



The Interim Report

of the Special Select Committee (Senate)
on the **Evidence (Amendment) Bill, 2019**



FIFTH SESSION OF THE 11TH PARLIAMENT (2019/2020)

INTERIM REPORT

OF

THE SPECIAL SELECT COMMITTEE OF THE SENATE

APPOINTED TO CONSIDER AND REPORT ON

A BILL ENTITLED, “AN ACT TO AMEND THE EVIDENCE ACT, CHAP. 7:02”

MP PARL: No. 14/2/31

Senate Paper No. of 2019

[Ordered to be printed by the Senate]

Date Laid in the Senate:

Committee Mandate

Pursuant to a resolution of the Senate on Wednesday October 02, 2019, a Special Select Committee (Senate) was established to consider and report by November 29, 2019 on the Evidence (Amendment) Bill, 2019. Additionally, the Committee was also mandated to adopt the work of the Special Select Committee appointed in the Fourth Session 2018/2019.

Committee Membership

Mr. Clarence Rambharat - Chairman
Mr. Nigel De Freitas
Ms. Donna Cox
Mr. Saddam Hosein
Mr. Anthony Vieira

Secretariat Support

Mr. Johnson Greenidge, Procedural Clerk Assistant	Secretary
Mr. Brian Lucio, Procedural Clerk Assistant	Assistant Secretary
Ms. Janelle Mills, Parliamentary Intern	Researcher

Contact

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Date Laid in Senate:

Senate Paper No.:

PARL No.: 14/2/31

CHAIRMANSHIP

1. Pursuant to a resolution of the Senate on Wednesday October 02, 2019, Mr. Clarence Rambharat was appointed to be Chairman of the Committee, in accordance with **Standing Order 85(2)** of the Senate.

MEETINGS

2. Since its appointment, your Committee has held three (3) meetings on the following dates:
 - Tuesday November 05, 2019;
 - Thursday November 14, 2019; and
 - Tuesday November 26, 2019.
3. The Minutes of the Meetings are attached at **Appendix I**.

WORK TO DATE

4. At its **First Meeting** held on Tuesday November 05, 2019, your Committee received oral submissions (in public) from the following stakeholders:
 - (i) The Office of the Director of Public Prosecutions;
 - (ii) Forensic Science Centre; and
 - (iii) National Forensic DNA Databank.

The Verbatim Notes of this meeting are attached at **Appendix II**.

5. Pursuant to its Call for Submissions, your Committee received written submissions from the:
 - (i) Office of the Director of Public Prosecutions (DPP);
 - (ii) National Forensic DNA Databank;
 - (iii) Trinidad and Tobago Forensic Science Centre;
 - (iv) Trinidad and Tobago Police Service;
 - (v) Trinidad and Tobago Prisons Service;
 - (vi) Children's Authority of Trinidad and Tobago;
 - (vii) Legal Aid and Advisory Authority; and
 - (viii) Judiciary of Trinidad and Tobago.

6. The deadline established for written submission was October 04, 2019. As at November 28 2019 written comments remained outstanding from the:
 - (i) Justices of the Peace Association;
 - (ii) Law Association of Trinidad and Tobago;
 - (iii) Assembly of Southern Lawyers; and
 - (iv) Faculty of Law - UWI, St. Augustine
7. Further, your Committee noted that the Justices of the Peace Association indicated that it was unable to make a written submission. Your Committee agreed that notwithstanding the Association's inability to submit written comments, the Association would be invited to provide oral comments on the Bill at the earliest occasion.
8. By letter dated October 03, 2019, the Law Association of Trinidad and Tobago indicated that it "will provide its comments in due course".
9. At its **Second Meeting** held on Thursday November 14, 2019, your Committee received oral submissions (in public) from the following stakeholders:
 - (i) Trinidad and Tobago Prison Service;
 - (ii) Children's Authority of Trinidad and Tobago;
 - (iii) Legal Aid and Advisory Authority of Trinidad and Tobago; and
 - (iv) Justices of the Peace Association.

The Verbatim Notes of this meeting are attached at **Appendix II**.

10. At its **Third Meeting** held on Tuesday November 26, 2019 your Committee commenced its clause-by-clause examination of the Bill and agreed to lay an Interim Report.
11. Your Committee agreed that the following stakeholders be granted an extension until Friday November 29, 2019 to submit written comments on the Bill:
 - (i) Law Association of Trinidad and Tobago;
 - (ii) Assembly of Southern Lawyers; and
 - (iii) Faculty of Law - UWI, St. Augustine.
12. By email dated Thursday November 28, 2019, the Faculty of Law - UWI, St. Augustine, expressed its inability to comment on the Bill in light of the faculty being short-staffed and the absence of subject matter experts.

REPORT

13. Your Committee wishes to report that additional time is required to complete its clause-by-clause examination of the Bill and to compile proposed amendments with the assistance of the Legislative Drafting Department of the Ministry of the Attorney General and Legal Affairs.

RECOMMENDATION

14. Your Committee humbly requests an extension of time to continue its work and report by **December 31, 2019.**

Respectfully Submitted,

Mr. Clarence Rambharat
Chairman
December 04, 2019

Mr. Nigel De Freitas
Member

Ms. Donna Cox
Member

Mr. Saddam Hosein
Member

Mr. Anthony Vieira
Member

APPENDIX I

ATTENDANCE RECORD AND MINUTES OF PROCEEDINGS

ATTENDANCE RECORD
SPECIAL SELECT COMMITTEE ON
THE EVIDENCE (AMENDMENT) BILL, 2019

Members	1st Meeting 05.11.19	2nd Meeting 14.11.19	3rd Meeting 26.11.19
Mr. Clarence Rambharat (Chairman)	√	√	√
Mr. Nigel De Freitas	√	√	exc
Ms. Donna Cox	√	√	√
Mr. Saddam Hosein	√	√	√
Mr. Anthony Vieira	√	√	√

*exc- excused
abs- absent

**MINUTES OF THE 1ST MEETING,
5TH SESSION (2019/2020), 11TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON THE
EVIDENCE (AMENDMENT) BILL, 2019**

**HELD IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6,
AND IN THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE FLOOR,**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Mr. Nigel De Freitas	Member
Ms. Donna Cox	Member
Mr. Saddam Hosein	Member
Mr. Anthony Vieira	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Janelle Mills	Research Assistant

ALSO PRESENT

Mr. Faris Al-Rawi	Attorney General
Mrs. Hazel Thompson-Ahye	Senator

CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 9:22 a.m. and welcomed Members present.

DETERMINATION OF A QUORUM

- 2.1 The Chairman referenced letter dated October 07, 2019 from the President of the Senate, in which, the President, in concurrence with Standing Order 85 (3) of the Senate, directed that the quorum of the Committee shall be three (3) Members

inclusive of the Chair.

TERMS OF REFERENCE

3.1 The Chairman reminded Members of the Committee's terms of reference, viz.:

- i. to consider and report on a Bill entitled "The Evidence (Amendment) Bill, 2019";
- ii. to adopt the work of the Special Select Committee appointed in the Fourth Session 2018/2019; and
- iii. to report by November 29, 2019.

3.2 The Chairman also reminded Members that:

- i. In accordance with **Standing Order 67(1)** of the Senate, "*any Committee to which a Bill is committed after second reading shall not discuss the general merits and principles of the Bill, but only its details*";
- ii. In keeping with **Appendix III, Number 9** of the Senate Standing Orders on the General Rules for the conduct of proceedings of Committees, Members should inform the Secretariat of any Senator who wishes to attend Committee meetings to ensure that the leave of the Committee can be granted;
- iii. In concurrence with **Appendix III, Number 10** of the Senate Standing Orders on the General Rules for conduct of proceedings of Committees, "*the Minister or Member in charge of a Bill may take part in the proceedings of the Committee even though not a Member of the Committee but may not vote on any question put to the Committee.*"

Members took note of the relevant Standing Orders.

3.3 The Chairman advised that in keeping with **Appendix III, Number 9** of the Senate Standing Orders, leave was granted to **Sen. Hazel Thompson-Ahye** to participate in the Committee's public proceedings and clause-by-clause consideration of the Bill. Sen. Thompson-Ahye was welcomed to the meeting.

DISCUSSIONS ON THE WAY FORWARD

4.1 The Chairman reminded Members that officials from the Office of the Attorney General and the Legislative Drafting Department (CPC) have been designated to assist the Committee's deliberations on the Bill and that these officials will be present

at the day's hearing.

