Trinidad and Tobago Forensic Science Centre; and  
(v) the name and designation of the person receiving the package. |
| Duties of Forensic DNA analyst | 25(1) Subject to subsection (2), a Forensic DNA analyst who conducts a forensic DNA analysis shall prepare and submit a certificate of analysis to the Commissioner of Police.  
(2) Where a certificate of analysis is prepared in respect of any matter which is under investigation or before a Court, a Forensic DNA analyst shall submit that certificate of analysis to the relevant investigating officer.  
(3) A forensic DNA analyst shall submit a DNA profile obtained by him through forensic DNA analysis to the Custodian for storing in the Forensic DNA Databank.  
Chap. 7:02  
(4) A forensic DNA analyst shall be deemed to be a Government expert for the purposes of the Evidence Act.” |

**Sen. Ramlogan SC:** Mr. Chairman, I beg to move that clause 24(2)(b) be amended as follows:

At the bottom of the page, record the following information “in the DNA register” as opposed to “log”.

**Sen. Deyalsingh:** Mr. Chairman, on clause 24(1)(a), “as soon as is practicable”, is there anything in the regulations that defines a time period? The reason I ask is, if you have a high-profile case riding on DNA samples, let us take the old Abdul Malick/Gail-Ann Benson case, to protect and preserve the chain of custody, would you want to have a specified time as opposed to just an open-ended thing as soon as possible where a case could fall on that? So three days, two days—

**Sen. Ramlogan SC:** The problem is that those jurisdictions that did specify a time, ran into serious problems as a result of which—I see Sen. Al-Rawi agreeing with me—people have been able to escape conviction. This is the alternative formula that most jurisdictions are using now.

**Sen. Deyalsingh:** On the flip side, have any cases been lost because you have this “as soon as possible”?
Sen. Ramlogan SC: No, because it means as soon as practicable.

Mr. Chairman: So, the question is that clause 24 amended as circulated with the further amendment that subclause (2)(b) be amended so as to replace a log in line 1 by the DNA register.

Sen. Prescott SC: [Inaudible] my proviso about a witness being required and that the form be amended accordingly?

Sen. Ramlogan SC: Yes, we have taken note of that.

Mr. Chairman: That is Form 4 in the Second Schedule.

Question put and agreed to.

Clause 24, as amended, ordered to stand part of the Bill.

Clause 25.

Question proposed: That clause 25, as circulated, stand part of the Bill.

Mr. Volney: Madam Chairman, I beg to move that clause 25 be amended as follows:

A. Delete subclause (3) and substitute the following subclause:

(3) The Trinidad and Tobago Forensic Science Centre shall—

(a) within three months after the end of each calendar year, provide the Commissioner of Police with a list of samples which have been lodged at the Trinidad and Tobago Forensic Science Centre for a minimum period of ten years; and

(b) indicate to the Commissioner of Police that it proposes to destroy the listed samples.”.

B. In subclause (4) insert the words “,after consultation with the Director of Public Prosecutions,” after the word “Police”.

Sen. Al-Rawi: Mr. Chairman, I am just wondering, in clause 25(1) where a certificate is generated and sent to the Commissioner of Police, it may be that it is implied that that certificate should also reside with the commissioner. I am borrowing the example of certificates of title in the Registry relative to RPO transactions and making sure that at all points in time we have a duplicate of whatever has been sent. I am wondering whether we should include—I am open to interrogation of the idea—the commissioner under the Act as also receiving a copy of that certificate.
Sen. Ramlogan SC: The present practice is that they would submit it to the investigating officer when it is in relation to an outstanding matter. The problem with the police service is that the commissioner’s office is already overburdened and ill-equipped to deal with administrative matters. The administrative capacity is not what it should be and if we keep adding bureaucratic burdens on the office of the commissioner, then we are going to suffocate the police service.

Sen. Al-Rawi: That is exactly the point. In fact, I so agree with you that I am suggesting that because of the risk of loss and the overburden in the TTPS, I am looking at providing it to the person who runs the DNA bank so that whatever happens in the TTPS, the certificate get lost, the clause currently contemplates putting it to the Commissioner of Police, that certificate.

Sen. Ramlogan SC: There are two things to that.

Sen. Beckles: The investigating officer, I think, would be better.

Sen. Ramlogan SC: That is what we have. I would agree with the wisdom of Sen. Beckles and keep it as we have it because the investigating officer is really the material person.

Sen. Beckles: If the commissioner is not there, and you have that case, you have to collect that—

Sen. Al-Rawi: All I am asking for is inclusion of the custodian, perhaps. If you have a certificate generated and one copy goes, you have got—if the regulations provide for instance, if we contemplate that all certificates generated an original copy will be there.

Sen. Ramlogan SC: We can look at that in the regulations, yes.

Sen. Al-Rawi: I am borrowing from the Firearms Regulations where you submit for ballistic analysis, one copy is kept there and another copy is given out.

Sen. Ramlogan SC: In any event, they keep a copy on file. It is done in duplicate.

Sen. Ramkhelawan: Mr. Chairman, I have a deep concern about the whole question of the forensic DNA analyst from the point of view of management effectiveness. This analyst is responsible, among other things, under 25(4) to be a government expert for the purposes of the Evidence Act, which is a very, very critical responsibility. Yet when I look at the definitions, which we will come to later, there is no minimum set of qualifications or expertise for this person who is an analyst. In theory, this person can be anybody according to the law.
Administratively, there might be standards, but I certainly want that if somebody is going to be the expert witness in these matters, which could be somewhat complicated and not easily understood in a court of law, or all of the niceties associated with the DNA identification, that I think we need to deepen the definition or the qualifications of this DNA analyst.

Mr. Volney: If we should start that, under section 19(1) of the Evidence Act, the certificate or report of an expert or someone deemed to be a government expert for the purpose of the Evidence Act is admissible in evidence. What then happens is that once a certificate purports to be that of such an expert, then it becomes admissible and it speaks for itself.

For a person to be appointed as a government expert for the purposes of the Act, he has to be appointed by the service commissions and there are set criteria, qualifications before you can have acquired the nomenclature of an expert, as a scientific officer or as whatever. So that rest assured you would not get the job and you would not be able to sign the certificate or report unless you have the qualifications set for the position.

Sen. Prescott SC: May I just add a penny here? The Minister will not remember it, but even government pathologists have been taken to task when they come forward as experts and have been proven not to be satisfactory experts. This person is going to be deemed an expert but there will be no reason why defence counsel cannot have him or her called to demonstrate the weakness of the person’s position. All the person really has been given here is the power to sign a document and to have the court accept it.

Sen. Al-Rawi: And admissibility as opposed to weight is always—

Mr. Chairman: The question is that clause 25, amended as circulated, now stand part of the Bill.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Clause 26.

Question proposed, That clause 26 stand part of the Bill.

Mr. Chairman: You will recall there was a new subsection (2) which read:

“Upon application by a person from whom a sample has been taken under the Act, the Court shall order that the sample be destroyed unless the court is satisfied that the sample may reasonably be required for the prosecution or investigation of an offence.”
Sen. Al-Rawi: Was that circulated? Would you just read that over again?

Mr. Chairman: This is—

Sen. Al-Rawi:—when we were discussing earlier on.

Mr. Chairman: Very early—


Mr. Chairman: I was just saying that this is another amendment already considered but not passed.

Sen. Al-Rawi: Could you repeat that, Mr. Chairman?

Mr. Chairman:

“Upon application by a person from whom a sample has been taken under the Act, the Court shall order the sample be destroyed unless the court is satisfied that the sample may reasonably be required for the prosecution or investigation of an offence.”

That is as I took it.

10.10 p.m.

Sen. Prof. Ramkissoon: Mr. Chairman, I still want to find out; why that magic number 10? Why 10 years?

Sen. Al-Rawi: Now, that is now subjected to clause 2, because you could apply. So, if I got it correct—sorry, Prof., to butt in—but if clause 2 reads the way it does, it means that you potentially have the right to apply, at any point in time, and then ask for it unless the court deems otherwise.

Sen. Prescott SC: The burden is on the commissioner or the DPP.

Sen. Al-Rawi: Exactly. And the burden will be on the commissioner to say, “Look, the offence is still on. The Act contemplates 10 years, we think we have room.”

Sen. Ramlogan SC: Mr. President, you see, that simple amendment represents a fundamental departure from the government policy in relation to this Bill. Then every police officer, every soldier and everyone can apply and say, “Well, it have no basis for you keeping my DNA sample”, and then it all goes. The whole point in creating and developing a DNA database is to have a DNA bank that you can run—something you collect from a crime scene to see if it trips and creates a red flag with anyone whose sample is there.
It undermines the whole concept of having a DNA database. How will you fight crime? Everyone is going to go to legal aid and say, “Look, they doh have nothing on me, eliminate my sample, eliminate my profile.”

**Sen. Prescott SC:** Mr. Chairman, may I just ask, is the Attorney General still on my side on this matter?

**Sen. Ramlogan SC:** No, no, no.

**Sen. Prescott SC:** Might I ask you to err on the side of people’s rights on this occasion?

**Sen. Ramlogan SC:** Well, I am. That is why I want to ensure that we have a DNA databank to protect innocent citizens. I have asked those on the other side of this particular argument to tell me, what harm will be done to the person who is a suspect or an accused or whatever, whose DNA sample and profile is retained. I have heard two illustrations; one the police certificate of good character, and I have dealt with that by saying, we can put a clause in this law to say “The information collected cannot be used for anything other than for the purpose of solving crime”, and that will deal with the issue of the police certificate of good character, and it will also deal with the issue of the visa. It will deal with that also.

Disclosure of your DNA or your profile or your sample otherwise in connection with the police investigation into crime—put the death penalty on it if you want, I do not care—but to undermine the whole substratum of the concept to create a DNA bank.

If your child is kidnapped—this is a real example, Nial Ali, from Gasparillo. They found his bones recently. When that child was kidnapped—I know the family personally—they kept moving that child from camp to camp in the forest. They did it with Debbie Ali and they did it with Nial Ali.

When the police go to one camp and they find a piece of underwear or a strand of hair, and they want to take that now, they do not know who had your child, and they have no suspect. The police do not have suspects. What is our crime detection rate? What is our prosecution rate? They have no suspect. Why? The police themselves may have been involved in the thing. So when they get a strand of hair, it could have been one of the captors, and when they go to that DNA bank and they run that DNA from the strand of hair, if the fellow who was guarding the kidnap victim DNA is there and a match is made, you then have something to go on to save somebody life. If that person’s DNA sample is not there, that strand of hair that could save somebody’s child’s life becomes completely useless, and these are real life situations.
Now, to tell me that I must—somebody’s daughter who has been kidnapped and raped, and we can solve that problem in part—give up that to protect the man whose hair I found on the ground and who was standing captive over her—because he could be affected and because he is not going to get a police certificate of good character and a visa to go to the US—quite frankly, I want to err on the side of the human right of the victim.

**Sen. Al-Rawi:** Mr. Chairman, with the greatest of respect to the hon. Attorney General, very emotive plea, strong case on one side of the coin. The difficulty is the proportionality of the law as it stands in relation to our Constitution as other jurisdictions have recognized. The first point is it may very well be in relation to the rights of a child whose position comes up as a hit on a DNA database that disclosing the existence of a DNA profile on this database may cause negative impact that we cannot yet foresee—employment opportunities, education and other factors.

**Sen. Ramlogan SC:** But how? Tell me how?

**Sen. Al-Rawi:** How?

**Sen. Ramlogan SC:** How? Give me an illustration of somebody being denied employment.

**Sen. Al-Rawi:** Okay, good, I will give an illustration.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** Yes, somebody applies to BP Amoco that has a first world standard—

**Sen. Ramlogan SC:** Good.

**Sen. Al-Rawi:**—and says I want a job as an engineer there.

**Sen. Ramlogan SC:** Sure.

**Sen. Al-Rawi:** That person was a child earlier on who got caught shoplifting.

**Sen. Ramlogan SC:** Right, so we have the DNA sample.

**Sen. Al-Rawi:** You have the DNA sample.

**Sen. Ramlogan SC:** Right, BP “rights”.

**Sen. Al-Rawi:** You go and get a certificate of character in this case, and the certificate of character says “Person has a profile kept for an offence—
Sen. Ramlogan SC: No, hold on.

Sen. Al-Rawi: I am hearing. I am just giving a few examples here.

Sen. Ramlogan SC: We are outlawing that.

Sen. Al-Rawi: We would have to, if we are considering the outlawing of that, make sure that we are careful in the language to say that the existence of that should not disqualify someone, for instance—

Sen. Ramlogan SC: No, that is not the way you do it, no.

Sen. Al-Rawi: Hold on! Let me at least finish my ideas.

Sen. Ramlogan SC: Okay. [Crosstalk] That is the point I am making. You see, the disclosure of a person’s DNA record sample or profile, that disclosure that it even exists must be criminalized, and we are prepared to do that—the disclosure of the profile, existent sample, anything, otherwise than in connection with police investigation of crime will be a criminal offence. So, BP cannot get it.

Sen. Prescott SC: Hon. AG, how is that applicant ever going to be able to swear truthfully that a record does not exist in the police,—or whatever you call it database?

Sen. Ramlogan SC: We can deal with that as well.

Sen. Prescott SC: The applicant cannot swear to that truthfully.

Sen. Ramlogan SC: In the law, it is illegal in this country to ask somebody if they vote.

Sen. Prescott SC: Is that right?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: Sorry, I thought you were going to say if they were ever known to the police.

Sen. Ramlogan SC: No, but it is illegal to ask someone, for example, “if they vote”.

Sen. Prescott SC: So, are we going to introduce law that says it is illegal to ask? “No, man!”

Sen. Ramlogan SC: Let us put a clause that makes it illegal to ask someone if he has submitted a sample.

Sen. Prescott SC: All I am asking you to do is to permit a judge the opportunity to say, “I am sorry young man, but the Commissioner of Police is right, I must hold on to this.” That is all. You would make the same arguments you have just made.
Sen. Ramlogan SC: But the gap there needs to be bridged. How is the Commissioner of Police or anybody going to bypass the clear words that we will put to give that information that this person’s record is on a DNA databank and to give it to any private organization or, in fact, anybody else otherwise than in connection with the investigation of crime in the first place?

Sen. Prescott SC: I do not know the answer. We are two poles in the spectrum. I am saying that there is a man who has a right to be free from any reference in the police records, and he may prove himself to anyone to be free of it. He may find himself there because he got into some domestic tiff with his spouse, and 10 years later the people cannot live happily, because there is this record and he wants to rid himself of it. All he needs to do is go to a judge and say, “Judge, please permit me to have my name removed or my sample removed from the database.”

Sen. Ramlogan SC: Senator, the problem with that approach is that is where the country has been for the past 20 years, and that is what has led to this present situation. [Desk thumping] It is time we start thinking about innocent citizens in this country. We are legislating for the rights of the accused? I want to legislate for the rights of the victims too.

Sen. Drayton: Mr. Chairman, we are thinking of innocent people, and this thing about it cannot be disclosed, we have in front of us right now in the glare of the public—you have the same thing with respect to the Integrity Commission and it is leaked, except that this is not a question of discussions in a boardroom, this is yours and mine, DNA profile. So do not tell me that you are going to legislate for something not being leaked.