Consideration of Stakeholder Submissions

- 4.2 The Chairman advised Members that written comments on the Bill were received and circulated from the:
- i. Office of the Director of Public Prosecutions (DPP);
 - ii. National Forensic DNA Databank;
 - iii. Trinidad and Tobago Forensic Science Centre;
 - iv. Trinidad and Tobago Prisons Service;
 - v. Children's Authority of Trinidad and Tobago; and
 - vi. Legal Aid and Advisory Authority.
- 4.3 The Chairman also advised that written comments remained outstanding from the:
- i. Judiciary – expected by Friday November 08, 2019;
 - ii. Justices of the Peace Association;
 - iii. Assembly of Southern Lawyers; and
 - iv. Faculty of Law - UWI, St. Augustine – Faculty Dean advised on her absence from the country. Committee Secretariat awaiting information on whether written comments will be forthcoming.
- 4.4 The Chairman advised that the Justices of the Peace Association indicated that it will not be forwarding a submission. After some discussion, Members agreed that notwithstanding the Association's inability to submit written comments, the Association will be invited to provide oral comments on the Bill at the earliest occasion.

Matrix of Stakeholder Comments

- 4.5 Members were advised that the Secretariat drafted a **Matrix of Stakeholder Comments as at November 04, 2019**, which was included in Members' packages.
- 4.6 The Chairman proposed that the draft Matrix and its subsequent updated versions be referred to the Attorney General and the Legislative Drafting Department. Members agreed to the Chairman's proposal.

Consideration of Work Programme

- 4.7 The Committee agreed to meet next on the following days:
- i. Thursday November 14, 2019 at 2:30 p.m.
 - ii. Tuesday November 19, 2019 at 9:30 a.m.
 - iii. Thursday November 21, 2019 at 2:30 p.m.

- iv. Tuesday November 26, 2019 at 9:30 a.m.
- v. Thursday November 28, 2019 at 2:30 p.m.

PRE-HEARING DISCUSSIONS

Consideration of Stakeholder Submissions

- 5.1 Members were advised that the following stakeholders confirmed attendance at the day's public hearing:
 - i. Office of the Director of Public Prosecutions;
 - ii. National Forensic DNA Databank; and
 - iii. Trinidad and Tobago Forensic Science Centre.
- 5.2 The Chairman reminded Members that the written comments of all attendees were received and circulated for Members' consideration via email.
- 5.3 Members discussed the approach to be taken during the public hearing.

OTHER BUSINESS

Next meeting date and Agenda

- 6.1 The Chairman reminded Members of the Committee's decision to meet next on **Thursday November 14, 2019 at 2:30 p.m.** At this meeting the Committee will conduct stakeholder discussions (in public) with the following:
 - i. Trinidad and Tobago Prisons Service;
 - ii. Children's Authority of Trinidad and Tobago;
 - iii. Legal Aid and Advisory Authority; and
 - iv. Justices of the Peace Association.

SUSPENSION

- 7.1 The meeting was suspended at 9:34 a.m.

PUBLIC HEARING WITH STAKEHOLDERS

- 8.1 The meeting resumed (in public) at 9:44 a.m. in the J. Hamilton Maurice Meeting Room.
- 8.2 The following officials joined the meeting:

Office of the Director of Public Prosecutions

Mr. Roger Gaspard SC	Director of Public Prosecutions
Mr. Nigel Pilgrim	State Counsel III
Ms. Anju Bhola	State Counsel III

Trinidad and Tobago Forensic Science Centre

Mr. Derrick Sankar	Director (Ag.)
Mr. Kirt De Coteau	Scientific Officer III (Ag.)
Ms. Earlene Bahadoorsingh	Scientific Officer II
Ms. Amanda Moses Ferreira	Scientific Officer I

National Forensic DNA Databank

Mr. Justin Lewis	Custodian
Ms. Tonia-Marie James	Databank Analyst

Legislative Drafting Department (CPC)

Mrs. Veronica Sahadeo	Senior Parliamentary Counsel
Mr. Parvin Sookhai	Parliamentary Counsel II (Ag.)

- 8.3 The Chairman welcomed the officials and introductions were exchanged.
- 8.4 The chief official of each stakeholder entity gave a brief opening statement.
- 8.5 For the comments made by the abovementioned stakeholders during this hearing, please see the Verbatim Notes.

ADJOURNMENT

- 9.1 The meeting was adjourned to Thursday November 14, 2019 at 2:30 p.m.
- 9.2 The adjournment was taken at 12:01 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

November 13, 2019

**MINUTES OF THE 2ND MEETING,
5TH SESSION (2019/2020), 11TH PARLIAMENT,
OF THE SPECIAL SELECT COMMITTEE (SENATE)
APPOINTED TO CONSIDER AND REPORT ON THE
EVIDENCE (AMENDMENT) BILL, 2019
HELD IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6,
AND IN THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE FLOOR,
OFFICE OF THE PARLIAMENT, TOWER D, 1A WRIGHTSON ROAD,
PORT OF SPAIN ON THURSDAY NOVEMBER 14, 2019**

PRESENT

Committee Members

Mr. Clarence Rambharat	Chairman
Ms. Donna Cox	Member
Mr. Nigel De Freitas	Member
Mr. Saddam Hosein	Member
Mr. Anthony Vieira	Member

Secretariat

Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary
Ms. Janelle Mills	Research Assistant

ALSO PRESENT

Mrs. Hazel Thompson-Ahye	Senator
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CALL TO ORDER

- 1.1 The Chairman called the meeting to order at 2:50 p.m. and welcomed Members present.

**CONFIRMATION OF MINUTES OF THE 1ST MEETING HELD ON TUESDAY
NOVEMBER 05, 2019**

- 2.1 The Chairman invited Members to consider the Minutes page-by-page and inquired whether there were any amendments.

- 2.2 There being no amendments, a motion for the confirmation of the Minutes was moved by Mr. Vieira and seconded by Mr. De Freitas.

MATTERS ARISING FROM THE MINUTES

- 3.1 **Per Item 4.3.** The Chairman informed Members that the Secretariat was yet to receive written comments from the following stakeholders:
- i. Judiciary – Submission completed and awaiting approval;
 - ii. Assembly of Southern Lawyers;
 - iii. Faculty of Law - UWI, St. Augustine – to receive feedback by Monday November 18, 2019; and
 - iv. Law Association of Trinidad and Tobago – By letter dated October 03, 2019, the LATT indicated that it “will provide its comments in due course”.
- 3.2 **Per Item 4.6.** The Chairman informed Members that by email dated November 08, 2019, the Matrix of Stakeholder Comments was referred to the Attorney General and the Legislative Drafting Department.
- 3.3 **Per Item 6.1.** The Chairman informed Members that the Secretariat invited the listed stakeholders to attend a public hearing with the Committee.

PRE-HEARING DISCUSSIONS

Consideration of Stakeholder Submissions

- 4.1 Members were advised that the following stakeholders confirmed attendance at the day’s public hearing:
- i. Trinidad and Tobago Prison Service;
 - ii. Children’s Authority of Trinidad and Tobago;
 - iii. Legal Aid and Advisory Authority of Trinidad and Tobago; and
 - iv. Justices of the Peace Association.
- 4.2 The Chairman reminded Members that excluding the Justices of the Peace Association, the written comments of all other attendees were received and circulated for Members’ consideration via email.
- 4.3 Members discussed the approach to be taken during the public hearing.

OTHER BUSINESS

Next meeting date and Agenda

- 5.1 The Chairman reminded Members of the Committee’s decision to meet next on **Tuesday November 19, 2019 at 9:30 a.m.** At this meeting the Committee will commence its clause-by-clause examination of the Bill.

SUSPENSION

- 6.1. The meeting was suspended at 2:58 p.m.

PUBLIC HEARING WITH STAKEHOLDERS

- 7.1 The meeting resumed (in public) at 3:08 p.m. in the J. Hamilton Maurice Meeting Room.
- 7.2 The following officials joined the meeting:

Trinidad and Tobago Prison Service

Mr. Dane Clarke	Deputy Commissioner of Prisons
Mr. Garvin Ferette	Legal Officer

Children’s Authority of Trinidad and Tobago

Mr. Hanif E.A. Benjamin	Chairman
Ms. Sharlene Jaggernauth	Legal Services Manager

Legal Aid and Advisory Authority of Trinidad and Tobago

Mr. Gilbert Peterson, SC	Director/Chairman
Mr. Ravindra Rajah	Legal Officer II
Mr. Martin Joseph	Legal Officer II

Justices of the Peace Association of Trinidad and Tobago

Mr. Don Asgarali

Vice President

Legislative Drafting Department (CPC)

Mrs. Lorraine John

Asst. Chief Parliamentary Counsel

Mrs. Veronica Sahadeo

Senior Parliamentary Counsel

- 7.3 The Chairman welcomed the officials and introductions were exchanged.
- 7.4 The chief official of each stakeholder entity gave a brief opening statement.
- 7.5 For the comments made by the abovementioned stakeholders during this hearing, please see the Verbatim Notes.

ADJOURNMENT

- 8.1 The meeting was adjourned to Tuesday November 19, 2019 at 9:30 a.m.
- 8.2 The adjournment was taken at 4:43 p.m.

I certify that the Minutes are true and correct.

Chairman

Secretary

November 18, 2019

APPENDIX II

VERBATIM NOTES

VERBATIM NOTES OF THE FIRST MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) ON THE EVIDENCE (AMDT.) BILL, 2019, HELD IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6, (IN CAMERA), AND IN THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE FLOOR, (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON TUESDAY, NOVEMBER 05, 2019, AT 9.44 A.M.

PRESENT

Mr. Clarence Rambharat	Chairman
Mr. Nigel De Freitas	Member
Ms. Donna Cox	Member
Mr. Saddam Hosein	Member
Mr. Anthony Vieira	Member
Mrs. Hazel Thompson-Ahye	
Mr. Faris Al-Rawi	
Mr. Johnson Greenidge	Secretary
Mr. Brian Lucio	Assistant Secretary

Office of the Director of Public Prosecutions

Mr. Roger Gaspard SC	Director of Public Prosecutions
Mr. Nigel Pilgrim	State Counsel III
Ms. Anju Bhola	State Counsel III

Trinidad and Tobago Forensic Science Centre

Mr. Derrick Sankar	Director (Ag.)
Mr. Kirt De Coteau	Scientific Officer III (Ag.)
Ms. Earlene Bahadoorsingh	Scientific Officer II
Ms. Amanda Moses Ferreira	Scientific Officer I

National Forensic DNA Databank

Mr. Justin Lewis	Custodian
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Ms. Tonia-Marie James

Databank Analyst

Legislative Drafting Department

Mrs. Veronica Sahadeo

Senior Parliamentary Counsel

Mr. Parvin Sookhai

Parliamentary Counsel II (Ag.)

Mr. Chairman: Good morning, and welcome to the first meeting and first public hearing of the Special Select Committee of the Senate on the Evidence (Amdt.) Bill, 2019. This hearing is broadcast live on Parliament Channel 11, Parliament Radio 105.5 FM and the Parliament's YouTube Channel, *ParlView*. I am Clarence Rambharat, I am Chairman of this Select Committee. I now invite my colleagues on the Committee to introduce themselves, starting on my right.

[Introductions made]

Mr. Chairman: Thank you very much. I should point out that Sen. Thompson-Ahye is an Independent Senator who has been given leave by the Committee to participate in the deliberations and discussions of the Committee as is provided in the Standing Order of the Senate. The Committee is supported by the Secretariat provided by the Parliament, Mr. Lucio, Mr. Greenidge, and we are also supported by the staff from the Attorney General's office and the Chief Parliamentary Counsel's office, and they are here to support the Committee.

The hon. Attorney General is expected to participate also. He has indicated that he may be running late at this time. So we have before us today—and I thank you for accepting our invitation and also making your written submissions—the representatives from the Director of Public Prosecutions Office, the Trinidad and Tobago Forensic Science Centre and the National Forensic DNA Databank. And when the Committee met in camera before coming here, we identified the stakeholders before us as very critical to the success of the work of this Select Committee which has been appointed by the Senate to review the Bill, to conduct the appropriate discussions with stakeholders and to report back to the Senate by the end of November 2019, and we intend to do so.

So I now want to invite the three stakeholders before us to make your opening submissions based on your written submissions, and whatever else you wish to share with us. So we would start with the Director of Public Prosecutions, then follow with the Forensic Science Centre and then the DNA Databank. So thank you very much. DPP.

Mr. Gaspard SC: Good morning. I would like to thank the Committee for extending its kind invitation to my office. It is a signal honour to be here. These issues as they pertain to the Evidence (Amdt.) Bill are very, very important issues, especially when viewed against the backdrop of our criminal justice system that has appeared and has in fact been moving rather sluggishly over the last few years. The Evidence (Amdt.) Act, and in particular those sections of the Act which pertain to special measures, I welcome them. And I am on public record for at least 10 years now as an advocate for special measures, especially in the unwholesome climate of fear which tends to pervade if not cloud the ambience that sometimes exists in the courtroom.

The Evidence (Amdt.) Bill, as I see it, can go a long way towards obviating certain problems associated with identification procedures and this can in turn result in the amelioration of the criminal justice system. It is not a magic bullet or a panacea that would automatically and ineluctably result in the system being improved, but I see it as presenting an opportunity for other ingredients in the cocktail of measures which the country has a duty to the citizens to create so as to deal with the problems or some of the problems which are currently besetting the criminal justice system.

It is in this context and against that backdrop I look forward to making a contribution before this Committee, and I trust that we would engage in rather wholesome discussions. Thank you.

Mr. Chairman: Thank you very much. Forensic Science Centre.

Mr. Sankar: Derrick Sankar, the Acting Director of the Trinidad and Tobago Forensic Science Centre. Trinidad and Tobago Forensic Science Centre's core function is to process evidence gathered by the police officers of the Trinidad and Tobago Police Service and to report on these items of evidence. We prepare certificates of analysis that are used as part of the judicial system in assisting the DPP and the police officers in prosecuting these cases before the court. The officers who prepare these reports are also summoned to court on many occasions to testify as witnesses, as expert witnesses. As a result, the Evidence Bill dealing with witnesses, ID parades and video conferencing is very relevant to us in how we present our case before the court and it is very relevant to the climate in which witnesses are asked to present evidence. And it is a great honour for us to be invited and to be here to contribute to this Bill.

Mr. Chairman: Thank you. DNA Databank.

Mr. Lewis: Hi, good morning. I am Justin Lewis, DNA Custodian Manager. I have, alongside with me, my Databank Analyst, Tonia-Marie James. We both compiled the comments that we are going to detail today. The Databank basically is a repository of DNA profiles from crime scenes, and persons mentioned in the DNA Act, we compare profiles to find matches, contaminations for medical associations. We provide reports to the police on matches, of course, and to the Forensic Science Centre.

I am going to say that we are not experts in the ID parade policies and regulations; however, as scientists we do see value in providing comments and we would get through them today. Thank you very much.

Mr. Chairman: Thank you. I would now invite member Vieira to lead the opening questions on behalf of the Committee.

Mr. Vieira: Thank you, Chair. Good morning everyone, again. Director, first of all congratulations for presenting us with a very helpful brief. Clearly you went through the legislation with a fine-tooth comb and your package is well received. Now, one critic has described the provisions on the Anonymity Orders as a perjurer's charter. What is your take on that?

Mr. Gaspard SC: I think, at first blush, such a contention might appear to be somewhat seductive, but bearing in mind how the law of perjury works, I do not see this particular provision as precluding

the law enforcement authorities from acting against a perjurer. So I do not think such a contention can easily bear any real critical scrutiny.

Mr. Vieira: Thank you. Now, I noticed you also made comment about the photographs, a couple of other commentators have made reference to that bit. I am wondering, there is something called “choice overload” where psychologists talk about the dangers of having too many options to choose from, do you think that the number of photographs being shown to a witness runs the risk of choice overload?

Mr. Gaspard SC: That might be so in a particular case, but I do not agree with that in this case since the touchstone of any identifying procedure must necessarily turn and hinge on fairness, and it is only fair for the identifying witness to be asked to make an identification from a number of photographs as opposed to one photograph, two photographs or three photographs. Having said that, on the other hand, it might be inefficient being hypothetical and reasoning and extremist for the identifying witness to have to choose from 500 photographs. The way how it is laid out in the Bill, it is my office’s view that this is perfectly permissible and fair.

Mr. Vieira: Thank you. I just have one other question and I am sure other members would have. Are there any aspects to the legislation that you would have a concern about or that you find troubling?

Mr. Gaspard SC: Apart from what I would have reduced into writing in our submissions, I do not have any particular concerns outside of those.

Mr. Chairman: Member Hosein.

Mr. Hosein: Thank you very much, Chair. Good morning, Director. Director, I was reading your submissions that were submitted to the Secretariat of the Committee, I noticed that there was a heading, “Order of Priority of Identification Procedures, Rights and Representatives.” Now, members of the public would not be aware or have an opportunity to have read these submissions. Can you just take us through with respect to, in particular, the order of priority as listed in the Bill currently before us, whether or not that is adequate or should there be any changes in terms of amendments? It is at page 2 of the submissions.

Mr. Gaspard SC: The apposite section of the Bill is clause 12E(1), and it reads, if I may be permitted:

“Where an identification procedure is to be conducted, it shall, subject to practicability or the availability or cooperation of the suspect, be conducted in the following order of priority:

- (a) identification using video medium in accordance with section 12J;
- (b) an identification parade in accordance with section 12K;
- (c) identification in a public place with the consent of the suspect in accordance with section 12M;
- (d) identification in a public place without the consent of the suspect in accordance with section 12N; or
- (e) identification by confrontation in accordance with section 12O.”

When the Bill speaks about priority it simply means that the procedure, identified at (a) in the adumbrated list of five options, would first be adopted, and if it is not practicable to adopt that first procedure which is “identification using video medium...”, then you go to the second one, which is “an identification parade in accordance with section 12K”.

If neither of those are practicable then you go to the third one, as opposed to giving the police and law enforcement the opportunity to just choose any of the five. They have to start with (a), and if (a) is not suitable then go to (b), then go to (c), then go to (d), then go to (e). That is what is meant and that is how I interpret the types of identification procedures in the context of an order of priority.