Sen. Ramlogan SC: But Senator, please.

Sen. Drayton: Let me finish.


Sen. Drayton: We are on the same side.


Sen. Drayton: Yes, we are on the same side.

Sen. Ramlogan SC: No, no, we are not.

Sen. Drayton: We both want to protect the innocent person, and we both want to see the criminal put away. In the same light, you cannot erode constantly the rights of every single person in Trinidad and Tobago. [Desk thumping] You might as well when we are born put our DNA in the DNA bank.
Sen. Ramlogan SC: Senator, listen. This thing is about detecting and fighting crime. If you are not involved in criminal activity you have nothing to fear. The leaking argument—

Sen. Drayton: I am sorry. When we did the anti-gang legislation, we were told that if you are not a member of the gang then you have nothing to worry about. We have walked that road before.

Sen. Ramlogan SC: Senator, can I tell you this? What was leaked in the anti-gang is the CCTV footage that showed that some of the detainees were robbing people’s children while they were going home from work. That is what was shown and that is what was on record. Permit me to say the leakages from the Integrity Commission could occur in any institution in this country.

Sen. Drayton: It could occur in this.

Sen. Ramlogan SC: Hold on. The Elections and Boundaries Commission could leak who voted and who did not vote. They can, if you have a connection it could happen. Who knows? The point is you cannot legislate on the basis that there is going to be a leakage. That is not the way to pass good law. The Judiciary could leak something too. What I am saying is this—

Sen. Drayton: All I am saying, hon. AG is that we have a right to try to protect innocent people.

Sen. Ramlogan SC: From having their DNA in a databank?

Sen. Drayton: Not only from the criminals, but from authorities and institutions which can be abusive, and we have seen that.

Sen. Ramlogan SC: Ma’am, I have to tell, I respectfully beg to differ on this point. The idea that the State is going to take someone’s DNA profile which it has gathered for the purpose of fighting crime in a situation where the custodian is not being appointed by any politician, but is being appointed by the independent service commission—all the public officers at the Forensic Science Centre who are going to be in charge of this are public officers appointed by the public service commission—and they will leak this to some private employer and, more importantly, the private employer would risk criminal liability and prosecution to even solicit that information to find out, what? How would the DNA—there are volunteers; there are people mandated—the army, police, the municipal police officers, the prison officers and the fire officers, so how on earth is the employer, by knowing that somebody’s DNA is in the database, assuming he finds that out, what is he going to do with that?
Sen. Drayton: Your DNA is not in a database, your DNA is in a criminal databank.

Sen. Ramlogan SC: No, no, no!

Sen. Drayton: Yes, it is, this is a criminal Bill.

Mr. Chairman: May I hear Sen. Dr. Tewarie at this point?

Sen. Dr. Tewarie: I just want to reinforce a point I made earlier which had to do with democracy and the issue of protecting innocent people. As I said, the individual does not enter the database unless he or she has come into contact with the law on the basis of some suspicion of infringement of the law.

Sen. Al-Rawi: Like selling rotten goods.

Sen. Dr. Tewarie: And, basically, I think that given the atmosphere, the environment, in which these kinds of legislation have evolved in Trinidad and Tobago and around the world, because the deck has been consistently stacked in favour of the criminal, I think the legislation of this type which is in no way draconian, but meant to protect the rights of innocent people who have been hurt by criminals, it is important to understand that some rebalancing needs to take place to give the State the authority and the power to do this, and enough elements have been introduced in here to ensure the independence of the institution, and the integrity of the database.

The argument about leakages can happen in any institution, but the law and the promise of the law that the AG mentions will take care of the issues. I really do not feel—if you make namby-pamby law to deal with criminal matters, the end result is going to be no effect, which has been the effect for the last several decades.

Sen. Ramlogan SC: We have had it this way. Listen, the way that you all are proposing, we have had it that way all this time. Since 2000 in this country, what you are proposing has been in place, and since 2000 to now the murder rate has skyrocketed. So we have tried it your way. The country is engulfed in a crisis, a terrifying crime crisis.

10.25 p.m.

Since 2000—2012 we have had it that way, and it has not helped the police to improve the detection rate of crime. I am telling you about real-life examples involved with the kidnapping industry and other forms of criminal activity. Even if I accepted what you all are saying—which I do not, with the greatest of respect—
I do not think that the State is going to be concerned about leaking somebody’s DNA profile to bpTT or any other private entity, so that the person would not get “ah wuk”, or “dey go be leaking it to the US Embassy so you would not get ah visa”, or that the Commissioner of Police will leak it and not give you a police certificate of good character. I do not think so at all.

In fact, we have taken into account all that you have said. In many countries— I just pass the listing here. In most countries, do you know what the retention time is in Spain, Sweden, you know—

**Sen. Al-Rawi:** With or without consent for starters?

**Sen. Ramlogan:** Ten to seventy-five years.

**Sen. Al-Rawi:** I have read the same thing. I have read it, and you are leaving out the consent issue, AG. That is a superficial argument.

**Sen. Beckles:** That is superficial; for which offences?

**Sen. Ramlogan SC:** Sorry.

**Sen. Al-Rawi:** First of all, hon. AG, they have it for scheduled offences, serious offences; secondly, there is consent requirement; thirdly, how does this law survive the proportionality? Listen, everything the Government has said today—Sen. Devant Maharaj, said and read, the UK submissions to the European Court of Justice.

**Sen. Ramlogan SC:** Yes.

**Sen. Al-Rawi:** Everything that you have said fits within that model. The point is, when you compare the European Union Article 8 taken to the English position with our Constitution, they are on all fours. And how does the proportionality stack up when we have had the removal of consent here when the English experience has demonstrated that the police will go on a pick-up exercise— England has studies in relation to this. You go on a massive—put everybody on the database—exercise to make it as large as possible. What is the jeopardy in saying, “keep it for a period of time? You have your no consent position so far, but justify it to a judge after five years, and say; “Look, my Lord, we wish to keep it because we have an ongoing investigation”—et cetera. We have to think about the methods of abuse that we cannot foresee right now, and we must legislate under a veil of ignorance.
Sen. Prescott SC: Mr. Chairman, thank you. I wish to firstly say that the introduction of the question of leaks did not come from the proposal of this amendment. It was never based on that. I was saying that, I, an innocent person, do not wish, internally in my spirit, to know that my name and data are in this database because of some perceived infraction within my home with my spouse or my child. A kind of situation where had I gone before the magistrate 10 years ago and got a section 71, I would have had a clean slate, nobody would know but me—


Sen. Prescott SC: That I went before the court and I have been freed, they found nothing worthy of keeping a record about me. What am I doing talking about leaks? I am not speaking about leaks. Institutions have leaks, we know that, but I am saying that the 90 per cent of this country whose citizens are innocent, that is to say that they have never crossed the line, do not wish to get up each morning and feel within their spirit that there is a record somewhere in criminal legislation or in the criminal archives of this country which includes their name. That is my whole point. I do not wish it for myself and I do not wish it for 90 per cent of the people in this room.

Sen. Ramlogan SC: Mr. Chairman, my counter to that is that 99 per cent of the people in this country want to get up in the morning and know that in their spirit, when their daughter boards a taxi to go to work that she would reach home safe in the night. Ninety-nine per cent of the people in this country want to know that when they go to work they could reach home safe in the night to actually see their children, and cook a meal—of food—and put it on the table. It is those 99 per cent of law-abiding decent citizens, who will have no qualms, whatsoever, in voluntarily providing their DNA because they know that this thing is about fighting crime.

Listen, the man whose spirit you want to protect, who want to get up in the morning and breathe a breath of fresh air, knowing that he is innocent and celebrating his innocence, he has absolutely nothing to fear if he is not going to be involved in any form of criminal activity. [Desk thumping] He has nothing to fear. The only time this is going to be made use of is in connection with the detection and investigation of crime. Now if there are peripheral matters we are prepared to consider toughening up the offences to deal with that.

Sen. Drayton: Could I just seek clarification, Mr. Chairman, just referring to the current Bill. What we are saying here is not that we want removed entirely, any reference to your profile in a DNA bank if you are innocent.
Sen. Ramlogan SC: Yes.

Sen. Drayton: What we are saying; let there be a process that if you wish to apply to a judge—

Sen. Ramlogan SC: After how many years?

Sen. Drayton: Let me finish this and then we probably could look at how many years, okay?


Sen. Drayton: So let us take it one by one. If whoever decides that they wish to have their profile removed and they are applying to a judge to have it moved, then the judge would decide based on whatever case is put forward by the commissioner, the Director of Public Prosecutions (DPP) or whoever. Okay. Now are you saying that is the situation in the current legislation?

Sen. Ramlogan SC: No. No. No. The current position is that there is no record. The record is not retained.

Sen. Drayton: Okay. So let us go to step 2 of my seeking clarification. Why 10 years? Why can we not look to make some compromise here and say 3—5 years, bearing in mind that you could always come, if you suspect for any reason, you have the right, to take my sample. If you are saying 10 years then it could apply to 11 years from now. I will be comfortable with a compromise to know that it is not 10 years or indefinitely, but it is 3—5 years. Or, if not, I would like the opportunity to apply to have my profile removed, and if you have reason to believe, if the authorities have reason to believe, that that profile should be maintained then let them make a case to a judge. I do not see 300 people rushing to do this, quite frankly. It is not the case now and I see no reason why it will be the case if that compromise is made. I think we both have the same goal. We want legislation strong enough.

Sen. Ramlogan SC: Would you be prepared to consider 8 years then, because the reason we selected 10—I want to tell you why—is because in most countries—we have the list here—it ranges between 10 to 75 years.

Sen. Al-Rawi: Mr. Chairman, perhaps we could have this here. I have the same list right here.

Sen. Beckles: I have it as well—serious offences to minor offences.

Sen. Al-Rawi: Mr. Chairman, if we were to schedule serious or what we call blood offences in previous Bills, you could keep it for 100 years. What we are saying is the tomato that is rotten that you get charged for in the market—

Sen. Al-Rawi:—under the offences Act, it is a criminal offence which fits into this Act and I could be suspected of selling rotten tomatoes and therefore picked up and, given the DNA, no problem. All of the literature says keep it for 100 years for blood crimes, no problems there”, you are protecting all. But you need to have a proportional scale-down in respect of minor offences, or at the very least reverse the burden to demonstrate why.

When you come to clause 30, you will see that the reason given by the Commissioner of Police for not destroying a sample, is a sole single line. In his discretion he thinks that it is necessary for an ongoing investigation or something before the court. Not even your general reason subject is to JR, so why do we not categorize it? We all agree that we do not want crime here but in achieving the balance, list the blood crimes in a schedule as we have done in other legislation, and keep it for 100 years—no problems, those are blood crimes. That is what the list of countries shows; blood crimes are kept for 75 year, 17 years and 20 years. France, Sweden—


Sen. Al-Rawi:—the whole world, but they list it in respect of blood crimes.

Sen. Ramlogan SC: The problem with that is this: I cited the celebrated case that gave rise to this; the case where Mr. Waite was arrested and convicted for rape and murder in the United State of America, but there are many other examples, but it was a traffic offence. I pointed out to you all that empirical data and studies suggest that the low end of the net, on the low threshold offences, you back-pedal and catch a lot of persons in the net who commit high crime.

Let us take, for example, the average bandit; what does a “rude boy” and a “bad boy” want to thief people money for? You know what they want to do? First and foremost, they want to “bling it out” with accessories on a car. You know what they do with that car? It is used as a getaway vehicle to lime and carry a little young “gyul” in front and the “get-rich-quick culture” with pure hard cash and speeding.

When you catch someone—and this is real—speeding with a souped-up engine, with all the accessories and music blaring out—in fact, the music system oftentimes costs more than the car itself; but when you hold that person and you get a DNA sample, it is potentially four bandits, it is potentially somebody who raped somebody’s daughter, and you could churn up a lot in the database. But if you do not have the right to take that person’s DNA for that minor offence, you lose the opportunity and we have been losing the opportunity in this country for so long. All I want to do is give the State that opportunity. [Desk thumping]
Sen. Drayton: But you have that opportunity. You have that opportunity.

Sen. Ramlogan SC: Not if you cannot retain it.

Sen. Drayton: No. No. You can retain it—

Sen. Al-Rawi: You can under written samples in clause 14.

Sen. Drayton:—because, well, apart from clause 14, if the judge or whoever decides, if the Commissioner of Police or the DPP or whoever, that is no rocket science—then you can. So we are not taking away that ability from the police.

Sen. Ramlogan SC: No, you are—with respect you are. What you are saying is that if you go to a judge and you convince the judge that the retention of this profile and sample is necessary because there is a pending investigation that it is relevant to, the judge could then say, “Keep it still”, but if the police cannot demonstrate that there is some pending investigation in respect of which this sample or profile is required because it is relevant to that pending investigation, the judge will have to say, “Destroy it.”

When you destroy that, for example to use the trafficking offence, the young boy that you stopped and so on, after you have charged him, he goes the next day with the same money that he has in his pocket that he robbed somebody the night before, he goes the next day to the Magistrate’s Court and he pays the ticket. After he pays the ticket you cannot keep the sample, so you could never discover that he robbed somebody the night before, and it was that robbery money he was spending when you held him. You cannot discover that the next week he is going to commit a next robbery. You lose the opportunity; it is a vital opportunity.

Sen. Drayton: But hon. AG, you yourself said in accordance with this particular law, the very Bill that we are looking at, if you suspect you can hold him, you can keep his DNA. This says that if you have those suspicions then you are within your right to hold that person.

Sen. Ramlogan SC: Can I ask you this? Do you know that in almost 75 per cent of the crimes committed in this country the police have no suspects? The police have no suspects. In 75 per cent, “we not even getting off the ground”—[Interruption]

Sen. Volney: Because there is no DNA database.

Sen. Ramlogan SC:—because there is no DNA database. Listen, people do not report robberies again sometimes. What is the point? The reality is they do not even have a suspect for the crime, but if there was a DNA database and they would run the thing, you give them something to start with. Let us give the people a chance.
Sen. Drayton: That is not making sense. That is not true.

Sen. Dr. Tewarie: Chair, I need to ask a question. If I am an innocent man and I come into contact with the law and on the basis of that they take a swab from me and put my DNA in the bank, and I am let off as being innocent, what is the danger to me as an innocent person, of the existence of my DNA in the bank?

10.40 p.m.

Sen. Beckles: Why should it be there in the first place?

Sen. Dr. Tewarie: No, because I have been held on suspicion and the whole idea is that if you are building a database you have got to start somewhere, which is the point I made earlier. It is not database in which you take 1.3 million people and run a swab on each one of them; you wait for the altercation which leads to their inclusion on the database because of some suspected infringement of the law. It is a reasonable way to proceed, and you cannot have orderly societies without these kinds of things.

Sen. Prescott SC: Mr. Chairman, that is— [Interruption]

Sen. Beckles: That is a perception of your guilt.

Sen. Ramlogan SC: Sen. Beckles, listen. Part of the problem here, Sen. Drayton, is the dubbing of this as a criminal database. Listen, the rape victim, his or her DNA, will be in that; the police officers will be in there; the soldiers; the municipal police officers; the customs officers; the immigration officers; the coast guard officers. So where does the concept of a criminal database come from? It is a database that can be used as an investigative tool to assist in the detection and investigation of crime. That is what it is.

I want to reintroduce one thing into the debate. It has always been the case, your fingerprint when they take it, “the police and dem don’t destroy it”, it never caused any upheaval in this country. “Nobody never get deny no visa, no work, nothing like that, no certificate of good character even.” This is just a modern analogue to that.

Sen. Drayton: If you are equating a fingerprint with a DNA, then your argument really does not make sense, because then I would ask you— [Interruption]

Sen. Ramlogan SC: No, the mischief.

Sen. Drayton: I will ask you then, why is your detection rate so low?
Sen. Ramlogan SC: I will tell you why.

Sen. Drayton: If you are equating the fingerprint, then the same guys who are under suspicion right now, you have their fingerprint, and you have the fingerprints from the crime scene or you have whatever it is from the rape victim. So as far as I am concerned, I come back to the point; are we making the law because of other deficiencies, in terms of our administrative systems because of the skills of our police, because of the clogging up of the Commissioner of Police’s office; because of a breakdown in the justice system? You see, this is why your argument tells me, we keep going around in circles, with law after, after law, after law, and we are not really making any progress whatsoever.

Sen. Ramlogan SC: We have not been for the last 10 years.

Sen. Drayton: At the same time—I acknowledge that, for the past 50 years perhaps—[Interruption]

Sen. Ramlogan SC: Yes.

Sen. Drayton: —we have gone on a slope—[Interruption]


Sen. Drayton:—which is downhill. So that we all want to arrest the situation, and the thing is, we do not want to go down an anti-gang legislation again.

Sen. Ramlogan SC: But this has nothing to do with that.

Sen. Drayton: So if you are equating a fingerprint with a DNA, and the very fact that we already have a DNA Bill, there is absolutely no reason why the detection rate should be so low.


Sen. Drayton: Because it means that you could do the same thing with the guy with the big boom box or whatever it is, and the 10 gold chains, who you have now profiled and suspect because he has a boom box, and this is exactly what we are saying. He has a boom box, he has 10 gold chains, you have just profiled him, take his DNA. This is exactly what we are saying. We are opening up citizens to abuse. I am prepared to compromise. All I am saying is, if you have discharged the person, you have no suspicion about that person, why do you want to keep his DNA profile?
Sen. Baptiste-Mc Knight: Thank you, Mr. Chairman. You know what bothers me? This is not supposed to be a criminal databank. It is supposed to help you to solve cases. The hon. Attorney General has been mentioning this case, Waite, over and over, and if I understand what he has been saying correctly, six or seven years prior to picking up with Mr. Waite, there was a rape, and 6,000 bits of DNA later, nobody was found to match the DNA from the rape kit, but Mr. Waite turned up on the traffic change, right, and his DNA matched, but Mr. Waite was not in the databank.

Sen. Ramlogan SC: Yes. He was. That is how you got the match.

Sen. Baptiste-Mc Knight: He came into the databank six years later, had he been—[Interruption]

Sen. Ramlogan SC: No, no, no. The sample was there.

Sen. Al-Rawi: It was a cold case.

Sen. Ramlogan SC: It was a cold case. The sample was there. That is how they got the match.

Sen. Baptiste-Mc Knight: What sample was there? Was Mr. Waite’s sample—[Interruption]

Sen. Ramlogan SC: Mr. Waite’s sample. Yes.

Sen. Al-Rawi: Mr. Waite’s sample from the rape kit.

Sen. Baptiste-Mc Knight: But this is what I am saying. The sample that he gave, unwittingly, was there.

Sen. Ramlogan SC: Yes.

Sen. Baptiste-Mc Knight: But you could not find him on the basis of the sample alone until he ran the traffic light.

Sen. Ramlogan SC: That is correct.

Sen. Baptiste-Mc Knight: Exactly!

Sen. Ramlogan SC: But you had to have it in the first place.

Sen. Baptiste-Mc Knight: The idea is that what you have in the rape kit is not what you got from Mr. Waite, it is what he left.

Sen. Ramlogan SC: No, no, no. It was on the database.

Sen. Baptiste-Mc Knight: “How you mean?” You found it because he was there at the rape scene.

Sen. Ramlogan SC: Yes.
Sen. Baptiste-Mc Knight: Exactly! But until he turned up with the traffic offence.

Sen. Ramlogan SC: Yes.

Sen. Baptiste-Mc Knight: —you would never have been able to match it.

Sen. Ramlogan SC: If you did not have the right to take the DNA sample at the traffic offence, you would never get the match.

Sen. Baptiste-Mc Knight: But we are not talking about the right to take the sample when somebody is convicted of something, everybody agrees to that.


Sen. Baptiste-Mc Knight: Everybody agrees to that.

Sen. Ramlogan SC: The permutations— [Interruption]

Sen. Baptiste-Mc Knight: What we are talking about is keeping the sample after a certain period of time.

Sen. Ramlogan SC: Yes. But Senator—[Interruption]

Sen. Baptiste-Mc Knight: You keep the sample that you need to investigate.

Sen. Ramlogan SC: Yes. But Senator, the reverse, the permutation, illustrates the point quite perfectly, easily and neatly. That is to say, if Mr. Waite ran a traffic light and you took his DNA, six years later he rapes somebody and you get the DNA on the crime scene, but you have no suspect—think about it. You have a DNA database, his DNA is on it because he ran a traffic light, six years later he rapes someone but they have no suspect, the person was wearing a mask when they raped the person, but they got bodily fluid. If they did not have the retention of that DNA six years before when he ran the red light, they would not know that it was him when they take it from the crime scene.


Sen. Ramlogan SC: It is the same thing. That illustrates the point, but I want to respond to Sen. Drayton. The reason fingerprint analogy is being used, is because the mischief that you fear and expressed such grave concern over, about the “fellas” with the 10 gold chains being profilled and all of that—quite frankly I prefer to protect the people with the one gold chain or none right now. But I want to tell you this: The mischief that you are complaining about or that you have expressed grave concern about, which is to say, that if the police maintaining a record, and to use Sen. Prescott’s SC analogy, “You are not free in spirit”, the
innocence of your spirit and mind and the dignity of your person as a human being is somehow compromised because the police has a record—I am saying that for the past umpteen number, 50 or 60 years, when the police had that fingerprint record of all these persons, I never heard anybody say, “Well, my spirit is compromised and my innocence is somehow disturbed. [Interruption] I am coming to that, Ma’am.

Furthermore, I have never heard anybody say that the fact that the fingerprint record existed in the police service was leaked to BP to deny me a job or resulted in me not getting a police certificate of good character. The reason the detection rate would be improved by this, but not by the fingerprint, is because a strand of pubic hair left at the crime scene will not give you a fingerprint but it will give you DNA.

Sen. Al-Rawi: Hon. AG—

Sen. Ramlogan SC: Saliva would, anything else would but it would not necessarily yield a fingerprint. So that is why.

Sen. Al-Rawi: Mr. Chairman, we are at two polar opposites. On the one side, our position is quite simple, if I could put it in legalese; I am concerned about the proportionality as it relates to reasonableness, in the clause 13 exception. This Bill is, in our view, or some of us at least, disproportionate in the length of time position without the categorization of blood crimes for instance. If we are going to go down the line to argue from two polar ends, we are going nowhere. So we might as well accelerate to a vote on the issue because I do not think that we are going to agree on the point if there is no concession being made relative to categorization for instance, you could keep those things longer, you reverse the burden for lesser positions after five years for justification. So the question is, what is our solution going to be? Our position, or at least my position is, it is disproportionate and it is not going to stand under challenge.

Sen. Ramlogan SC: No, why do you want to protect that for? I put on the table that we are prepared to compromise to go down to eight years.

Sen. Drayton: Five and apply to the judge if you want.


Sen. Ramlogan SC: I say eight you say five, let us go seven.

Sen. Dr. Armstrong: Mr. AG, five.

Sen. Ramlogan SC: Five. Prof. Ramkissoon, five?
Sen. Prof. Ramkissoon: Yes.

Sen. Ramlogan SC: We will go with the five.

Sen. Karim: This is what has us in this position, you know.

Sen. Dr. Tewarie: AG, let me tell you something.

Sen. Karim: This is what this country is in.

Sen. Dr. Tewarie: I have had occasion to say in this Senate that the society has become how it has become because of the way we have led and with consent of the people—[ Interruption ] Listen a minute. This is a serious, serious matter because the five-year period, in my view,—[ Interruption ]


Sen. Dr. Tewarie:—is not enough.

Sen. Ramlogan SC: No, it is not.

Sen. Al-Rawi: It is not five years and go; it is five years and let the judge decide.

Sen. Ramlogan SC: No it is not. He has to make his point too. The man is right.

Sen. Dr. Tewarie: We will end up with a series of litigations or with a situation in which hundreds of people are going to go—[ Interruption ]

Sen. Al-Rawi: Or you could end up with a Bill struck down for being disproportionate. Let me put it this way, sorry to interrupt you.

Sen. Dr. Tewarie: Yes.

Sen. Al-Rawi: If we went for the five-year compromise, not five-year and throughout—it is five-year and burden shifts to the State to say why they should keep it. You could fix your problem.

In fact, if you were to keep a register of blood crimes which you kept for 15, 20 or 100 years, you could mix and match it. But the point is, when you are intruding upon rights and you expect a constitutional challenge, at least intrude de minimis, come back in two years or three years or five years and say, “Look, we need to have a longer period, then intrude further on people’s rights.

Mr. Tewarie: The things that are influencing me in the direction in which I am taking my argument, is the fact that you do not enter the database unless you are in one of those categories here—
Sen. Al-Rawi: The offence is the problem, Senator.

Sen. Dr. Tewarie: No, no. Some of them involve no offence, because categories here involve people in certain categories: [Crosstalk] the defence force, the military, the police and so on.

Sen. Al-Rawi: That equals to disproportion in law and unconstitutionality.

Sen. Dr. Tewarie: Just one second. But the ordinary citizen does not enter the base unless he has some reason to be called by the law to account, even if at the end he is innocent, and understanding the way this society operates you need more time with that data in the base to make a difference. Ten years may be too high, the Attorney General suggested eight, I do not see why we cannot compromise on that, and we could go to the court afterwards.

Sen. Prescott SC: Mr. Chairman, me again. One of the clauses in this Bill permits a sample being taken without the consent of a person who strays onto a crime scene. Now, that person, (a) has been forced to give a sample without his consent. He has nothing to do with anything. This is not a person who has perhaps committed an offence. I am looking at clause 13(1)(d). The person has strayed onto a crime scene. He is not a news photographer, he is an innocent bystander or passerby who, in typical Trinidad fashion, went and watched what was going on. I am hearing other noises but I cannot say those words in Parliament. [Laughter] So that person is forced to give his sample. How is this person going to feel for the rest of his 10 years, that he can do nothing about removing himself from this?

10.55 p.m.

This is the kind of person to whom the police say, “Boy move from here”; in the past, but now he would say, “No, come I have to take your sample”. Every time I hear of take my sample, I do not simply think of him plucking a grain of hair from my head, you know; it hits me in a very sensitive part. [Interuption] I do not care where he puts it—the point is that somebody is going to invade my bodily privacy on the basis that I strayed onto a crime scene.

Sen. Ramlogan SC: On the basis of wanting to solve a crime that somebody kills somebody’s child or something.

Sen. Prescott SC: No, indeed he may say he is doing it to remove me. He may say he is taking it forcefully to remove me from among those whom he suspects. It is just that I happened to be there, and for the next 10 years I am getting up every morning and saying, “But, you know, this is really quite an injustice to me.”
Sen. Ramlogan SC: Mr. Chairman, listen, Sen. Prof. Ramkissoon has spoken the least, perhaps, and if Sen. Prof. Ramkissoon has indicated that he is prepared to consider the five years, I mean, in the interest of bringing some middle passage to the thing, notwithstanding the dissenting voices that I support on this side, I think, in the interest of a compromise, I would like to propose the following—

Sen. Dr. Wheeler: Could I just say—

Sen. Ramlogan SC: Sorry, Dr. Wheeler. I am grateful for your support in this.

Sen. Dr. Wheeler: Actually, the introduction of this might actually cause a deterrent in the—[ Interruption ]

Sen. Ramlogan SC: You sure you want to talk then? [ Laughter ]

Sen. Dr. Wheeler: No, no, I am in support of it, but the country right now is so lawless, so if they know that by breaking a traffic light they might find themselves on the database, you might find that people would think twice about doing that.

Sen. Ramlogan SC: That is the point. That is the point we are trying to make. I made that point in the contribution.

Sen. Dr. Wheeler: I am actually in support of it.

Sen. Ramlogan SC: Well, I am grateful to hear that, Sir. Thank you very much.

Sen. Deyalsingh: Chairman, may I? I hear Sen. Dr. Tewarie and I hear the hon. Attorney General—if we could take a different spin on this. If we all agree we want to curb crime—you have a database, we still have the Privy Council as our final Court of Appeal. The Privy Council has imported the European Convention of Human Rights into their Parliament via the Human Rights Act 1988. Many cases about the keeping of DNA and fingerprinting have been struck down, as you know, in Marper. Do you want a situation where somebody from Trinidad takes a case to Privy Council where rulings will be made on the European Court of Human Rights and your whole DNA database is struck down? I do not think neither you nor I want that. Therefore, the five years with your safety clause of clause 14 for repeat sample, to me, is not a compromise. It represents an evolution of the law, so that, if it goes to the Privy Council it may not be struck down as being disproportional, and we may stand a better chance of preserving the DNA database that we have built up.
Sen. Ramlogan SC: Well, the thing about it is this, unlike Britain where there is no written constitution, Trinidad and Tobago has a written Constitution which is the supreme law, and that Constitution provides for a law to be passed that is in conflict with the fundamental rights provisions if it is done with a specified majority.

We are exercising that option in the Constitution to pass this with a special majority so different considerations would apply. Furthermore, insofar as it must be proportionate and reasonably justifiable, I have no doubt that given our social reality, the raw and harsh reality on the ground in Trinidad and Tobago, that they would say that it is reasonably justified and proportionate and legitimate to the objectives and aim of the legislation, which is to give the police in a society where crime detection and the prosecution rate is abysmally low—unlike England, Canada and America where it is high—but in our society it is quite proportionate, reasonable and justifiable. That is how I would respond to that. [Interruption]

Sen. Deyalsingh: Mr. Chairman, it is the same Privy Council that says we cannot hang people and they do not consider our local circumstance. They have adjudicated on Pratt and Morgan, not on Trinidad society. They have adjudicated on Pratt and Morgan based on their society, based on their norms and based on their laws to our detriment.

Sen. Ramlogan SC: No, no, but Sir—

Sen. Deyalsingh: The point I am making, hon. Attorney General, if you would allow me—


Sen. Deyalsingh:—is this; we want to protect the DNA databank that you are building. If this goes to the Privy Council they are not going to consider our local circumstance, they are going to use Marper, and then, all the DNA profiles that we have built up would go out the window. The case you have used to justify it is a US case; US Supreme Court is going to use different criteria, and quite frankly, that was an exception rather than the rule. I want to protect the rule.