Mr. Hosein: Director, particularly with respect to the order of the priority, are you satisfied that the first method of identification during the course of the investigation should be by video or should it be by identification parade as opposed to video, because at that stage, let us just assume, that the suspect is in the custody in the police?

Mr. Gaspard SC: Well, as we had outlined in our submissions, we were of the view that the first item in the order of priority should be the identification parade since—if the first item in the order of priority is identification using the video medium there are certain things that might be lost which may otherwise aid an identifying witness to make a positive identification. For instance, depending on how the video medium is used it will wholly exclude the prospect of the witness asking the officer conducting the procedure to have the suspect or the persons in the video medium to walk, to talk, to bend, to stretch, to do other things which may lend itself by way of confirmation of a positive identification. Whereas at the ID parade, it is well settled that a witness might properly ask the identification parade officer to have the suspect, and by extension all the persons on the parade, say a particular word, make a particular motion, walk, raise their hands, et cetera, et cetera; with the video medium you would lose all of that.

So it is my respectful view, and it is the position of this office that the first in the order of priority should be the identification parade. Now I know that, increasingly, the police are having problems in this climate finding and getting persons to agree to go on an identification parade. Well, in those circumstances if the identification parade were to be the first in the order of priority then it may no longer be practicable in that case for the police to go with the identification parade, so then they go to option number two in the order of priority which would be the video medium, so you lose nothing.

Mr. Hosein: Director, if we are to move identification parade up to the first option for identification, are you satisfied with how the order of priority with respect to the other options as listed currently in the Bill?

Mr. Gaspard SC: Well, your question does not quite contemplate what would be the second item in the order of priority.

Mr. Hosein: If we are to switch (b) and (a).

Mr. Gaspard SC: Right. Yes, I do.

Mr. Chairman: I welcome the hon. Attorney General and invite him to raise a few questions with the three stakeholders who are here before us today.

Mr. Al-Rawi: Good morning to everyone, apologies, just juggling a few meetings, and good morning to the viewing public. I welcome the very distinguished representatives of the stakeholders who are here before us as key stakeholders in this exercise. DPP, you quite correctly put the reason for the—as the drafter of the Bill and in electing the PACE methodology and in going for the priorities that we had seen in other parts of the Commonwealth, starting in England, we had selected the video as the first port of call. I certainly take on board the recommendation because it is without prejudice to the fact that it may no longer be practicable and therefore one can step to another step. I was just wondering your view in particular if we are looking at 12E, whether—in my mind as the drafter of the law I had contemplated that video medium, even though 12J says moving images I had not discounted the use of actually live video medium in which case the advantages of directing the witness to stretch or to move—forgive me, the person in the parade to conduct certain things which could assist the identifying person in that point. I really had in my mind the concept of live imagery also falling into that. Do you have any views in respect of that?

Mr. Gaspard SC: That might go some way in addressing the concern that I would have raised earlier, but I still see it as having the possibility of falling short of the benefits to be derived from an identification parade in practical terms.

Mr. Al-Rawi: Thank you, Sir. May I, having been the last person to enter the room, be so bold as to ask for some of your views and thoughts on this very strong concept of witness anonymity? As you know, this Bill contemplates using witness anonymity and orders in very strict and certain circumstances. It is a rather unique feature for us, something which I think has been thought about for quite some time. As the person with responsibility for a large part of the operation of this arena, would you mind giving us a little bit of expansion of your views on the proposed Witness Anonymity Orders that this law contemplates?

Mr. Gaspard SC: There was a time when a section or a clause or clauses like these as they pertain to witness anonymity would have attracted much concern on my part, but given the present climate and the prevailing winds those concerns have, to a large extent, been defanged by the practical realities extant in Trinidad and Tobago today. So, in those circumstances and against that backdrop I find that the clauses as they pertain to witness anonymity in this Bill, I find them to be unexceptionable.

Mr. Al-Rawi: Thank you, Sir.

Mr. Vieira: Coming back to the order of priority, at the last hearing the police had indicated, like you, they wanted a change in the order. So I am just going to run the order that they had proposed and ask how that squares with you. They had suggested first, (b), “an identification parade in accordance with section 12K”; secondly, “identification in a public place with the consent of the suspect...”, which is (c); then (d) as three, “identification in a public place without the consent of the suspect...”, and then four would be “identification using video medium...”, and then five, which is (e), “identification by confrontation...”. Would that be an acceptable list in terms of priority for you?

Mr. Gaspard SC: I have no problem in principle with that suggestion.

Mr. Al-Rawi: Could I just have a rejoinder here? In my mind again as the drafter of the law I am tempted to include the fact that the video medium may be live and I think that it is reasonable that

many of the stakeholders have viewed this to be something which is filmed and then played to the witness. The mischief that we are trying to treat on the drafting side, I accept the (b) moving to (a) route, but just to put in mind that the mischief that we were trying to achieve was the reluctance of people to participate, because there was a chorus of concern that the bottle of rum or the scotch, or whatever it is that people use, the \$200, it is quite hackneyed in terms of the incentives that people use and the limitations, and also to the fact that people do not want to find themselves in these circumstances of participation.

I do propose, subject to the Committee's view of course, to perhaps look at the modification of the video to make it clear that it does not include filmed historical records but that it can also include live video medium, because in that circumstance we thought that we would have a greater participation of people because they would be in a remote event where a conductor could ask somebody remotely to do something or to do not. I do remind hon. members that when we are looking at 12E, it is subject specifically to practicability and availability or cooperation, and therefore that is a huge consequence. I was trying to find a mechanism of flexibility in the circumstances. If I could say it this way, again in a hackneyed way, to think outside the box. So I hope that that helps from a drafting perspective.

Mr. Vieira: My concern is that we have a particular culture in Trinidad and Tobago. We have a particular way our courts interpret legislation and do things, so there is always a difficulty and sometimes even a disconnect between what the law says on paper and what obtains in practice, and I think what we are trying to achieve is to get that right balance that would work in practice. So, for example, one of the concerns that has been expressed is about, for example, not being able to get hold of station diaries when you are at trial and you are calling for things like that. Are there any areas in this legislation that you can see gaps arising where we need to shore up, not just what is on paper but in terms of, say, infrastructure support systems, and so on?

10.10 a.m.

Mr. Gaspard SC: Well, there were several areas of the legislation which I believe can be shored up so as to meet with the concerns that the hon. member has expressed. I would have reduced most of those concerns into writing in my submissions.

If I might get into one particular, as it pertains to this issue of identification procedure, and something which I would have alluded to in my submissions, the whole area of identification procedure. When you look at the Act it strangely leaves out the issue of verification. Now, if we are looking at an order of priority it might be that verification should find itself at A. So if a criminal offence is perpetrated by someone well known by the victim—like if my brother, God forbid, were to wound me with a cutlass, the police as a matter of duty would still want to carry out an identification procedure, using me as a witness, to identify my brother. That is called verification, and it does not find itself in the Act, notwithstanding the fact that the Act speaks to identification procedure. And more particularly, when you look at the definition section of the Act it speaks to identification procedure and it defines it thus:

“‘identification procedure’ means a method or system of ascertaining or determining the identity of a suspect for the purposes of an investigation as specified in section 12E(1)(a) to (e);”

In my respectful view, section 12E must necessarily include verification. This is a major omission in the Act.

Mr. Al-Rawi: DPP, I can say immediately off the bat as the drafter that I sincerely thank you for that observation at 12E for the inclusion of verification. I also note with great appreciation the recommendation for incorporating certain aspects of the Judges' Rules into the text of the position, and I also welcome the observation that some of the penalties are far too low and that we should adjust them. They are very powerful recommendations.

DPP, may I ask you, this is something that I have been knocking on the door of, and in the course of the debate I raised it. In the Anti-Terrorism Act I raised it, in a number of pieces of law I raised it, and I wish to thank you profusely for your recommendations or observations at J of your submission, which is to be found at page 5. This touches and concerns the adverse inference from silence.

Forgive me for being a little bit long in the run-up to the wicket. I am conscious that people are observing the proceedings and may not be on the point of law as quickly as we would be, and therefore I could be a little bit briefer if I was speaking only to lawyers.

Our jurisdiction is often compared to other Commonwealth jurisdictions, in particular the United Kingdom and the United States, where convictions come with rapidity and trials are much briefer, and where defences are viewed to be less complicated in terms of allegations of fabrications. Those are all driven from the application of the adverse inference to silence rule.

I note that in paragraph J of your submission, that you have a suggestion for reform and the use of adverse inferences from silence, and you have very usefully quoted from *Murphy on Evidence* and disclosure of defence. You have also noted that the limited form of practice direction by the Chief Justice in our jurisdiction is already in place.

Could I ask you please, for the benefit of the public on such a nuclear submission—a powerful submission—to truly take the reform of our law forward, to give us a little amplification on paragraph J of your submission?