Sen. Ramlogan SC: You see, the flaw in your contribution, with respect, is the citation of the death penalty. We have never passed a law in this country—despite the fact that one party has ruled for almost half a century, collectively—to amend the Constitution to say that the death penalty shall be lawful notwithstanding the passage of five years. We have never done that.

Sen. Al-Rawi: Because we have used save laws. We have used save laws.
Sen. Ramlogan SC: This here, we are expressly saying that it is inconsistent with the Constitution, but we are seeking a special majority for it.

Sen. Al-Rawi: And we are saying it is disproportionate with risk of being unreasonable and likely to be struck down.

Sen. Drayton: Would you take a final suggestion on this? Just a final submission, and that is that I get the impression that there is a feeling, listening to Sen. Dr. Tewarie, that some of us, more or less are on the side of the criminal or wanting to perpetuate what has been going on for the past how many years in the context of crime. There has been an explosion of violent crime all over the world, you just have to pick up any newspaper anywhere, switch on to any channel, and at all ages. What we have been discussing here and debating here over the past four/five hours, Britain, Canada, Europe and UK have been debating for the past 10 years and more, and the trend at this point in time is not to continue the erosion of individual rights. [Desk thumping]

Mr. Volney: We will all be dead by the time! Dead people have no rights!

Sen. Drayton: No, I understand what—[Laughter]. Well, this is exactly what I am saying, that we have this counteraction as though we do not appreciate how bad the crime situation is. We do! But if we did not have this kind of a dialogue, which is what our democracy is all about and what our Parliament is all about, then we are not going to have the laws that we ought to have, that are balanced and that are proportionate. So, this is where I am saying that we are all on the same plate, we have a little difference, and that difference has to do—

Sen. Ramlogan SC: With the period of time, you say five we say 10.

Sen. Drayton:—with the period of time with respect to—[Interruption]

Sen. Ramlogan SC: The retention of sample and the profile.

Sen. Drayton:—the holding of the persons who are not under any suspicion of the law and who are innocent. That is all we are doing here, and I am saying that we can arrive at a position and we have two options—

Sen. Ramlogan SC: Okay, let me proffer something to you?

Sen. Drayton: Yes.

Sen. Ramlogan SC: If in relation to serious blood crimes we keep it for the 10 years.

Sen. Drayton: Great, for longer. You could keep it for 100 years.
Sen. Ramlogan SC: Okay. And for the lesser crimes outside of those you give me eight years.


Sen. Drayton: You gone back. If it is blood crimes, if it is the bad tomatoes you sold—

Sen. Ramlogan SC: You see, what say you to Sen. Dr. Wheeler’s point—your colleague on the Independent Bench? His point informed—

Sen. Drayton: We are all independent. We are all independent, so I respect Sen. Dr. Wheeler for his point.

Sen. Ramlogan SC: I know. Sure, I know, I did not say he was not independent. I was simply referring to him according to his proper title. What say you to your colleague on the Independent Bench on the point that he has made, which informed our thinking on this matter, that, look if someone knows that their DNA sample is going to be in a DNA bank, a database, and if they commit a crime they are likely to be caught because they know that their sample, the police have it?

Sen. Al-Rawi: Attorney General, your argument makes sense, but let me tell you how you catch it in the wait example. If you kept blood crimes for 50 years, when you pick up a guy with a traffic offence which is a lesser offence, or a rotten tomato as is in our instance, you get to cross-check him instantly within that five years. So, it could easily be solved by putting a schedule of blood crimes, which we have in the anti-gang legislation, keep it for 25 years and keep the lesser offences for five years and cross-check easily.

Sen. Ramlogan SC: We agree. This is the following formulation:

“Except in the case of offences referred to in the Schedule of the Administration of Justice (Criminal Procedure) Act, 2011, a person from whom a sample has been taken under this Act may apply to a judge of the High Court five years after the profile was generated for an Order that the sample be destroyed and the Court may make such order unless satisfied that the sample may be reasonably required for the purpose of a criminal investigation.”

And for the blood crimes ones in that schedule, we are going to 25 years. We increase 10 to 25. [Desk thumping]

Mr. Chairman: I think you possibly want to make a carve out for clause 15 which is the one under defence force and—
Sen. Ramlogan SC: Yes, for the five years.

Mr. Chairman: I am just saying you need to make a carve out for that as well. I take it there should be no limit—

Sen. Al-Rawi: So blood crimes and those in the protective services.

Sen. Ramlogan SC: That is fine, absolutely. I see Sen. Prescott SC is smiling and waving his hand to clap me.

Sen. Prescott SC: One hand cannot clap.

Sen. Dr. Tewarie: Attorney General, except on the issue of the protective services, et cetera—

Sen. Ramlogan SC: We have agreed; it—

Sen. Dr. Tewarie: No, no, it should be a separate clause, not in the one with the blood crimes.

Sen. Ramlogan SC: Well, we could work it out, we could tease that out.

Mr. Chairman: Those categories need to be excluded.

Sen. Ramlogan SC: You could tease that out, that is fine.

Sen. Prescott SC: Just two things: one of them is, what you read seems to suggest that the person must apply at five years and I was thinking that you probably mean not before the expiry of five years.

Sen. Ramlogan SC: Not before the expiry?

Sen. Prescott SC: Secondly, I am still concerned about the person in clause 13(d) who has strayed onto a crime scene and whose sample has been taken without his consent; where does he find himself? He is neither convict, suspect nor detainee; in fact, his sample has been taken—

Sen. Ramlogan SC: If he is neither of those three his sample cannot be taken.

Sen. Prescott SC: His sample has been taken to exclude him. He has stumbled onto a crime scene—

Sen. Ramlogan SC: But, Senator, with the greatest respect—

Sen. Prescott SC: Look at clause 13(d) again.

Sen. Ramlogan SC: No, your sample could only be taken if you are a suspect or you are a detainee, otherwise it cannot be taken.
Sen. Prescott SC: No, Sir. Look at clause 13(d) again, I may have missed it. Clause 13(1)(d)—


Sen. Prescott SC:—is a person who attends a crime scene. I am coming along the road and I have touched your car—

Sen. Ramlogan SC: Yes, but that is required “eh”. That would be necessary to eliminate—

Sen. Prescott SC: To eliminate me; I am neither, suspect, convict nor detainee.

Hon. Senator: No, but you contaminate the site.

Sen. Prescott SC: I may have contaminated the site but that is not an offence, why am I having to wait five years to tell people? All I did was pass and touch the man’s car.

Sen. Ramlogan SC: No, but in that case—

Sen. Prescott SC: Please, please consider that one person.

Sen. Ramlogan SC: You see, I understand what you are saying, but I want you to consider this, oftentimes the way the crimes are being committed, you have one person who “does go back” to visit the crime scene—[Interruption]—no, and they go back to see, for example, they go back to observe the police in action to see if they are finding anything, where they are dusting for fingerprint, what they are looking to pick up and put in white bag—

Sen. Prescott SC: Attorney General, I think you are right, let me just ask your assistance. If you wanted to remove that other person, the one I am speaking about, me, who happened to pass by the crime scene, who happened to pick up my daughter who had been raped so, I am now a person who has come on to the crime scene, I have had to forcibly give up my sample, how can you possibly arrive at a form of words that would assist me to clear my name after a much shorter period? That is all I am asking you. Tell me a form of words that eliminates that person?

Sen. Ramlogan SC: Clause 13(d). You want to eliminate clause 13(d)

Sen. Prescott SC: Eliminate that person, the innocent one.

Sen. Ramlogan SC: We would come up with something.
Sen. Prescott SC: I am very much obliged.

Mr. Chairman: Attorney General, can we get that wording again, please? [Interruption]

Sen. Ramlogan SC: We have some drafting to do on this one.

Mr. Chairman: So, you want to defer it?

Sen. Ramlogan SC: Or we can take a “lil” break if we want.

Mr. Chairman: You want to take a break? You do not want to go along and then come back? Take a break?

Sen. Ramlogan SC: Yes, take a break.

Mr. Chairman: How long do you need?

Sen. Ramlogan SC: About 10 minutes.

Sen. Al-Rawi: Chair, 15 minutes “nah”.

Sen. Ramlogan SC: Yes, 15 minutes, we could discuss some of the other provisions as well.

Mr. Chairman: Hon. Senators, this Committee would be suspended for a period of 15 minutes. We would resume at 11.25 p.m.

11.10 p.m.: Committee suspended.

11.25 p.m. Committee resumed.

Mr. Chairman: We shall resume. What we propose to do is to defer further consideration of clause 26 which I am told is really clause 25 of the Bill. So, we defer it and come back because wording will be presented to us for further consideration at a later point.

Question put and agreed to.

Clause 26 deferred.

We are now on to clause 26 of the Bill, which is really 27 of the consolidation, if you understand what I mean.

Sen. Prescott SC: Mr. Chair, I have a question on 27. Does your version have in line four the words “for the determination of”?

Mr. Chairman: No; 27 (1)?

Sen. Prescott SC: Yes. Does your version have in the fourth line the words “for the determination of.”
Mr. Chairman: No.

Sen. Ramlogan SC: “Yeah” the consolidated version has that.

Sen. Prescott SC: But the Chairman’s version does not have it.

Sen. Ramlogan SC: No. It does not have it.

Sen. Prescott SC: Okay and my question really is why is it being removed —what page was that.

Sen. Al-Rawi: Page 18 in the new one.

Sen. Prescott SC: Why has it been removed? Why have those been removed in the new version? In the old version it reads:

“Notwithstanding section 7(2), where the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of a complainant is no longer necessary for the determination of any matter under investigation or before the Court he shall,…” et cetera.

This new version simply says, “it is no longer necessary”.

Mr. Chairman: “…In relation to a matter under investigation or before the court”.

Sen. Prescott SC: Oh, pardon me, yes. My question was, what is the distinction we are making? The thing is not—it is either not necessary for the determination of the matter or in relation to the matter. Is there a thinking behind leaving it out? Does it make it broader or narrower? It was once thought that we needed it to able to say it is “for the determination of the matter”.

Mr. Volney: Which will be the broader one? Determination—[Interruption]

Sen. Prescott SC: No, no. In relation is a broader one. You wanted to make it broader, is that it?


Mr. Chairman: What I am saying is that this is a new clause 27, we are going to have to take it at the end of the Bill so, we really moving on to 27 of the Bill, but 28 of the amalgamation.

Sen. Al-Rawi: So we are holding off on 27 for now. Because—[Interruption]

Mr. Chairman: It is a new clause.

Sen. Al-Rawi: So, we will be going to miscellaneous directly. I see, because, Mr. Chairman, there is a lot to be said in relation—[Interruption]
Mr. Chairman: I am sure, and we will soon come back to it. Clause 26 of the Bill—[Interruption]

Mr. Volney: Is that Part 6?

Mr. Chairman: Under Part 6, Miscellaneous.

Clause 26.

Question proposed: That clause 26 stand part of the Bill.


Mr. Chairman: Are the amendments circulated?

Mr. Volney: It is the second set of amendments, start with page 1, addendum.

Mr. Chairman: Oh, that is the addendum. That is the new clause, we are going to come back to that. That is clause 27 the new 27, that is what we are going to come back to at the end of Bill.

Sen. Al-Rawi: Yeah, we have skipped that and have gone back to Part 6 on page 21 of the marked-up Bill which is under “Miscellaneous”, which is listed as the new clause 28.

Mr. Chairman: Correct.


Sen. Al-Rawi: Is it correct to say, Mr. Chairman, that clause 26 stands part of the Bill even though it is renumbered as 28.

Mr. Chairman: I am so advised. The numbering will be consequential and there are a number of consequential amendments that have to be made beyond.

Sen. Al-Rawi: Thank you, Mr. Chairman, understood, thank you.

Question put and agreed to.

Clause 26 ordered to stand part of the Bill.

Clause 27.

Question proposed: That clause 27 stand part of the Bill.

Sen. Prescott SC: Have we not done that already and said that at 5(3) for the purpose of this Act a DNA are registered to be known as a DNA register shall be established and maintain by the forensic—
Sen. Al-Rawi: We moved that—[Interruption]

Mr. Chairman: The question is that clause 27 be deleted in its entirety—of the Bill as originally cast.

Question proposed that clause 27 be deleted in its entirety.

Question put and agreed to.

Clause 27 deleted.

Clause 28.

Question propose: That clause 28 stand part of the Bill.

Mr. Chairman: We have an amendment proposed by Sen. Drayton.

Sen. Drayton: Yes, Mr. Chairman, I think at this stage I will be more or less just seeking some clarification here. It says that:

“No proceedings, civil or criminal, shall be brought against a person using reasonable force in respect of the taking of a non-intimate or an intimate sample in accordance with this Act.”

Now, what I want to ask here is that if a police officer used unreasonable force—

Sen. Ramlogan SC: Unreasonable or excessive.

Sen. Drayton: —what recourse to due process a person would have here bearing in mind, I recall when you made your contribution you made reference now to the “burly” criminal who might resist the police taking a DNA sample and of course if such a person resisted, they would be obstructing the police in carrying out their lawful duties, and I think somewhere else they can end up in jail for as much as two years. So, that in other words, the police officers would have recourse if they are obstructed from doing their work.

On the other hand, if the police did use excessive force and a person wants to have some recourse, it would seem to me that under this clause really, they have very little chance of doing that or probably none. Now, I understand that we want to empower the police to do their work which is very important work. But on the other hand, if excessive force was used against a citizen then they should have right to due process. So, I am seeking clarification at this point in time and maybe my colleague on the Independent Bench could also—you know I would love to hear what he has to say in that regard.
Sen. Prescott SC: I have looked at it before and there is that question—the whole point of going to court will be to determine whether the force was reasonable or not. [ Interruption ]

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: So, it seems to me that if this provision was not here then the ordinary law would apply. A person would go to court and say this was not reasonable force and therefore no immunity is given to the State.

Sen. Ramlogan SC: That is correct. If excessive or unreasonable force was in fact used to obtain the sample then they would have recourse as normally exists, which is to sue the State in civil proceedings. And if they have a viable claim they would succeed.

Sen. Prescott SC: So it should be deleted?

Sen. Ramlogan SC: No, we would prefer that it is left, because we would want to make sure that the police officer is aware of their rights and that there is no hesitancy or reluctance on their part, and it is also already in the original Act. It has always been the law.

Sen. Drayton: Okay, but if it is in the original Act, you have to remember the difference between what we are doing here and the original Act, is that in the original Act there is the implication or implicitly there is consent. In the context of this law we are saying—yes there is express consent in the original law, in this one we are saying that we are giving the police the right or whoever it is to take the sample by force—[ Interruption ]

Sen. Ramlogan SC: You see the reason this was put in—[ Interruption ]

Sen. Drayton: —and as I said I understand the need to empower the person and the fact that the police already have recourse all now, so—[ Interruption ]

Sen. Ramlogan SC: Yes.

Sen. Drayton: —because if you resist the police in carrying out his lawful duties then you are obstructing the law. And this Bill says that you can go to jail for two years for doing that. But even outside of this Bill if you obstruct the police you still would face consequences. But, I am saying now in terms again of proportionality with respect to a citizen, where the police have used or somebody has used excessive force, they really have no recourse under this law.
Sen. Ramlogan SC: No, they do. That is what I am trying to tell you, they do. Sen. Prescott SC answered that quite cogently and I agree with him. They do have recourse and in the normal course of things what would happen is that they will sue the State in civil proceedings. That is the recourse they are given. If they are assaulted they could even cross-charge and bring a criminal private complaint in the Magistrates’ Court. But, it is a normal recourse that would apply and they would have recourse to that. This provision as Sen. Prescott SC noted is perhaps somewhat superfluous because even without it the police would have the right to exercise reasonable force in taking the sample. They have that right anyway whether we put it or not.


Sen. Ramlogan SC: But, the reason we put it, superfluous though it may be, is to:

(a) clarify it in the mind of the police officers; and

(b) act as a deterrent against frivolous complaints which normally would come in the course of things.

Also, it adds clarity to the law by making it abundantly clear that look, if you have to provide a sample and you are resisting, the police are empowered, on the clear wording of the law, that they can use reasonable force to extract the sample from you. And why would you not want to cooperate to give the sample really?

Sen. Prescott SC: Just do one bit of clarification.


Sen. Prescott SC: In relation to subclause (2) therefore, are we sure that it means what it says? Because it seems to be telling me that a person may however bring proceedings on the ground of negligent act or omission. Is that what it means?

Sen. Ramlogan SC: Yes.

Sen. Prescott SC: That you may bring action therefore to demonstrate that the force was not reasonable or as excessive, and it was negligent or that there was an omission.

Sen. Ramlogan SC: Yes. Well the negligence may apply to something else, for example if you have to take a prick of a finger and you use a non-sterile needle—[Interruption]
**Sen. Prescott SC:** So no rights are being taken away in 29?

**Sen. Ramlogan SC:** That is correct. That is a nice way to put it. No rights are being taken away in 29.

**Sen. Drayton:** I have no problem then with—[Interruption]

**Sen. Al-Rawi:** Just an enquiry Mr. Chairman, through you to the hon. Attorney General. My concern in relation to this is the concept of malicious prosecution which in civil terms you would call bad faith. How do we deal with that? I personally agree that—[Interruption]

**Sen. Ramlogan SC:** You would really—implicit in the use of unreasonable or excessive force would be bad faith.

**Sen. Al-Rawi:** Let us assume that, as an example, I was stopped for whatever reason and a swab was being taken, reasonable force was used et cetera, but a police officer went out of his way to get me in relation to that when he should not have. Some frivolous allegation which I would prove had I had the right to sue for malicious prosecution; had I had the right to sue and I could have done that which is a concept—he acted in bad faith therefore.

11.40 p.m.

**Sen. Ramlogan SC:** The answer to that is simple. Under section 14 of the Constitution, the concept of the constitutional redress as expounded by the superior courts in the case of *Seechan Ramroop v the Attorney General*, the court, in a constitutional motion, has any and all power to redress the violation of your fundamental right. If it is that a police officer acted maliciously in a situation like that, I have no doubt a constitutional court in exercising its jurisdiction, one of the remedies it can grant, Sen. Prescott SC, could include the expunging of that record.

**Sen. Prescott SC:** To continue on one thing there, but from a slightly different approach, if the allegation is malicious prosecution, this does not trouble it.

**Sen. Ramlogan SC:** No, it does not.

**Sen. Prescott SC:** Because what this speaks to is the taking of the sample. You are saying, “I want to sue you for having prosecuted me”, going beyond the taking of the sample.

**Sen. Ramlogan SC:** Yes.

**Sen. Prescott SC:** Clause 29 says if you do something wrong in the taking of the sample, you might have immunity.
Sen. Ramlogan SC: That is correct.


Question put and agreed to.

Clause 28, as amended, ordered to stand part of the Bill.

Clause 29.

Question proposed: That clause 29 stand part of the Bill.

Mr. Chairman: Clause 29 is amended as circulated and reads as follows:

A. In subclause (1)(d) delete the words “an analyst” and substitute the words “a Forensic DNA analyst”.

B. In subclause (3) delete the number “4” and substitute the number “5”.

Sen. Al-Rawi: Mr. Chairman, just an enquiry, just for an explanation. Clause 30 as it is now renumbered 29(b):

“The Custodian or a person authorized by him may disclose DNA data to—

(b) the person from whom the non-intimate…or his representative and the person from whom a request was made.”

What does that mean?

Sen. Ramlogan SC: Well, we can delete that and put “or his representative”, and put a full stop after “representative”.

Sen. Al-Rawi: I genuinely just did not understand what the words meant, or the ubiquitous semicolon.

Sen. Deyalsingh: Chairman, I have a question under clause 30(d) where it states: a forensic DNA analyst making a request for a DNA profile. Could the analyst just make a request, or is it a request for a criminal matter or—

Sen. Ramlogan SC: It must be for the purpose of the Act. That is fine. You do not need that.

Sen. Deyalsingh: Okay, fine, great.

Sen. Ramlogan SC: The point raised by Sen. Al-Rawi is one that—

Mr. Chairman: Clause 29 is amended as circulated and further amended to remove the last line of clause 29(1)(b).
Sen. Al-Rawi: Is that okay with the AG’s team? I am not sure; in case there was something they were trying to get at that we missed—some mischief.

Sen. Ramlogan SC: I am advised that that actually is a repeat from the existing law, but we should take it out; it should not be there. So I am happy to take it out.

Sen. Al-Rawi: Thank you, Sir.

Question put and agreed to.

Clause 29, as amended, ordered to stand part of the Bill.

Clause 30.

Question proposed: That clause 30 stand part of the Bill.

Mr. Chairman: There is circulated amendment to clause 30 which reads as follows:

In subclause (1)(c) delete the word “DNA”.

Sen. Prescott SC: May I ask, just on a policy issue? I find that the offence in clause 30(2) is more grievous than the offence in 30(1). The impersonation of—

Sen. Ramlogan SC: Would you be happy if we increased it to 10 years?

Sen. Prescott SC: I am actually implicitly saying there seems to be some need to consider a more serious sentence.

Sen. Ramlogan SC: Well, we will be happy to increase seven to 10, on clause 30(2).

Sen. Prescott SC: But I do not just throw numbers around; that is all. If you think it is more grievous, I think you should consider it.

Sen. Ramlogan SC: Well, it is more grievous, really, when you look at it, and although you do not like to throw numbers around, I considered it, deliberated upon it and decided 10 years will be better.

Sen. Prescott SC: Your usual rapid fire. [Laughter]

Mr. Chairman: Clause 30 is amended as circulated with the further amendment in paragraph (b) by removing the last line thereof and that clause 30 (2) be amended by substituting ten for seven in the last line.

Sen. Al-Rawi: Mr. Chairman, just a question for clarification. Does the 10-year rule run afoul of the categorization as a summary offence as opposed to an indictable one?
Sen. Prescott SC: That is why I told him he should not just throw numbers. Check it first.

Question put and agreed to.

Clause 30, as amended, ordered to stand part of the Bill.

Clause 31.

Question proposed: That clause 31 stand part of the Bill.

Mr. Chairman: We have a circulated amendment which reads as follows:

Insert after the first place in which the word “Act” appears the words “, other than a complainant,”.

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the Bill.

Clause 32.

Question proposed: That clause 32 stand part of the Bill.

Sen. Al-Rawi: Mr. Chairman, I was wondering in clause 32, if we could consider what the rationale is for not considering the DPP’s involvement relative to this, because it would have concerned a case which was prosecuted by the DPP; particularly if you look at subclause (3):

“The Commissioner of Police shall in writing inform a person who makes a request under this section of his decision to grant or deny the request within one month of receiving the request.”

And then (4):

“Where the Commissioner grants a request...he shall make arrangements...”

Should we not consider—and this is just for enquiry and discussion—the involvement of the DPP in this clause?

Sen. Ramlogan SC: Not really, because you see, remember the police are the ones that have to detect and investigate the crime. When they have sufficient evidence, then they will involve the DPP and his role is limited to advising on whether there is sufficient evidence to lay a charge. But it may be not within the constitutional remit of the DPP to get involved at this earlier stage. And I think, properly speaking, the Commissioner of Police would be the most appropriate person to determine whether or not this is necessary.
Sen. Al-Rawi: I catch that; I agree with it, but what I am looking at here for a second thought and pause, particularly as the new clause 33(1)—old clause 32—deals with, “was convicted of an offence and has filed an appeal against that conviction or sentence or both.” So there may be existing legal proceedings involving conduct by the State.

Sen. Ramlogan SC: Yes, but you see, the retention of the sample would not in any way affect the existence of the appeal or dependency of those proceedings. The Court of Appeal has no originating jurisdiction. It will merely be operating as a court of review to review the proceedings that went below in the High Court.

Sen. Al-Rawi: Agreed with that point. However, if we are actually in High Court, which has originating jurisdiction on a JR or some other aspect for reconsideration, would that then stand?

Sen. Ramlogan SC: It would. You see, the Act becomes unworkable if we complicate it by involving too many offices when it is not necessary. The Commissioner of Police, his responsibility under the Police Service Act, is to conduct police investigations.

Sen. Prescott SC: But, AG, is that not the better point?

Sen. Ramlogan SC: Yes. That is why I am saving the best for last. So that I won the case by Sen. Prescott SC. [Laughter]

Sen. Al-Rawi: I will accept the last point.

Sen. Ramlogan SC: I am grateful to my learned friends.

Question put and agreed to.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33 ordered to stand part of the Bill.

Clause 34.

Question proposed: That clause 34 stand part of the Bill.

Mr. Chairman: Clause 34 is amended in the manner circulated, and reads as follows:

In subclause (2) delete the word “negative” and substitute the word “affirmative”.

Question put and agreed to.

Clause 34, as amended, ordered to stand part of the Bill.

Clauses 35 and 36 ordered to stand part of the Bill.

Clause 37.

Question proposed: That clause 37 stand part of the Bill.
Mr. Chairman: Clause 37 is amended by the insertion—

Sen. Al-Rawi: Mr. Chairman, it is called the Deoxyribonucleic Acid (DNA) Identification Act, 2000.

Mr. Chairman: Is it 2000? No, that is the wrong Act.


Mr. Chairman: You will see in the side note it is referred to as Chap. 5:34, but I think the correct reference is to the year in which it was passed. That is just where to find it.

Sen. Deyalsingh: I think the drafters could put that in.

Question put and agreed to.

Clause 37 ordered to stand part of the Bill.

Clause 38 ordered to stand part of the Bill.

11.55 p.m.

Mr. Chairman: We are going back to the clause 4, definition section. [Interruption]

Sen. Al-Rawi: Mr. Chairman, the definition section may be affected by the insertion to clause 27, the new clause 27. So I do not know if you want to get over that hurdle first.

Mr. Chairman: “Yeah”, I hear you. I think there is value in looking at clause 27 first. I am told the schedule is last. New clauses, really, should come after deferred matters, but, I heard the Senator say that looking at clause 27 will—there was also clause 25, do you want to start there?

Sen. Al-Rawi: Which is, the redraft of the new 26. So on page 17 of the marked-up amended Bill, are we looking at the new 26 or the new 25?

Mr. Chairman: I should also say that we have also deferred clause 5, which is the one where we introduced that language.

Sen. Al-Rawi: Clauses, (4), (5), (7), (26) and (27).

Mr. Chairman: The definition section, you want to do that after we deal with substantive section. But clause 5 is really the first deferred clause—

Sen. Al-Rawi: But, insofar as—7 makes reference to the subclauses that we have later. Is it possible, subject to your guidance, Mr. Chairman, that we deal with clauses (25) (26) and (27)?
Mr. Chairman: I am open to that. Could you tell us the rubric at the side of the clause?

Sen. Al-Rawi: I do not know if the Government is yet in a position to tell us the redrafted version of 26 which we paused on, because that will affect the discussion on 27.

Mr. Chairman: Retention of samples?

Sen. Al-Rawi: That is retention of samples.

Mr. Chairman: That is what I was asking.

Sen. Al-Rawi: Yes, Sir, sorry, But we have to hear the redraft.

Sen. Ramlogan SC: Attorney General you had a clause you wanted to produce for us in the new 26: the retention of samples. The proposal for 26 (1) which is the compromise that we are proposing will read as follows: Expect in case of—and Sen. Prescott SC, I want you to note this very carefully, colon not semicolon—“Except in the case of: A offences referred to in the First Schedule to the Anti-Gang Act 2011”—this is the part that gets a little delicate with Sen. Prescott SC—“; (b) schedule 6 to the Administration of Justice (Indictable Proceedings)—

Sen. Prescott SC: “Except in the case of: (b) Schedule 6”—or did you mean the offences referred to in Schedule 6?


Sen. Prescott SC: No, you can move the colon down.

Sen. Ramlogan SC: You can do that too yes.

Sen. Prescott SC: So to (a)

Sen. Ramlogan SC: You can do that, yes.

Sen. Prescott SC: So to (a). You must not play with my colons.

Sen. Ramlogan SC: Why do you think I have been highlighting it as I go along? [Laughter]

Sen. Prescott SC: Do not mess with my colon. [Laughter]

Mr. Chairman: Indictable proceedings, I have gotten up to there.

Sen. Ramlogan SC: Yes, Act. And, “(c) persons referred to in the Third Schedule”.
Mr. Chairman: You see offences referred to, would not be in that Third Schedule. So that is what I was saying.

Sen. Al-Rawi: You have to repeat it with to (a) and (b) as indicated in—

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: “persons referred to in the Third Schedule”. So I was right Sen. Prescott SC.

Sen. Prescott SC: You were, you were.

Sen. Ramlogan SC: “a person from whom a sample has been taken under this Act and a person who is not suspected”—[Interrupt]

Sen. Prescott SC: Are you familiar with dictation speed? [Interrupt]

Sen. Ramlogan SC:—“accused or convicted of an offence, may not, before the exploration of five years from the date of the generation of the DNA profile, apply to the Court for an order that the sample be destroyed and the DNA profile be expunged.”


Sen. Ramlogan SC: Sen. Prescott, I did not hear you, Sir, what did you say?

Sen. Prescott SC: Fantastic!

Sen. Ramlogan SC: Fantastic, is that with an exclamation mark at the end, Sir?


Sen. Deyalsingh: Attorney General did it also include the sample?

Sen. Al-Rawi: Could you repeat the last part, please. Sorry “that the sample be destroyed and DNA profile be expunged”. Thanks.

Sen. Ramlogan SC: And, just by way of explanation this takes care of the point that Sen. Prescott SC raised earlier. That is why we have the person who is not suspected, accused or convicted of an offence. So, the father picking up the daughter at the scene of the crime where she is a victim—it takes into the account the blood and serious offences by referring to the schedule in the Anti-Gang and the Administration of Justice (Indictable Offences) Acts. So it deals with the serious crime. And, of course, those we said will go for 50 years.

And we came to the other one, where we said not before five years on this.
Sen. Ramkhelawan: Fifty or 25?

Sen. Ramlogan SC: You all said take as long as I wanted. [Laughter]

Hon. Senator: Make it indefinite. [Interruption]

Sen. Ramlogan SC: All right. [Interruption]

Sen. Ramkhelawan: Go ahead, AG, go ahead. [Interruption]

Sen. Ramlogan SC: And for the blood crimes we will make the consequential amendments to keep it indefinitely. [Interruption]

Sen. Al-Rawi: Just to be sure, relative to the blood crimes, we are keeping profiles for persons suspected of blood crimes or persons convicted of blood crimes.