Mr. Gaspard SC: Certainly. A useful starting point might be the Criminal Procedure Rules. The Criminal Procedure Rules are designed to make trials more efficient, put simply, and there is this issue of the right to silence which is a very, very touchy issue, especially if you were to hold discussions with those persons who are numbered among the criminal defence Bar.

Having opened in that way, adverse inferences from a person's silence I should say, may go some way in making trials speedier, in expediting the criminal justice process, because what you find happening—and it also may go some way in ensuring that a verdict rendered by a jury of the accused peers is a true verdict. One has to look at adverse inferences from silence in at least two ways. One, you look at adverse inferences from silence in the context of pre-charged operations by law enforcement, and you may also look at it in the context of directions a trial judge is required to give to a jury in the context of adverse inferences from silence.

What you find happening from time to time in criminal trials, notwithstanding the stellar efforts of the Chief Justice by dint of his practice direction, is that persons are still proceeding to trial hoping in

some instances to patch, construct and reconstruct their defences, depending on how the prosecution's case evolves. In other words, they may remain silent at the investigative stage. They may remain silent at the stage where the person is charged and, depending on how the prosecution's case goes, notwithstanding disclosure being made by the prosecution, then you find that some persons construct a defence.

I am not laying this at the feet of the attorneys, but then you find—let me put it another way, there is the prospect that a defence might be advanced which is not a true defence. Now, if a particular act, reasoning hypothetically, would have occurred on X date, and the accused is alleged to have been the perpetrator of the crime, if his defence is an alibi, he does not have to wait until 2012 to indicate that his defence is alibi, because he already knows that; and the law has already gone some way in treating with that defence alibi. So, to some extent, the law has already made an incursion into the classic right of silence.

I am saying that the time may have come, subject to the issue being treated with by way of further discussions with other august bodies, for us to consider—this is not a plea for us to implement or to do away with the right to silence—this is merely an invitation for this Committee to consider, in all the circumstances, whether or not the time has come for us to go further in terms of the right of silence, and whether or not in going further, or some persons might very well contend, whether in making a further incursion or sortie into the right of silence, whether we are doing an injustice to accused persons. Or whether on the other hand, by making that type of incursion, we are ensuring that the product delivered by the criminal justice system is a fairer product.

Mr. Viera: Director, I thank you for that because you have given a nuanced position. You have indicated that you are not at all looking to interfere with the right to silence, but that in certain circumstances adverse inferences may be drawn.

You made an interesting observation, and it is something that my own view is, what we are really talking about is not only about changes in legislation, but behavioural change in the way trials are conducted. When I look at the new Criminal Procedure Rules and the case management procedures, and the overriding objective, and I look at the Chief Justice's practice direction on defence statements, I think we have already gone a long way. It is not so much a matter about bringing in new laws as it is about implementing what we have effectively in the courtroom. Would you agree?

Mr. Gaspard SC: I do, that the Criminal Procedure Rules would have gone some way, and to a large extent the implementation of those rules and the enforcement of those rules, while it is a work in progress there are certain lags that are occasioning some concern. Initially when the criminal rules were first brought into effect, for some strange reason this whole issue of the defence's case would have been left out. That is why the Chief Justice had to come back by way of the repechage with the practice direction.

And when you look at other jurisdictions, if you are talking about efficiency in the trial process, how do you say well the prosecution should disclose, the prosecution should let the other side know what the case is, but the other side, the defence Bar, they are allowed to proceed in the process almost by way of ambush. Hence the reason why the legislation would have gone the way that it did in relation to alibi. Because what used to happen in bygone days was that at the trial itself during the pendency

of the trial, accused persons would just before they went into the box, if at all, indicate that their defence is an alibi, or the prosecutor might hear it for the first time when the accused person testified in the box.

Now, in those circumstances, how could that process have been fair? Because when would the prosecuting authorities have been able to find the time to check out the alibi—when? Even if the judge was to adjourn to give the prosecuting authorities time to investigate the alibi, how could that make for an efficient trial?

Mr. Al-Rawi: Director, could I please invite, and again thank you for being here. This is an issue which, albeit I have raised on umpteen occasions on the floor of the Parliament, it does not necessarily resonate unless it comes from the practitioner and the person with constitutional authority to speak to these matters, which obviously under section 19 is you. Could I ask you to connect now to another very material and important submission in your written submissions, which is the substantive closing statement argument? This is at paragraph N of your statement. There is a recommendation and an observation which warms me that we look at section 15(2) of the principal law, the Evidence Act. And there is a recommendation that the prosecution be given an independent right to give a closing address, which is not necessarily tied to the defence. Could you for the benefit of the listening public indicate the rationale for that submission, which I would confess, not even as a member of this Committee, but as the drafter of this law, I warmly accept?

Mr. Gaspard SC: From time immemorial the prosecutor was tasked with the onus of proof. Onus simply means the obligation or the responsibility of proving. The prosecutor also has to meet a particular standard of proof. The standard in criminal matters classically is proof beyond reasonable doubt. There are some criminal matters where a different standard of proof becomes applicable. It usually finds itself embracing legislation which gives or which creates a reverse burden of proof on the accused.

Now, the prosecution has the obligation of proving, so the prosecution bears that mantle. Classically it was seen and it is seen in this way: the prosecutor's right to address the jury is like a right of reply. So if the defence does not address the jury, what is the prosecutor replying to? The right of reply was seen in the context of a reply to the defence's closing arguments. So if there were no closing arguments by the defence, then the prosecutor did not have a right to reply to anything. So the trial would then proceed without any address to the jury by the prosecutor or the defence, and the judge would then go on with his summation and so on.

This submission is made in the context of the prosecutor having this obligation to prove, and even though the defence makes the tactical choice of not closing, because the prosecutor carries the burden of proof and the standard must be proof beyond reasonable doubt or proof to the extent that you feel sure, you being the jurors, it my respectful submission that notwithstanding the fact that the defence chooses not to close, the prosecutor should be still allowed to make closing submissions to the jury, consonant to and complementary with the prosecutor's obligation to prove.

Mr. Al-Rawi: This will of course be an amplification of the manner in which we adjust the behaviour in trials as opposed to fairness and procedure, because obviously one has the right to speak. So if

there is a clear intention that the prosecution intends to address, then of course the opportunity for the defence would always be there, and therefore the balance would be struck. Yes?

Mr. Gaspard SC: Yes, but I would like to add a caveat with that. In this jurisdiction, unlike in some other Anglophone jurisdictions, the prosecution has the last word to the jury ordinarily, where there are addresses being made to the jury. I do not want this submission to be construed in such a way that it is interpreted as though I am saying that the prosecutor should no longer have the last word.

Mr. Al-Rawi: I understand it in the other way.

Mr. Gaspard SC: Because the way how it reads that is an interpretation open to you when you read it, but I am saying that is not what I am contending. I am saying that bearing in mind that the defence would know, if the law is adjusted or changed, amended that, listen, that tactical choice that we would ordinarily have made, it might not make sense to make that choice now, and it is open to them in those circumstances to address, and in certain circumstances, they may very well do that. So I am not for a moment suggesting that the defence be allowed the last say since they have no burden to discharge.

Mr. Al-Rawi: Thank you DPP. Sorry, Mr. Chairman, one last very important point that I would like the DPP's assistance on. This is again in respect of another one of the anchors of this legislation. Again, as a drafter I considered the need for Trinidad to have special procedures and CCTV evidence in use for vulnerable witnesses to be a core treatment for something that ails our society, that is, there is a lack of witness evidence because of fear, intimidation and other beliefs which cause witnesses to simply be put out of the system because they believe that they cannot be protected.

Section 12AA of the legislation, which is at pages 41 and 42 of the legislation, treats with the concept of special measures, evidence by video link and Witness Anonymity Orders. Specifically at 12AA we treat with vulnerable witnesses and special measures. The definition of "vulnerable witness" at subsection (3) is put into persons who are likely to be affected by reason of age, immaturity, physical disability, mental disorder, trauma suffered by a witness, fear of intimidation of the witness and the witness being virtual complainant in proceedings for sexual offenses. We have the concept of vulnerable witnesses under the suite of legislation that treats with children on a stand-alone position and also in the Family and Children Division law which we created.

You have made, again, a very important observation at paragraph K of your submission, on the last page of your submission, where you make a submission that subsection (3) of 12AA should contain a specific provision for witnesses in gang and terrorism prosecutions to be deemed vulnerable witnesses. I welcome the suggestion. As the drafter I had really sought in a framework kind of perspective to include that under paragraph D, which is "fear of intimidation of the witness or", but I do generally believe that in treating with Trinidad and Tobago's current situation that there would be an expressed benefit to singling out the concept of witnesses in gang matters and terrorism matters, because we have had matters of this type and have matters of this type in our jurisdiction come to the fore.

Could you lend us a little assistance in disaggregating the special mention of vulnerable witnesses in gang and terrorism matters, from the framework of fear of intimidation of the witness in subparagraph D? I will also ask you to consider whether we ought to now be having a discussion about special procedures and special advocates in a voir dire kind of context, where an application is made and we

have to now manage the access to the vulnerable witness. So let me put that one, if you would permit me to flesh it out.