Sen. Ramlogan SC: No it would be persons—

Sen. Al-Rawi: Persons suspected—


Mr. Chairman: —and convicted.

Sen. Ramlogan SC: We need a subsection; this would be (2) and (3) further. (2) Would now read: “A sample taken from a person suspected, detained or accused of an offence under subsection (1) shall be retained”—I am advised by the draftsman you need to say (1)(a) and (1)(b). The suspected detained or accused of an offence under subsection (1)(a)—

Sen. Volney: 26(1) the subsection.

Sen. Al-Rawi: That is blood crimes?

Sen. Ramlogan SC: “Yeah”, “(1)(a) or (1)(b)”.


Sen. Prescott SC: “.”

Sen. Ramlogan SC: The grammar police are out for me, “.”. The last subsection to deal with the point made I believe by Sen. Drayton, quite helpfully, is (3): “A sample taken from a person under subsection (1)(c)” —that would be police officers and so on—“shall be retained until”—how many years after retirement? Sen. Prescott SC, how many years you wanted it?

Sen. Ramlogan SC: “ten years after retirement.”

Mr. Chairman: Just to get this clear, Attorney General, what you are reading therefore replaces—well, the new 26(1), (2) and (3)?


Mr. Chairman: So this would be 26(1), (2), (3) which in the Bill will be 25(1) (2) and (3)?

Sen. Ramlogan SC: That is correct, Sir.

Mr. Chairman: And then it will renumber—as we have it here the old (3) will become (4) and the old (4), (5). Within the 26.

Sen. Ramlogan SC: Yes Sir.

Mr. Chairman: The question is that clause 25 be amended as read by the Attorney General.

Sen. Al-Rawi: Mr. Chairman, would you just repeat the last bit of what you say stays in. So that replaces—?

Mr. Chairman: Sure. This is clause 25; the new 26 we are dealing with. It will have five subsections. The Attorney General read subsections (1), (2) and (3). The (4) will start with “the Trinidad and Tobago Forensic Science shall (a) (b)”; and (5) will read: “where the Commissioner of Police after consultation with the DPP”

Sen. Al-Rawi: Okay, just to spend one moment just being careful about the new (4), which is the old (3) on page 18: “The Trinidad and Tobago Forensic Science Centre shall within three months after the end of each calendar year provide the Commissioner of Police with a list of samples, which have been lodged at the Trinidad and Tobago Forensic Science Centre for a minimum period of ten years.”

Sen. Ramlogan SC: We have to insert the words.


Sen. Ramlogan SC: Instead of “lodge”. We will say, “a list of samples which have been placed in the DNA register”.

Sen. Al-Rawi: Right, that takes care of where my mind was. And what about profiles? What I was very happy about with this—[Interruption]
Sen. Ramlogan SC: You will hardly take a sample without generating the profile. The purpose of having the sample is to generate the profile.

Sen. Al-Rawi: You can, but—

Sen. Ramlogan SC: No. The whole point is one is a prelude to the other. The profile is a corollary to the sample. You see?

Sen. Al-Rawi: What I was thinking of is when reports flow through to the Parliament for instance, in reporting mechanisms. And, the other thing—

Sen. Ramlogan SC: Would you want to say “a list of samples and profiles”? It is just creating more administrative burdens.

Sen. Al-Rawi: Sure. We have a register of profiles and we have reports that may be taken care of elsewhere, perhaps. The thing that concerns me, well—[Interruption]


Sen. Al-Rawi: Was there a clarification?

Sen. Ramlogan SC: No, no, go ahead.

Sen. Al-Rawi:—what I am happy for is that this section that we have just introduced takes care of a major concern which would arise in clause 27, when we come to that, it actually solves a big problem there.

12.10 a.m.

So am I correct in saying that the databank, insofar as the custodian would have to make a report, would take care of lists of profiles generated?

Sen. Ramlogan SC: That is correct.

Sen. Al-Rawi: And is it that we do not want the Commissioner of Police to know that necessarily?

Sen. Ramlogan SC: No, he would know.

Sen. Al-Rawi: Because this section, in the Trinidad and Tobago Forensic Science Centre sending a list, we have bifurcated the samples and profiles so it may be that he may get it independently from the custodian.

Sen. Ramlogan SC: Yes. That would be an authorized disclosure because it will be for a purpose connected to the Act?

Sen. Al-Rawi: Sure, sure. I am just making sure that we do not leave it out.

Sen. Deyalsingh: Mr. Chairman, on clause 26, just before we go on, the last line in the old clause 26(4), “the Commissioner of Police”, et cetera, the last line, should it be “shall” or “may” there? Because, with “may”, it gives the Commissioner of Police the discretion to destroy or not to destroy, and the objective of that clause is to have the destruction of the sample. Would you look at substituting “may” with “shall”?

Sen. Ramlogan SC: No, no.

Mr. Chairman: Attorney General, I just need to get clarification on the section of “shall provide the Commissioner of Police with a list of samples which have been”, right now it says “lodged at”. You have changed that to—

Sen. Ramlogan SC: Well it would have been “entered”—

Mr. Chairman: “entered in the DNA register”?

Sen. Ramlogan SC: “entered in the DNA register.”

Sen. Ramkhelawan: Mr. Chairman, if I may? Under the new subclause (4), reference is made to a minimum period of ten years which when checked back to (1), (2) and (3), how is that going to be changed?

Legal Advisor: That is what we are working on.

Sen. Ramkhelawan: That is what you are working on. Under the new (5), I just want some clarification from the hon. Attorney General—

Sen. Ramlogan SC: Senator, before you finish, we will put a full stop at the end of the word “centre” in (a) and delete the rest.

Sen. Ramkhelawan: Okay, so it will link back to the five years and indefinite period and so on?

Sen. Ramlogan SC: Yes.

Sen. Ramkhelawan: My next question is—I require some clarification from the hon. Attorney General with regard to this new (5) which says:

“Where the Commissioner of Police after consultation with the Director of Public Prosecutions, does not object to the destruction…”

Now I have found that you have so many degrees in terms of consultation. It does not mean consent, it means, okay, the Commissioner of Police sends a message verbally or otherwise, I wonder whether you are trying to say “with the
consent of the DPP”. For example, if the DPP says: “You know, we really require this evidence”, but the Commissioner of Police is not obliged to listen to the DPP in terms of consultation and that could happen.

**Sen. Ramlogan SC:** You see, that comes back to the point that I had raised with Sen. Prescott SC and it has to do with, at this stage in the process, we are at the detection and investigation stage, and the accent in terms of the balance of power really lies with the Commissioner of Police. So that is why we did not say “with the consent of the DPP” rather than “in consultation with the DPP”.

**Sen. Ramkhelawan:** No, but let us explore that a little bit because at this point in time, I am sure this is now evidence of some sort which would lie more in terms of the balance with the DPP and the DPP says—

**Sen. Ramlogan SC:** No, it may not be evidence. It may not.

**Sen. Ramkhelawan:** So you are comfortable that consultation is sufficient and not consent and agreement with the DPP?

**Sen. Ramlogan SC:** Yes, as a matter of policy, we are comfortable with that.

**Sen. Ramkhelawan:** Okay.

**Sen. Al-Rawi:** Mr. Chairman, I am looking in the impact, through you, to those who are drafting or considering a retooling of the old (3) now (4) on page 18. We have established potentially under the new (5) to come, “the DNA register”; “shall maintain and keep the DNA register”, and we are also in clause 11, imposing upon the Custodian, the obligation to report his operations to the Minister and then the Minister reports to Parliament.

We are in this page 18, now new (4) saying, tell the Commissioner of Police what you have by way of samples, but what is useful to him is really the profiles themselves or a list of profiles. I mean, I am not quite sure as to why we are telling the Commissioner of Police what samples we have. Maybe if I understood that, I could understand what we should be telling him.

**Sen. Ramlogan SC:** I think this really is in the context of the destruction of the sample. If the Commissioner of Police, for example, has within his contemplation a particular suspect in a matter that is a not-so-cold case or something that they still feel they could get a lead on, you have to inform him that you are about to destroy the sample.

**Sen. Al-Rawi:** I catch that. I understood the mischief because I have spotted the word “and” between (a) and (b). But—
Sen. Ramlogan SC: Your question is sample or profile?

Sen. Al-Rawi: No, no, well, apart from that, I am on to the fact that should we not state it more clearly in terms of saying, “Look, the mischief we are trying to achieve is do not destroy something that he might need”. That is really the mischief that we are trying to avoid.


Sen. Al-Rawi: Or make sure you have his express knowledge insofar as you have informed him that you are about to destroy something. So, why are we telling him something which he has access to in terms of the DNA register? The register which we are going to keep will have a list of all samples taken in the various categories that they will be stored.

Sen. Ramlogan SC: Yes, sure. But, should he not have access to that?

Sen. Al-Rawi: So he does.

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: So I am saying he has access to that. If the mischief that we seek to deal with here is to make sure he is aware of the things to be destroyed—

Sen. Ramlogan SC: Which is (b).

Sen. Al-Rawi: Yes. So why do we not just tell him that?

Sen. Ramlogan SC: The reason I think is because nowhere in the Bill did we actually say, and given the fact there are criminal offences for unauthorized disclosure and so on, it may be a wise thing to have it expressly stated that the man has a right to receive a list of all the samples.

Sen. Al-Rawi: Right, and we have a clause which deals with disclosure of DNA data to a category of peoples, could we have inserted it in there?

Sen. Ramlogan SC: There is nothing wrong in having it here really because it serves two purposes; one is that it codifies and highlights the commissioner’s right to receive information about the samples that have been taken and are about to be destroyed, but have been taken, full stop. Secondly, it links with the destruction aspect of it and then it also deals with—it clears him from any penalization.


Sen. Ramlogan SC: Yes, any breaches.
Sen. Al-Rawi: I was looking at trying to tidy up in that context. Now, on the issue of profiles per se. Do we want to be telling them insofar as we are splitting it out, not treating him as an included person in the profile disclosure list of authorized persons, do we want to include the profile information here now because we maybe destroying a profile?

Sen. Ramlogan SC: So you say sample and profile?

Sen. Al-Rawi: Yes, because above we have dealt with sample and profile together.

Sen. Ramlogan SC: That is fine. We can say list of samples and profiles in (a) and (b). That is fine.

Sen. Al-Rawi: “proposes to destroy the listed samples and expunge the listed profiles”?

Sen. Ramlogan SC: Yes.

Sen. Baptiste-Mc Knight: Mr. Chairman, in (5), is the reference to subsection (4)?

Mr. Chairman: Yes, it will have to change.

Sen. Baptiste-Mc Knight: Okay.

Sen. Al-Rawi: Mr. Chairman, while that draft is coming, I do not know if it is convenient for us to look at clause 27 to get the policy discussion out of it?

Sen. Ramlogan SC: Which draft are you talking about?

Sen. Al-Rawi: The new wording to take care of the (4) and (5) that we are going to deal with because I understand there is some retrofitting with respect to chopping off the words “for a minimum period of ten years” or have we dealt with that?

Sen. Ramlogan SC: We have agreed to take that off and we will just put a full stop after the word “centre”.

Sen. Al-Rawi: Could it be read then again, the proposed position?

Mr. Chairman: Well, it is now “DNA register.”

Sen. Al-Rawi: Yes, because “DNA register” would have to be included there so just to get the final wording right.

Mr. Chairman: (a) would read, as I see it, “with a list of samples and profiles which would be entered in the DNA register”.
Sen. Ramlogan SC: “at the Trinidad and Tobago Forensic Science Centre.”

Mr. Chairman: Or, you want to add on “at the—?”

Sen. Ramlogan SC: That is not adding it on, that is already there and you just put a full stop after the word “centre”.

Sen. Al-Rawi: Remember samples are at the DNA register and profiles are at the databank.

Sen. Ramlogan SC: Profiles and samples; DNA register and databank, respectively.

Sen. Al-Rawi: And (b) would have to remove the word “listed” because it is not that you are necessarily going to remove “all listed” to disclose which samples are to be destroyed and profiles expunged. Because you are providing the obligation—

Sen. Ramlogan SC: That is fine.

Sen. Al-Rawi: Yes.

Mr. Chairman: So if I may read it again:

“(a) within three months after the end of each calendar year, provide the Commissioner of Police with a list of samples and profiles which would have been entered in the DNA register and databank respectively at the Trinidad and Tobago Forensic Science Centre; and

(b) indicate to the Commissioner of Police that it proposes to destroy the listed samples and expunge the listed profiles.”

Sen. Al-Rawi: Okay, problem number one: the profiles are not lodged at the Trinidad and Tobago Forensic Science Centre, they are lodged with the custodian.

Sen. Ramlogan SC: He is part of the Forensic Science Centre.

Sen. Baptiste-Mc Knight: Profiles are being dealt with in clause 27.

Sen. Al-Rawi: No, we have taken care of that in part—And then the second point, you are getting a list of everything that is done within three months of the year. So, let us say you put a thousand people on, we may only be destroying one potentially, so we cannot say “the listed samples” because it is not everything on that list, so we need to find a different wording for paragraph (b).

Sen. Al-Rawi: (a) says “within three months after the end of each calendar year provide”—him—“with a list of samples in the register and profiles in the databank”, so that is everything that goes on.

Legal Advisor: “Recommended for destruction and—”

Sen. Al-Rawi: Well, now you are going, that is why I was raising the point in the first point.

Legal Advisor: “Recommended for destruction and expungement”?

Sen. Al-Rawi: Right.

Sen. Ramlogan SC: “indicate to the Commissioner of Police that the listed samples”

Sen. Prescott SC: “that it proposes to destroy”; the listed samples and so and so recommended for—


Sen. Al-Rawi: But I took your point of taking care to empower to disclose to him so I had no problem with it as drafted. So if paragraph (b) could say that you provided him a list of those that you propose to destroy or which of those you propose to destroy from that list then (b) could take care of it and still keep your power to disclose clean and separate in (a).

Sen. Ramlogan SC: Senator, just repeat for the CPC people.

Sen. Al-Rawi: I was just wondering if we had at (a):

“within three months after the end of each calendar year provide the Commissioner of Police with a list of samples which have been entered on the DNA register and profiles which have been entered in the databank.”

(b) indicate to the Commissioner of Police which”

—do we want to put “provide” him with a list because you should provide him with a list?

Legal Advisor: Yes.

Sen. Al-Rawi: So, maybe you can put “within three months” in the chapeau. So if you take the words: “within three months after the end of each calendar year”, you could perhaps put that into the chapeau of “the Trinidad and Tobago Forensic Science shall within three months after the end of each calendar year—”; there is no colon here.
(a) provide the Commissioner of Police with a list of samples which have been entered in the DNA register and list of profiles which have been entered in the databank.”

12.25 a.m.

I do think we need the words “at the Trinidad and Tobago Forensic Science Centre” and we could eliminate “for a minimum period of 10 years”: and; now, we have to think of the words here “provide the Commissioner of Police,” maybe that could go into the chapeau as well, because it is going to be repeated in (b) here. So the idea is:

“provide the Commissioner of Police with a list of samples and profiles which are proposed to be destroyed and expunged respectively.”