Right now, in wrestling with another piece of law which I am in conjunction with many stakeholders on, including the Office of the DPP, the fairness of excluding witnesses from being met by the accuser is the subject. So there is an accuser who is a defendant in proceedings. There is a witness who is giving evidence. The witness is a vulnerable witness let us say. The witness is somebody who statute says ought not to be identified in certain circumstances. Other jurisdictions have a process referred to as a “special procedure” where a special advocate represents—it is done in the UK for terrorism matters, et cetera—they represent the interest of the accused, but that attorney is a vetted attorney from a panel of vetted attorneys who will approach the case on behalf of the defendant to now test in a special forum, akin to a voir dire, meaning a side discussion, as to whether the judge ought to allow the evidence or not.

In looking at this general issue of vulnerable witnesses, applications which may be made and then in this special cohort of terrorism and gang matters, do you think the time has come for us to adopt that special procedure? Panel of vetted attorneys who will interview carefully the accused, and the accused attorney approach a judge, have the judge consider the propriety of granting the order, and then allow the process to continue. Could you assist me?

Mr. Gaspard SC: Hon. AG, when you look at section 12AA subsection (3)(d), there is a very little word that attracts huge concerns. It is the definite article, and the word “the.” Persons who are up to no good in the criminal world may intimidate or do acts pertaining to persons other than the witness. So the fear of intimidation of “the” witness would not catch that at all. It is not the fear of intimidation of “a” witness. You are using the definite article T-H-E. So the intimidation of relatives, friends, et cetera, persons within the inner circle of the witness, this would not catch that.

Mr. Al-Rawi: Good point.

Mr. Gaspard SC: Terrorism and offences under the Anti-Gang Act, they are offences which, in my respectful view, should attract a very high degree of moral blameworthiness. And consonantly, prosecutions under the Anti-Terrorism Act and the Anti-Gang Act, to my mind, make for particularly dangerous situations for witnesses, not just civilian witnesses, but witnesses.

Mr. Al-Rawi: And functionaries.

Mr. Gaspard SC: All of us are aware as to the threats to law enforcement and to other persons in the society which ordinary prosecutions present. Bearing that in mind, it is easy to understand the multiplier effect on one’s fear in circumstances where you are dealing with matters under the Anti-Gang Act and the Anti-Terrorism Act.

With respect to the second issue raised by your good self, the idea of vetted attorneys dealing with these supposedly vulnerable witnesses, as you know is a novel one in this jurisdiction, but it is something which operates in other jurisdictions. But I will respectfully crave your indulgence and perhaps try to focus your mind on the resource problem that is faced by Trinidad and Tobago. At this current time there are several matters awaiting trials in the courts of Trinidad and Tobago, especially in the case of murder, where one of the big bugbears is unavailability of counsel, especially by way of

the Legal Aid clinic. And as you know, this has given rise to discussions pertaining to a different system, whereby you create an equivalent to the DPP's Office on the defence's side.

Mr. Al-Rawi: The office is rented, the staff is advertised and hopefully during the course of November and December the public defenders division will be birthed.

Mr. Gaspard SC: Public defenders indeed. Now, the question that, just like if you are starting a family, at the present time you have no children, you might very well wish to construct a home in contemplation of the arrival of children sometime in the future, and as a good lawmaker one would expect that you would have the vision in terms of the development of the society, in terms of the maturing of the society, you do not want to have to make amendments every year. But having said that, the question also arises as to whether or not that voir dire exercise, given our resources at this time, whether or not that voir dire exercise cannot be properly conducted by trial judges.

10.40 a.m.

I think at the moment our trial judges are fully empowered, capable, and highly competent to deal with the voir dire situation involving, supposedly, vulnerable witnesses.

Mr. Al-Rawi: Important clarification. Wow! Let me put that simple word on the record. So the mischief in my mind was protecting the accused who is facing a Witness Anonymity Order or a special procedure, CCTV utilization, et cetera, and how I would allow the accused the right to interrogate the process of the grant of that order in the pseudo voir dire setting or voir dire setting. Is it that you are suggesting that a judge who is not involved in the matter can supervise the interest of the accused before the judge who is hearing the voir dire?

Mr. Gaspard SC: I do not see why that is necessary, with respect, because as trials go now—

Mr. Al-Rawi: The same trial judge.

Mr. Gaspard SC:—the same trial judge. We have to trust our judges.

Mr. Al-Rawi: Question: So would you be comfortable—so the risk in other jurisdictions as painted is, that if we allow the accused via his attorney alone to know the identity of the witness in full circumstances and interact in that voir dire setting where the application is made, that that could be a risk that goes back to prejudice the very vulnerable witness that we are looking at.

So the other jurisdictions had grown up with this practice of using another “defence counsel”, a counsel to represent the rights of the defence in that setting. How would you suggest that we manage that process of who the correct person to represent the accused will be where there are allegations that the representative of the accused, to borrow Commissioner Griffith's expression, criminal lawyers as opposed to attorneys-at-law who practise in criminal law may be involved in the situation?

Mr. Gaspard SC: First of all, I am loath to borrow Commissioner Griffith's expression. Having said that, there is legislation in this jurisdiction as we speak, and the common law allows certain applications to be made without the accused being present, his attorney being present, and the applications are made, and the process has never attracted the allegation of unfairness. One of the issues that readily comes to mind is the whole issue of public interest immunity. For those matters, we

do not get a separate attorney, and in some instances, the attorney is excluded—not the attorney, the accused is excluded from the process, “excluded”. Even if you look at the Bill before us in relation to screens and so on, the accused may not be allowed to see the witness testifying, but the screens must not prevent the accused’s attorney from seeing the witness. So by way of symmetry, what is the difference?

Mr. Al-Rawi: Thank you so much, DPP. And I guess I could amplify that by saying that the practice that is engaged in children matters where these are now run of the mill par for the course sort of thing are also symmetrical.

Mr. Gaspard SC: Yeah.

Mr. Al-Rawi: Thank you so much, DPP. Appreciated.

Mr. Vieira: Director, I just have one more question because you touched about the resource problem and I am sure that we are going to have questions of the other panellists on that point. But I am asking this question for the record and for the viewing public because we know the answer.

We live in a time when there is a lot of cynicism, if not a jaundiced view about prosecutors and the police, and so, unlike some jurisdictions where district attorneys and prosecutors could actually be political and they can use it as a stepping-stone to political careers, in our jurisdiction the office is seen as a minister of justice who is constitutionally protected, and you actually have a code for prosecutors which makes it quite clear you are not a rubber stamp for anyone, police, politician or otherwise. Could you speak to us a little bit in terms of giving assurances of impartiality, fairness and so on as prosecutor?

Mr. Gaspard SC: I suspect that it is not the intension of the hon. member, but to my mind identifying a need to give reassurances obliquely suggests that there is some strong contention that the prosecutors are not ministers of justice or they do not act as such.

Mr. Vieira: No. Let me hasten to assure you not at all. It is just in the context of this legislation which people may be looking at it and saying, well, you know, this is charter for the heavy hand of the law to come down and be oppressive, I want to say that in the office it is actually going to be doing the administration of the prosecutions; there is a check and balance there as well.

Mr. Gaspard SC: The Office of the Director of Public Prosecutions I can assure you is an impartial office. I am also of the view that the empirical evidence would show that, if at all that office wields a sword, the sword is sharpened on both sides. As for guidelines and further assurances, the *raison d’être* for the promulgation of the code for prosecutors was so as to provide the public with the opportunity of demystifying prosecutorial decisions and the operations of the Office of the Director of Public Prosecutions, hence the reason why I spared no effort in being at the forefront thanks to the assistance of the British Government and the Canadian authorities of publishing the code for prosecutors and I will tell you that we are guided by that code. Prosecution in Trinidad and Tobago, the litmus test is the full code test, and the full code test is test that has been warmly and trenchantly embraced throughout the Commonwealth.

Mr. Al-Rawi: Mr. Chair, I can ask as we are on the topic of the forensics division, Mr. Sankar, may I ask you, Sir, to lend, as we are on the concept of vulnerable witnesses, part of your submission involves applying the definition of “vulnerable witnesses” to forensic experts.

I can also say that there is a live discussion for persons involved in the interception of communication which we are treating with in a different piece of law at this moment right now as we are very far advanced in a proposed amendment to that law, and we are looking at the concept of vulnerability.

So at page 4 of your submission you addressed the category of persons who ought to be included in the broad definition of “vulnerability”. And you also very usefully proceed with your support for the CCTV and video linking evidence. In fact, we have had cases as recently as last Friday where the complication of getting evidence from foreign jurisdictions comes about, and persons who retire and migrate elsewhere fall into this mix.

Would you mind, for the benefit of the public, and for the benefit of the Committee, assisting us with your views as to vulnerable witnesses and video testimony and anonymity orders as put out in your submission?