Sen. Ramlogan SC: The custodian as I indicated, would be a part of the Trinidad and Tobago Forensic Science Centre by virtue of the amendment at (5), so that we are okay with the wording as it is in terms of the Trinidad and Tobago Forensic Science Centre.

Sen. Al-Rawi: Okay, sure. I was just looking insofar as we had split it and given him the autonomy to act independently.

Sen. Ramlogan SC: Yes, but only in the exercise of his—but it covers it there.

Sen. Al-Rawi: Yes, I am just reminding that “DNA sample” is defined in the Act earlier, that is fine, but it is “DNA profile that we need to describe it as. [Interruption] “DNA profile” would be the appropriate words not “profile” by itself.

Sen. Ramlogan SC: Okay. We could put it there now.

Question put and agreed to.

Clause 25, as amended, ordered to stand part of the Bill.

Mr. Chairman: We are at clause 5, on page 5.

Sen. Al-Rawi: Twenty seven, Mr. Chairman.

Mr. Chairman: You want to do 27 first?

Sen. Al-Rawi: Yes, Mr. Chairman, once we get over that, everything should be fairly smooth.

Mr. Chairman: Before we proceed to the insertion of the new clause, I have to put the question that clause 27—[Interruption]
Clerk: New clause 27, expungement of profile in certain circumstances.

**New clause 27.**

Insert the following new clause after clause 25 and renumber accordingly:

27 (1) Notwithstanding section 7(2), where the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of a complainant is no longer necessary in relation to a matter under investigation or before the Court he shall, in writing, notify the complainant or, where the complainant is a child or an incapable person, his representative, of the decision to expunge the DNA profile from the Forensic DNA Databank.

(2) A complainant or his representative shall, within three months of the date of the notification under subsection (1), indicate in writing to the Commissioner of Police whether he objects to the expungement of his DNA profile from the Forensic DNA Databank.

(3) Where a complainant or his representative fails to indicate, after the expiration of three months from the date of the notification, whether he has an objection to the expungement of his DNA profile from the Forensic DNA Databank, the Commissioner of Police shall, in writing, inform the custodian of the Forensic DNA Databank that the DNA profile may be expunged.

(4) Where the Custodian is informed, pursuant to subsection (3), that the retention of a complainant’s DNA profile is no longer necessary, he shall take the necessary steps to have the DNA profile expunged from the Forensic DNA Databank.

(5) Notwithstanding section 7(2) and subject to subsections (6) and (7), a complainant or, where the complainant is a child or an incapable person, his representative, may apply to the Commissioner of Police to have his DNA profile expunged from the Forensic DNA Databank.

(6) Where an application is made under subsection (5) for a DNA profile to be expunged from the Forensic DNA Databank and the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of that complainant should not be expunged on the grounds that it is
needed in relation to a matter under investigation or before the Court he shall, in writing, inform the complainant or his representative that the DNA profile will not be expunged on the grounds that it is needed in relation to a matter under investigation or before the Court.

(7) Where an application is made under subsection (5) for a DNA profile to be expunged from the Forensic DNA Databank and the Commissioner of Police, after consultation with the Director of Public Prosecutions, is of the view that the DNA profile of the complainant is no longer necessary in relation to a matter under investigation or before the Court he shall, in writing, inform the Custodian of the Forensic DNA Databank that the DNA profile may be expunged.

(8) Where the Custodian is informed, pursuant to subsection (7), that the retention of a complainant’s DNA profile is no longer necessary, he shall—

(a) take the necessary steps to have the DNA profile expunged from the Forensic DNA Databank; and

(b) notify the Commissioner of Police, in writing, that the complainant’s DNA profile has been expunged.

(9) The Commissioner of Police, on receiving the notification referred to in subsection (8) from the Custodian of the Forensic DNA Databank, shall inform the complainant, in writing, that his DNA profile has been expunged from the Forensic DNA Databank.

(10) Notwithstanding section 7(2), where a sample is taken from a child, the Custodian shall cause the DNA profile derived from that sample to be expunged from the Forensic DNA Databank after the expiration of ten years from the date on which the profile was generated.

(11) Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence referred to in the First Schedule to the Anti-Gang Act, 2011 or Schedule 6 to the Administration of Justice (Indictable Proceedings) Act, 2011, the sample and DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, respectively, after the expiration of ten years from the date of exoneration.
(12) Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence other than those referred to in subsection (11), the sample and DNA profile derived from that sample shall be destroyed and expunged from the Forensic DNA Databank, respectively, after the expiration of five years from the date of exoneration.”

Question proposed: That the new clause be read a second time.

Sen. Prescott SC: Mr. Chairman, in the light of the changes we have made so far, is clause 27—[Interruption]

Sen. Al-Rawi: Necessary at all?

Sen. Prescott SC: Still necessary?

Sen. Al-Rawi: Mr. Chairman, my learned senior is echoing whether clause 27 as currently drafted is superfluous insofar as we have taken away the discrimination aspect.

Mr. Chairman: [Inaudible] have to read it a second time?

Sen. Al-Rawi: There are some useful positions that you may want to consider, I do not know, relative to its method, if we can look at it.

Sen. Ramlogan SC: Well, you see in the first part of clause 27 until 27(4), really deals with the right of the complainant to object to the removal, so that part will certainly have to stay. The second part, however, which deals with [Crosstalk] The whole thing? I think we will have to keep it.

Sen. Al-Rawi: I do not mind if we are treating with the complainant separately it is okay, because it is a sexual offence and we are treating that one with gloves; but I just wanted to make sure, because (11) may potentially impact.

Sen. Ramlogan SC: But throughout it really deals with the complainant.

Sen. Al-Rawi: Save until we get down to (10) and (11).

Sen. Ramlogan SC: It is really 10 and 11. Yes, (9) and (10) will have to stay.

Sen. Al-Rawi: Relative to the reference to 10 years for the child in (10), and 10 years there, so 10 reads:

“Notwithstanding section 7(2), where a sample is taken from a child, the Custodian shall cause the DNA profile derived from…to be expunged after the expiration of ten years from the date on which the profile was generated.”
I am just thinking about the policy behind it. I agree that we should treat children in a separate special category. My question is how does it fit within the contemplation of clause 26 now, where anybody has the right to say expunge unless it is a blood crime? This gives an automatic strike off 10 years—child.

**Sen. Ramlogan SC:** The child will be able before that, to go under the other clause.

**Sen. Al-Rawi:** Under clause 26, the child will have the right as a person approaching, to ask for it to be struck off.

**Sen. Ramlogan SC:** And that would apply—-[**Interruption**]

**Sen. Al-Rawi:** Then this is a back-up section to say “Well, look, in any event after 10 years it would be struck off.

**Sen. Ramlogan SC:** Automatically, that is right. So we strengthen the right of the child; it is an automatic strike off after 10 years. I see Senators Baptiste-McKnight and Drayton are nodding in approval.

**Sen. Ramkhelawan:** Mr. Chairman, what about (11), the question of exoneration and the period for expiration. I wonder if that should be five.

**Sen. Ramlogan SC:** No, no, no, because those are convicted persons.

**Sen. Ramkhelawan:** No, these are exonerated.

**Sen. Ramlogan SC:** Oh, exonerated, I see, I see.

**Sen. Ramkhelawan:** And the point was being made if you are exonerated that you should not be holding the thing at all, but since we started—-[**Interruption**]

**Sen. Ramlogan SC:** I think that section can come off and they will be governed by the previous section.

**Sen. Al-Rawi:** I was going to propose that, because that one may be in conflict with clause 26 per se, because in that way we would leave the burden upon the person to move it.

**Sen. Ramlogan SC:** No, no actually—one second—-[**Interruption**] You see Sen. Al-Rawi and Sen. Ramkhelawan, that section was put in there because the exoneration may come, as Minister of Justice, Mr. Volney was indicating, in many different ways. It could come because a witness was eliminated. It could come because of a technicality in the law; you follow? So we wanted to preserve that for a period of time there.
Sen. Ramkhelawan: The exoneration suggests innocence until being—[Interruption]

Sen. Ramlogan SC: Not necessarily—[Interruption]

Sen. Al-Rawi: Well, exoneration goes a step—clause 26 as we have it right now says: “Look, if you are a suspect for a blood crime, you are going to be there.” You could be a suspect—the question is how does exoneration affect your categorization as a suspect?

Sen. Ramlogan SC: That is the point it is not covered as before, it is not.

Sen. Al-Rawi: Correct. And there may be merit insofar as this now gives a person who has been exonerated the right to say, “Well look I have been exonerated, and albeit for different categories, the 10 years may not be so offensive insofar as—well, the question is about equality for suspects of a blood crime versus—but exoneration would be a special category at least from the double jeopardy theory and point.

Sen. Ramlogan SC: Ten years for this is not bad you know. Yes, we should leave this one as is.

Sen. Ramkhelawan: They could apply to the court for it to be expunged.


Sen. Al-Rawi: So the question that is being asked is—well, it is policy position that we take as a Senate. Insofar as—[Interruption]

Sen. Ramlogan SC: The reason I want to leave this provision in, is that the statistics that the police have had, reveal that there is a concept of multiple offenders. So you have one “fella, but he rap sheet” in terms of pending matters is very long—[Interruption]

Sen. Al-Rawi: AG, sorry to interrupt you, and this is just for thought. There would be no difficulty for anybody in here saying: “Look, with respect to a blood crime, even though you have been exonerated, you should have a ten-year minimum. But insofar as this clause deals with offences generally, we may run afoul of a Marper type situation.

Sen. Ramlogan SC: We could limit it to the schedule references in the anti-gang and the—[Interruption]

Sen. Al-Rawi: The thing is to allow persons who are—the rotten tomato seller—
Sen. Ramlogan SC: We have two options, we have that or to bring it down to five years.

Sen. Al-Rawi: AG, my thought is only so that they could stand scrutiny by a court.


Sen. Ramkhelawan: I am just saying make your case for what is the most consistent approach that we have taken throughout this piece of legislation.

Sen. Ramlogan SC: Well, think we will go with the blood crime, retain it for ten years.

Sen. Ramkhelawan: Ten?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: And for others five years or—?

Sen. Ramlogan SC: For others five years, yes.

Sen. Al-Rawi: So at least we get a little balance in our type of society.

Sen. Ramlogan SC: So it is consistent as Sen. Ramkhelawan said.

Sen. Ramkhelawan: That is all we want, we want some equity.

Sen. Ramlogan SC: We will do a redraft to say for the schedule offences in the anti-gang and the indictable offences Acts, that it is for 10 years you retain it, and otherwise it is five. If we could probably just go on to something else, and give the draft personnel a little—

Question put and agreed to.

Clause 27 deferred.

Mr. Chairman: Sure. We have a new clause 40 that we can touch upon, and then we have to go back to the definition section.

Sen. Ramlogan SC: A new clause 40?

New clause 40.

Clerk: 40 The Evidence Act is amended in section 19(4) by inserting after paragraph (i) the following new paragraph:

(i) A Forensic DNA analyst;”

New clause 40 read the first time.
Question proposed: That the new clause be read a second time.
Question put and agreed to.
Question proposed: That the new clause be added to the Bill.
Question put and agreed to.
New clause 40, added to the Bill.

Sen. Ramlogan SC: Could we go to the forms?

Mr. Chairman: What about the definitions?

Sen. Ramlogan SC: Yes, we have the definitions.

Mr. Chairman: Do you want to look at the forms first?

Sen. Ramlogan SC: Yes.

First schedule ordered to stand part of the Bill.

12.40 a.m.

Second Schedule.

Question proposed: That the Second Schedule, stand part of the Bill.

Form 1:

Mr. Chairman: Where we talk about a witness is what I recall?


Mr. Chairman: We put “witness” right at the foot of it, on page 30. Is that the idea? Where he signs, “Volunteer/Representative”?

The question is that the Form 1 with the reference to the inclusion of a witness now stand part of the Bill.

Question put and agreed to.

Form 2.

Sen. Baptiste-Mc Knight: Would it make sense where it says “signature of police officer” to put the number as well? You cannot always read the signature.

Sen. Ramlogan SC: They normally sign and put their badge number, but if you want we can put it.

Mr. Chairman: So you want to put signature and rank of police officer?
Sen. Ramlogan SC: Well, signature, rank and service number.

Sen. Deyalsingh: Mr. Chairman, please indulge me on Form 2. You have the signature, rank, et cetera. You have date of service. What about date of the actual form? Does date of service mean the date that the form is being filled in?

Mr. Chairman: We need to add in date notice is being given, so I imagine “date of service” is the material date.

Sen. Deyalsingh: So there is no need for a separate line that says “date”.

Sen. Al-Rawi: Could we also include “Name in block letters”. I do not know if rank will take care of that.

Mr. Chairman: The question is that Form 2, with the amendment to make reference to the name, rank and service number, now stand part of the Bill.

Question put and agreed to.

Form 3:

Sen. Al-Rawi: At page 33, if the “Witnessed by” could be inserted just after the first line “Signature of person giving consent”, then we could perhaps include “Witnessed by” and then it will continue “In the presence of”—

Mr. Chairman: “In the presence of” does not indicate—

Sen. Al-Rawi: Well, “In the presence of” is the person who is requesting the consent.

Sen. Ramlogan SC: Just put “Signature of Witness”.

Sen. Al-Rawi: So “Signature of person” and then “Witnessed by” and then the signature rubric. Similarly, for the “Withdrawal of Consent”, we should also have, after the person signs saying they wish to withdraw consent, just after place where consent is withdrawn, “Witnessed by”. That is above “In the presence of”. And there is also nothing in here relative to date.

Sen. George: Everybody signing should have a date.

Mr. Chairman: You want to put date after the signature?

Sen. Al-Rawi: Each time a person signs; yes, Sir.

Mr. Chairman: The question is that, Form 3 form part of the Bill with the addition of the date after each signature and the inclusion of “Witnessed by” before “In the presence of”.
(Administration of Justice) Bill, 2011  
Tuesday, February 07, 2012

Question put and agreed to.

Form 4:

Sen. Prescott, SC: I do not know if I heard the reference to witnesses being necessary in Form 4.

Mr. Chairman: Yes I did put—

Sen. Prescott SC: Thank you very much.

Mr. Chairman: Sorry. In Form 4, no. It had been suggested that that was in order. This is just a record. I do not see any—

Sen. Al-Rawi: I did not think that Form 1V needed a witness insofar as—

Sen. Prescott, SC: It is merely a record. Thank you.

Question put and agreed to.

Form V:

Sen. Al-Rawi: Just one question; whether the custodian is going to be using Form 5 as his form, for his Oath of Secrecy? If so, is he an employee at or performing function in the Trinidad and Tobago Forensic Science Centre?

Sen. Prescott, SC: He is neither?


Sen. Baptiste-McKnight: Is this the lab in the science centre? [Crosstalk]

Mr. Chairman: It does say that he should make and subscribe to an Oath of Secrecy, so it is intended to be the form that he signs from the substantive section if he is an employee.

Sen. Al-Rawi: Insofar as the databank is—an office of the Forensic Science Centre, you could probably have it there. I am just asking so that we are sure of what we doing.

Mr. Chairman: It seems to say “employee at/performing a function in”. So you either delete “employee at”—that is what I think the form really means.