Mr. Sankar: The Forensic Science Centre generates various types of certificates of analysis based on the evidence that we process. Some may be pathologists report, there are ballistic reports which are involved in analysis of exhibits for murder cases, homicides. There are offences under the Dangerous Drugs Act with large quantities of drugs, and as a result of that we are witnesses—like any other witness, we provide expert opinions, we present a report before the court.

Depending on the type of offence under the anti-gang legislation, we are sometimes witnesses in those matters as well, because many of the members of the gangs are perpetrators of homicides, they are involved in firearm-related offences, they are related in serious drug cases, and as a result of that, we are seeing that we are linked, you know, intricately to those types of offences and presentation of evidence in court. As a result of that, we may be in a position, as the climate is now that, you know, we are vulnerable to certain types of, you know, implications in those matters, and as a result from my own experience, we would appreciate that the vulnerable witness, you know, be extended to us.

We appreciate also the fact that the video link will help us testify in matters of a very serious nature. We have pathologists who have retired and have migrated for various reasons. We have scientific officers where there are still cases outstanding that may be required to attend court. We had at one time American firearm and ballistic experts who worked over a period of three years with exhibits from the Forensic Science Centre and are now called upon to testify in court.

We have experts from England as well who examined and tested our exhibits, prepared certificates of analysis, and may be required to attend. For the sake of cost, for the sake of convenience, we are asking that the video link procedure be, you know, available to them to give that type of evidence, so that the smooth flowing of the court will take place. We are also very, you know, very grateful if the vulnerable witness at every stage, we are allowed to participate in contributing to the applications made to the court if we fall within that purview.

Mr. Chairman: Thank you very much, Mr. Sankar, and before you, the DPP. We deliberately allowed an extended time for the Director of Public Prosecutions because a lot of what was submitted by the DPP is also addressed in your submissions from the Forensic Science Centre and the Databank.

And I want now, Mr. Sankar, to give you an opportunity, followed by Mr. Lewis to take us through your submissions. Now, we have the written submissions and we have read it, and I want you to just take us through and highlight, particularly for the benefit of the viewing and listening public, you highlight the key areas of your submission. And thereafter Mr. Lewis, I will come to you and ask you to do the same thing, and then I will come back to the Director of Public Prosecutions to ask you to address those aspects of your written submission. I have counted at least 10 recommendations you have made. I will ask you to address those which you have not already addressed and before I ask you do that, I will ask you something in relation to witness anonymity. So before I invite you, Mr. Sankar, to continue, I want to invite member Hosein to make a submission.

Mr. Hosein: Thank you very much, Chair. Chair, it is a question to Mr. Sankar. Mr. Sankar, the aim of this particular piece of legislation is to really get faster trials and get the system working in a much more efficient manner. One of the complaints that we hear very often is a resource issue at your establishment. Can you give the Committee an idea of the average time it will take for the production of a ballistic report from the date of submission of the item or even certificates of analysis?

Mr. Sankar: Let me say at the outset, there are a number of stakeholders that make representations to the Forensic Science Centre for ballistic reports: the Police Complaints Authority; summons from police officers through the Magistrates' Court, the High Court are sent to us; police officers who require management of their cases in an expedient manner will make written requests.

The Forensic Science Centre manages these requests and place in priority those requests. We have a backlog of ballistic cases, but we prioritize according to the needs from the police officers, from the Commissioner of Police, from the various stakeholders, and we recognize that some cases will require fast-tracking, as they say, and we fast track those cases because probably they are before the court, probably you have two witnesses in custody and you would like a ballistic report to negative or positive, you know, the case moving forward. We look at police shootings as well where it involves a number of firearms that will be taken out the service if the police officers' firearms are seized and kept at the Forensic Science Centre over a long period of time.

So there are a number of factors that we gave way to in order to expedite those priority cases. On a daily basis requests are made, on a daily basis decisions are made, and we try to assist all stakeholders, especially the police officers and the court, in moving forward with those cases.

The ballistic, having prioritized the case that comes before the scientific officer who specializes in ballistics, the officer now has before him an exhibit that has to be opened. There may be a number of cartridge cases, bullets; there may be two firearms, 10 firearms. So the time for processing a case from the point of opening the exhibit to closing and reporting will vary according to the amount of exhibits, and the number of microscopy items required analysis. Microscopy, by that I mean, matching a bullet from a crime scene or from a body to a test fire in a particular firearm. So it may take four hours, it may take days. Sometimes the bullet is not as detailed as other bullets, and the scientific officer will be required to spend more time on the case, so it may take hours as well as days.

Mr. Chairman: Thank you. Member Vieira.

Mr. Vieira: Director Sankar, obviously the Forensic Science Centre is a critical institution to this undertaking of dealing with crime and enforcement, but we have been hearing of late that there is going to be an increase in judges, there is going to be an increase in courts, we are streamlining procedures, so one can anticipate increased demands on the centre. You already have said that there is a backlog and you having to prioritize according to need. My question is: Can you cope with the anticipated demands? And also, what measures are in place to keep pace with those increased demands on the centre?

Mr. Al-Rawi: Could I just interrupt? Because it is more so a resource constraint that is provided to the hon. director of forensics. What I can say just to prove the MOU between India and Trinidad for the increase in forensics, similar one with China, and the location of the forensics division at the Mount Hope location is, in fact, set to go save for clearing the land which is currently under litigation. I have personally also attended to Jamaica where we have dealt with some of the expansion of forensic facilities. So from a governmental perspective there is an aggressive simultaneous expansion like we are trying in every other area to make sure that we operationalize the system.

So I can say, at least, and this is always so odd when we have committees where primary government members sit on the committee with first-hand knowledge, but being one of the persons involved in this equation I can say, there are at least three MOUs, land already identified, structure ready to go. As soon as we clear the injunction at the Mount Hope site which the Minister, then chairman has done, we expect to have to a rapidity of expansion going on right now; so there is good news ahead. Is that enough to manage the pace at present? No, obviously, but having recognized what is required, there is an aggressive anxiety to get it done.

Mr. Vieira: Well, I think that helps answer your question, but I am still interested in knowing, in light of what the AG has said, what would you identify as your priority list of needs?

Mr. Sankar: Well, in further support of what the hon. AG has said, is that the new Forensic Science Centre is projected to be six times the size of the original Forensic Science Centre, at least, six times, approximately 60 to 6,000 square feet of land—square feet of floor space.

In addition to that, the ballistic section, we have had discussions, and I personally have undertaken a project where I will train, together with the firearm unit, at least 12 police officers or other suggested persons with bachelor of science degrees or bachelor's degrees and master's degree to train in the specific area of forensic ballistic. This is a highly specialized areas. Having knowledge of firearms is not enough, you need to actually be specialized in the area of microscopy, matching strains in the bullets to the particular firearm, test bullets. And we intend to train those ballistic officers, be it police officers or members of the army or other persons in those areas to help us reduce the backlog.

So with the priority of cases that we have already in train, we will get those persons trained to, you know, assist with the backlog on a short-term basis, and in the long term, because the police officers, as we envisage, they are salaried, they are paid, so that will assist us in cost, and we will do the training free of charge together and in harmony with the police service and with use of their facilities.

The biology section which also has a backlog, the public service has supplied our cadre of officers, so there are no vacant positions at the Forensic Science Centre. We have had recently four forensic biologists who are now Scientific Officers Is trained awaiting to start case work in that area as well. So with a strategic move, we are hoping that we will point our guns, so to speak, at the target areas of ballistics and biology.

We are grateful that the hon. AG to inform us of the new Forensic Science Centre, but we are not waiting for that, we are taking immediate action in those two keys areas where there is a backlog of cases. And with the scientists at the Forensic Science Centre and strategic moves and approval by the Permanent Secretary, Ministry of National Security, we are looking to attack that backlog head on and be very proactive and useful to the courts in providing these cases in an expeditious manner.

Mr. Al-Rawi: Just to give one position, again, to both members who have asked these questions. We have approached the issue of law, every single law that we have brought with the following formula in mind, plant and machinery, people, processes and law. That is the only way we have been able to open courts, increase facilities and increase rapidity. It is the first time that that four-pronged approach has been applied with a consistent measure. So I am very grateful that the members have asked the question and can hear it live from the proverbial horse's mouth.

Mr. Chairman: Thank you very much. Mr. Sankar, could you proceed with your—as I asked, that you identify the key aspects of your written submissions, the members have had it, we have read it, and particularly in the interest of the public that you go through the submission for us.

Mr. Sankar: A number of the submissions that the hon. DPP has indeed addressed some of those issues in the questions addressed to him specifically in the first 40 pages, but I will comply.

Clause 12A at page 8 of the Evidence (Amdt.) Bill. That deals with “Identification Procedures”. It is suggested that the first description be taken from the words of the station diary. This record in the station diary must be made by a police officer who is in part of the investigation team as soon as practicable after interviewing the witness for the first time.

And this is important because if that is not done due to a failure to do so, it leaves room for allegations of prompting witnesses by police officers. And we are saying that that note in the station diary should be done as promptly as possible.