Sen. Al-Rawi: Okay, Mr. Chairman, thank you.

Mr. Chairman: The question is that Form 5 stand part of the Bill.

Question put and agreed to.

Second Schedule, as amended, ordered to stand part of the Bill.

Third Schedule.

Question proposed: That the Third Schedule stand part of the Bill.
Mr. Chairman: We have a number of amendments. The intention, as I understand it, is that the same persons listed in the first round of the Bill at 16(1) be included as:

Persons who is or applies for employment as:
(a) an officer of the protective services;
(b) a member of the Municipal Police Service;
(c) a member of the Special Reserve Police;
(d) a constable within the meaning of the Supplemental Police Act;
(e) a member of the defence force;
(f) a customs officer of the Customs and Excise Division; or
(g) a private security officer;

shall give a non-intimate sample.

That is the list of persons intended to replace (1) in the Third Schedule. The old (2) is deleted and (3) becomes (2) relating to employees at the Trinidad and Tobago Forensic Science Centre.

The question is that the Third Schedule, as amended, now stand part of the Bill.

Question put and agreed to.

Third Schedule, as amended, ordered to stand part of the Bill.

Clause 5 recommitted.

Question again proposed: That clause 5 stand part of the Bill.

Mr. Chairman: I believe that the proposal was that clause 5 would be split into subclauses (1) and (2). I have (2) as:

“That Trinidad and Tobago Forensic Science Centre shall have custody of and control over all DNA samples and profiles including the national Forensic DNA Databank of Trinidad and Tobago.”

Is that the amendment?

Sen. Al-Rawi: I believe there was a (3) as well, Mr. Chairman.
Mr. Chairman:

“For the purposes of this Act a register to be known as a DNA register shall be established and maintained by the Trinidad and Tobago Forensic Science Centre.”

Question put and agreed to.

Clause 5, as amended, again ordered to stand part of the Bill.

Clause 4 reintroduced.

Mr. Chairman: We are on the definition section. We will go down alphabetically so that we can follow. page 2, page 3, page 4. Am I going too fast?

Sen. Al-Rawi: Mr. Chairman, I wondered, insofar as the DNA literature, a non-intimate sample, paragraph (c) really refers to a plucked hair because it is really useless unless it is plucked. I do not know if you wanted to say that. That point has been made over and over by the DNA experts themselves. Also, in relation to a representative, in relation to a child or incapable person, I was wondering whether we should also—

Sen. Ramlogan SC: We have no objection to putting in the word “plucked”.

Mr. Chairman: What is the defined term?


Mr. Chairman: I know. That is the word you want there?

Sen. Al-Rawi: It is actually the term used in the DNA position—

Mr. Chairman: In relation to the word “hair”, is it?

Sen. Ramlogan SC: We are advised that it is plucked hair as in plucked chicken or duck.

Sen. Al-Rawi: Regular hair would not work. If you cut the ends of your hair, you cannot use it for a sample. You cannot get a DNA sample from hair that does not have the root on it. It has to be plucked hair.

12.55 a.m.

Mr. President, just relative to “representative”, I was wondering whether we wanted to include “any person appointed by the court”, because diminished capacity patients, under the Mental Health Act, have a court representative.

Mr. Chairman: Any problem with that, Attorney General? At (f), a suggestion to include on representative, “any person appointed by the court.”
Sen. Ramlogan SC: That is fine.

Mr. Chairman: Is that the language, “any person appointed by the court”.

Sen. Ramlogan SC: Or “a person appointed by the court”?

Sen. Al-Rawi: Yes, “a person appointed by the court”.

Mr. Chairman: Sen. Ramkissoon, you had a concern.

Sen. Prof. Ramkissoon: Yes, the definition of “suspect”, are we going to have a scheduled list or do we need to tighten up on the definition of suspect? It looks a bit loose to me.


Sen. Prof. Ramkissoon: A bit suspect, yes.

Sen. Drayton: Mr. Chairman, we have to put back in “register”.

Mr. Chairman: Is it the DNA register?

Sen. Drayton: Well, it was in the original one.

Sen. Ramlogan SC: Well this one here, we really wanted it to remain as is.

Sen. Drayton: So you do not want to put back in “register” here?

Sen. Al-Rawi: I do not think we need “DNA register”, because we have used inverted commas in clause 5 to describe the “DNA register”, so I think we are safer with that one.

Sen. Ramlogan SC: We can leave it as is.

Sen. Ramkhelawan: Mr. Chairman, if I may? The definition of “suspect”, as I recall in the Anti-Terrorism and Anti-Gang Acts—the definition means a person whom the police have reasonable grounds for believing—(b) may have committed an offence, and who is being investigated by the police in…that regard. I recall in some of those previous pieces of legislation that “may have committed or is about to”. I wonder whether that futuristic aspect makes sense.

Sen. Ramlogan SC: Yes, “may have committed or is about to”. Okay, that is fine.

Sen. Ramkhelawan: I do not know any law; I just remembered—

Sen. Ramlogan SC: You are right. We have it in other legislation.

Sen. Al-Rawi: We have quite a few offences on our books which refer to “about to commit” like the Anti-Terrorism Act and other positions.
Sen. Ramlogan SC: We will put it in.

Mr. Chairman: Can it be “who is being investigated by the police in relation to that offence”? Do we have to add on something there? The offence is not committed as yet.

Sen. Ramlogan SC: Mr. Maharaj, we have to define “police officer” and “protective services”. Do we need to define anything else in light of the expansion of the categories? Public officers—

Sen. Al-Rawi: In relation to same, perhaps?

Mr. Chairman: Or potential offence?

Sen. Al-Rawi: Mr. Chairman, insofar as we have persons who can be detained, do we need to really broaden the suspect? You can detain someone under the Anti-Gang Act and Anti-Terrorism Act and other positions as a detainee prior to the commission of an offence. So, the question is, do we need to broaden “or is about to commit an offence”? You can detain him without him being—you can be lawfully detained prior to the commission of an offence, so that you will come in as a “detainee” as opposed to a “suspect”.

Mr. Chairman: But “suspect” means a person who is about to commit an offence or “whom”, is that where perhaps it should come in? So, if he is “about to commit an offence”, you know, it is in the face of the police, as it were.

Sen. Ramlogan SC: Look, I think the Interpretation Act defines “offence” as including “an attempt to commit”.


Sen. Ramlogan SC: It does. I am sure about it. So to put it in can do no harm really. [Crosstalk]

Sen. Deyalsingh: AG, if we put a “:” he would agree.

Sen. Ramlogan SC: He was resting his colon. [Laughter]

Mr. Chairman: Sorry, do we want “suspect” to remain as it is?

Sen. Ramlogan SC: No, I think it is the insertion of the words suggested by Sen. Ramkhalawan.

Mr. Chairman: It is “who is about to commit an offence”. I would suggest it means “a person who is about to commit an offence or whom the police have reasonable grounds for believing may have committed an offence and who is being investigated by the police in relation to that offence.”
Sen. Ramlogan SC: That is fine.

Sen. Al-Rawi: “Or” or “and”? 

Mr. Chairman: No, it is “about to commit an offence”. You see, there is an investigation, but the investigation is in relation to a past offence.

Sen. Ramkhelawan: Mr. Chairman, I think what you might want to do is preface everything with “the police may have reasonable grounds to believe that this person is about to commit an offence or may have committed”, which captures reasonable grounds in both cases.

Mr. Chairman: So do you want to put in, “who is about to commit an offence” after “believing”? 

Sen. Al-Rawi: Yes, after “believing”. [Crosstalk]

Mr. Chairman: The wording is:
“a person who the police have reasonable grounds for believing:
(a) is about to commit an offence; or
(b) may have committed an offence and who is being investigated by the police in relation to that offence.”

Sen. Ramlogan SC: That is fine.

Sen. Al-Rawi: That applies in relation to both (a) and (b).

Sen. Al-Rawi: There is a “:” after (b). So, it should be “::” after (a).…(b)…— and is being investigated”.

Sen. Ramlogan SC: The last part he is saying should apply to both (a) and (b). [Crosstalk]

Sen. Al-Rawi: Mr. Chairman, I prefer it to be in relation to both.

Mr. Chairman: It seems that you cannot be investigating an offence that has not been committed as yet.

Sen. Al-Rawi: You could have reasonable suspicion and you are investigating it, otherwise you will not know. I “see” what you are saying; if you catch him on the spot.

Mr. Chairman: It those sort or instances in the face of the police. [Crosstalk and laughter] I had a difficulty suggesting that there was investigation being conducted on an offence that has not yet been committed.
Sen. Ramlogan SC: The attempt to commit an offence is in itself an offence in the criminal law. So, that is fine. So, attempted murder, for example, you may not have succeeded in committing the actual murder, but you could have an investigation into whether or not there was an attempt to commit the murder; attempted robbery or attempted anything.

Mr. Chairman: So, really you want a “,” after “offence” so that “and who is being investigated by the police in relation to the offence” governs everything that goes above.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Sen. Ramlogan SC: Can we go back to clause 27 for the redraft of (11).

Mr. Chairman: Yes.

Clause 27 reintroduced.

Sen. Ramlogan SC: We are deleting the existing (11), and we will replace it with the following:

Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence other than those referred to in subsection—

Mr. Chairman, I beg your pardon. There are actually two insertions. The first will read as follows:

“Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence referred to in the First Schedule of the Anti-Gang Act or the Sixth Schedule to the Administration of Justice (Indictable Offences) Act, the Custodian shall cause the DNA profile derived from that sample to be expunged from the Forensic DNA Databank after the expiration of ten years from the date of exoneration.”

That would be the new subclause (11).

Mr. Chairman: Is it “after the expiration of ten years”?

Sen. Ramlogan SC: Yes, “from the date of exoneration”.

Sen. Al-Rawi: One problem, AG or rather for consideration. That is the expunging only of the profile. What about the sample if it still exists?

Sen. Ramlogan SC: Well, we can do both; “sample and profile”.
Sen. Al-Rawi: Remember, there are two different people, so the custodian is with respect to the profile—

Sen. Ramlogan SC: They both fall under the Forensic Science Centre and that is why we are doing it that way, otherwise we will have to go all over the place.

Sen. Al-Rawi: Here we refer specifically to the “Custodian shall”. So, if we remove who should do it—

Sen. Ramlogan SC: Yes, remove “the Custodian”; yes.

Sen. Al-Rawi: You should simply say, “that the sample and the DNA profile generated therefrom”.


1.10 a.m.

Sen. Dr. Armstrong: Hon. Attorney General, we did not agree to five years on this as well?

Sen. Al-Rawi: This is a blood crime.

Sen. Ramlogan SC: No. Blood crime, we are coming to the five years after.

Sen. Dr. Armstrong: Okay.

Sen. Ramlogan SC: I am coming to that after. I am going to repeat it:

“Notwithstanding section 7(2) where a sample is taken from a person who is exonerated in relation to an offence referred to in the First Schedule to the Anti-Gang Act, or the Sixth Schedule to the Administration of Justice (Indictable Proceedings) Act”—

We delete “the Custodian shall cause”, no it would have to be “the DNA”.

Sen. Al-Rawi: —“the sample and the DNA profile”.

Sen. Ramlogan SC: “the DNA sample and profile derived from that sample shall be expunged from the Forensic DNA Databank after the expiration of ten years from the date of exoneration”.

Sen. Al-Rawi: Slight drafting difficulty there, “the DNA sample shall be destroyed and any profile generated in respect of that sample or in any other sample shall be expunged”.

Sen. Ramlogan SC: Well, yes, “destroyed and expunged”. So the sample is destroyed, the profile is expunged.
Mr. Chairman: “Destroyed and expunged”.

Sen. Ramlogan SC: Yes. That is fine, “destroyed” refers to the sample and “expunged” to the profile.

Sen. Al-Rawi: With liberty to tighten it up as you are drafting it.

Sen. Ramlogan SC: Then we have the new subclause (12).

“Notwithstanding section 7(2), where a sample is taken from a person who is exonerated in relation to an offence other than those referred to in subsection (11),”—we have the custodian here again. We will have to change up our language.

Sen. Al-Rawi: Repeat the same language and then come out to the time frame.

Mr. Chairman: In “the DNA sample and the profile arrived therefrom”?

Sen. Ramlogan SC: Yes.

Sen. Al-Rawi: “and any profile”.

Sen. Baptiste-McKnight: The DNA samples have already been edited in 26.

Sen. Al-Rawi: No, but this is now after exoneration so it is different.

Sen. Ramlogan SC: The rest continues except that it changed 10 to five years.

Mr. Chairman: “it shall be destroyed and expunged”—

Sen. Al-Rawi: “after the expiration of five years from the date of the exoneration.”

Question put and greed to.

Clause 27, as amended, now stand part of the Bill.

Preamble approved.

Question put and agreed to: That the Bill, as amended, be now reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.
Mr. President: This requires a three-fifths special majority, we will now conduct a division.

The Senate voted: Ayes 29

George, Hon. E.
Ramlogan SC, Hon. A.
Sandy, Hon. Brig. J.
Bharath, Hon. V.
St. Rose Greaves, Hon. V.
Tewarie, Hon. Dr. B.
Karim, Hon. F.
Ramnarine, Hon. K.
Maharaj, Hon. D.
Oudit, Mrs. L.
Dyer-Griffith, Mrs. N.
Abdulah, D.
Maharaj, D.
Baynes, T.
Beckles-Robinson, Mrs. P.
Henry, Dr. L.
Al-Rawi, F.
Deyalsingh, T.
Ali, Mrs. S.
Robinson-Regis, Mrs. C.
Ramkhelawan, S.
Baptiste-Mc Knight, Mrs. C.
Drayton, Mrs. H.
Ramkissoon, Prof. H.
Wheeler, Dr. V.
Prescott SC, E.
Armstrong, Dr. J.
Sydney, A.
Moheni, E.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Public Utilities (Sen. The Hon. Emmanuel George): Thank you very much, Mr. President. Before I move the adjournment of this Senate, I would like to say thank you very much to all the Senators sitting here this morning and who gave this Bill their support, and I congratulate them on their fortitude because it is now 1.19 a.m. I also would like to thank the Parliament staff for sitting through it with us, because without them [Desk thumping] it could not be done.

There is a matter on the Motion for the Adjournment, and my colleague, hon. Devant Maharaj, is prepared to answer as he has been prepared to answer this question since December last year, however, I do not know what my colleague Sen. Beckles will do, so I will do my part and say, Mr. President, I beg to move that this Senate do now adjourn to Tuesday, February 14, 2012 at 11.00 a.m. when it is proposed to debate the Finance Bill. In that regard the Finance Bill would be circulated to Senators in good time. It is also being proposed that we debate the Bacteriological and Toxin Weapons Bill, if need be.

I should mention that on Tuesday 14, 2012 we have a celebration that is associated with lovers—Valentine’s Day, in that regard, we would hope that we could complete the business of the sitting very quickly, so that the young ones among us, including my good friend, hon. Minister Volney, although he would not be in this Senate, will be able to go home to their young wives.

Sen. The Hon. Ramlogan SC: It is also “Machel Monday”.

Sen. The Hon. E. George: Mr. President, I beg to move that the Senate do now adjourn. Thank you very much.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 1.21a.m.