With respect the clause 12D, page 13, we are saying that the identification officer should not be a police officer or an inspector from the same station. We are saying that the inspector may come from another station. We are also concerned that whether the inspector is from the same batch of police investigators, they may have a personal link, and we are concerned about but, at least, the inspector should be from another police station, not from where the investigating officer works, because this will leave room for bias against the accused.

Under clause 12E, page 14, identification by confrontation, as the hon. DPP has alluded to, that is the last resort, identification by confrontation, and we in full agreement with that.

With respect to clause 12F, page 15, a note should be made of what measures were put in place to have the suspect be provided with legal representation. It is suggested that a legal aid officer be

contacted, and the accused be allowed to communicate with that person in person or by phone to get advice on the identification process, and a note of this made in the station diary.

We are also saying, in most cases before the court, an accused person will deny he was given the opportunity to contact a friend or family or a legal representative. It is important that provision be made to enforce the right of the accused.

Going to page 33 of the Evidence (Amdt.) Bill, clause 12R(2). This clause suggests that the interview or his representative can request a copy of the entry in the register of interviews in relation to his interview. The question is, would the police officer inform that person of that entry? And we are saying that the police officer shall inform the interviewee that he is entitled to this entry. It exists, and should be pointed to it in the actual station diary. Right?

There must be provisions for the interviewing officers to inform him of his right to have copy, and to put a note to this effect in the station diary. And if he has requested the same, a note will be made of this in the station diary, and the person receiving, signs the station diary on receiving same so that he cannot come and deny that he was not informed of it.

The section mentions a representative or his representative. The Constitution of Trinidad and Tobago states that a person arrested is entitled to have an attorney-at-law, friend, or relative, present. As such, any of these could be present. There have always been allegations by the accused that he has never informed of his rights when he is brought before a court charged with an offence. Provision should be made to have this accused contact a legal adviser by phone such as a legal aid lawyer or a duty counsel, or be given names of attorneys-at-law to contact in order to receive advice of his rights. We are also saying that the suspect interviewed should also request that legal officers or the attorney-at-law contact a friend or relative to visit him.

Under clause 12R(2) page 33, we are saying, this section suggest that the interviewer's representative can request a copy of the entry. We already alluded to that before.

And if you look at page 34, clause 12S(2)(c), this caution should, after being given to the interviewee, be explained to him in simple language. Where the accused has a legal adviser, he would be advised what this means, that he has a right silence, and he need not give an interview, and it is voluntary to do so. The hon. DPP has gone into that, and we will not say anything further on that.

Clause 12X(1), page 38. Where a suspect or person charged makes an oral admission and a note of this is made in the station diary, if the admission is made before he is legally advised by a legal representative or in the absence of a legal representative, the interviewing officer or the officer in charge of the investigation should as soon as possible thereafter make all efforts as mentioned above to communicate with a legal representative and have him present at the station, and there and then in the presence of the legal representative, the note should be read to the suspect of his oral admission, and at the end of the reading, he should be given the opportunity to state whether the note is true and if he made it of his own free will, and if he signed to same. A note of what transpired should be then made in the station diary and the accused and his legal adviser be asked to sign. Should they refuse to sign, then another note should be made to this effect.

At page 41, clause 12AA. As I had indicated, we, the forensic experts at the Trinidad and Tobago Forensic Science Centre, we view ourselves, as depending on the circumstances of the case and the matter before the court, we view ourselves to be considered as vulnerable experts, and in those circumstances, we should be able to make that application or make that communication to the respective court through the different media, and for the court to consider whether that is indeed so by all the factors the court has alluded to in the Evidence Act.

11.10 a.m.

We also would like to be considered to present evidence in video link, using the video link in special circumstances, because of the nature of the crime and the case, and the persons involved, we would like to be encapsulated within that and have that opportunity to do so.

Mr. Chairman: Mr. Sankar, could you provide a little more detail on that, in the context of the circumstances in which you wish to be involved that you are not already involved? And you had raised before some of the practical issues with people not being present in the jurisdiction, but beyond that, in what circumstances do you see yourself being involved?

Mr. Sankar: Well, in terms of the actual presentation of—the nature of the case, the witness may be very crucial in the determination of the case, if it is a homicide, if it is involving some heavy firearms related matters, dangerous drugs, and if it is that we were previously threatened, for example by a phone call—which has happened before—by phone call, or if—

Mr. Chairman: Just clarifying, the witnesses from the Forensic Science Centre in certain circumstances should be considered for witness anonymity protection?

Mr. Sankar: I feel so. Yes, that is my strong belief.

Mr. Chairman: Right. Okay, thank you.

Mr. Sankar: And I say so, not as Director, but previously I operated as a Scientific Officer. I function as a Scientific Officer. My speciality is forensic ballistics, and I have testified in a number of matters before the court in homicide cases, firearm related matters, so I am speaking from first-hand experience.

Mr. Chairman: Which gives me an opportunity to you and to the DPP, because I had planned to ask the DPP this question: When the Committee met with the representatives from the Trinidad and Tobago Police Service, I just want to draw your attention to, in the Bill 12AG(2), and the issue raised, 12AG(2) reads:

“A party to criminal proceedings may, in relation to a witness, make an application to the Court, for a Witness Anonymity Order.”

And in those discussions with the TTPS, the question was asked, where does the criminal proceedings start? And from a practical point of view I myself, and I know others have tried to determine, particularly in the context of the amount of disclosure that is required in criminal proceedings and the timing of the disclosure, the disclosure having to be made as early as possible so that the accused party may meet their defence. So, I want to ask you, in reference to 12AG(2), where does the criminal

proceedings begin? At what point? And at what point is this witness anonymity order sought, and how does that work in relation to previous disclosures that have been made in preparation for the trial?

Mr. Sankar: Forensic Science Centre looks at the matter of the initiation of proceedings. We receive exhibits from police officers. The police officers give instructions to process the exhibits, and these instructions are complied with at the Forensic Science Centre. At this stage we do not know if there will be impending proceedings or not. We do what—our core competence, we process the exhibits, we prepare a report and we send it out. At a later stage we may be communicated with, and we are told that we have to appear in court, which is the normal course of events for some cases. Not all the cases we process will be in the court's jurisdiction. As a result, after preparation of the cases if we are summoned to court, we go to court. So, from the forensic point of view our matter starts with the receipt of the exhibits.

Mr. Chairman: DPP, do you have a view?

Mr. Gaspard SC: A criminal trial usually begins upon the accused being arraigned. In the Magistrates' Court one might say upon the defendant being—the charge being read and he is called upon to plead, but that is a criminal trial. Criminal proceedings would begin, in my respectful view, from the time that the accused is charged and brought before the court and the proceedings commenced with the reading of the charge. I think that is when criminal proceedings begin.

Mr. Chairman: So, how do you see that working in relation to the Witness Anonymity Order?

Mr. Gaspard SC: In relation to Witness Anonymity Orders, it is my respectful submission that the Witness Anonymity Order would properly be made at any time after criminal proceedings would have commenced, but before the witness is due to give evidence.

Mr. Chairman: Okay, thank you. Mr. Sankar, you can continue.

Mr. Sankar: We are asking in support of the video link where we can give evidence over a video, via conference, video conference, and this is now very applicable to us for one, our safety; two, the availability of some of the experts who have retired and have migrated, for former experts who came from other jurisdictions to work at the Forensic Science Centre, from England and America. This is a perfect medium for which to bring the trial to them rather than they have to come to Trinidad to testify in our courts. It reduces cost and time and allows for speedy preparation, and we would like to be included as part of this Act for video link preference and privilege.

In terms of a support person we are also asking that in certain circumstances, and it depends on the offence, that a support person be provided for us as expert witnesses, because if we are deemed vulnerable then the support person will be one of those tools or persons to assist us to provide security and make us comfortable in the circumstances. So, we are in support of clause 12A, page 44, the provision of support persons to the Forensic Scientist or the expert in the relevant matter. We are also in full support of a risk assessment of the endangerment being conducted because it will all be part of the same procedure to be deemed as vulnerable or not, whether we are deemed a vulnerable witness or not. So that risk assessment, we are in full support of that as well. And, of course, it is all linked to closed-circuit television to present expert evidence as part of the tool used to present evidence before the court. We would like to be represented in that. We have that privilege to access that opportunity.

As it exists now, we are summoned to court and we give testimony before the court and in the presence of the accused. In the future—we are looking at the future where things may be a little different.

Mr. Chairman: Thank you very much. Mr. Lewis.

Mr. Lewis: Okay, morning again. So, we reviewed the amendment Bill and provided the following comments: Under Division two, Identification Procedures, 12B(1):

“Prior to the conduct of an” —ID — “procedure...”

This may imply that a suspect is known and available to participate in the procedure. Fine. And they say that may want to use photographs, so we are suggesting that these photographs, some regulations should be applied because the contents of the photographs may lend prejudice to the witness, and may form some bias against the suspect. That is one. Under 12F, we are suggesting a clause should be added to basically let the suspect know the reason why he is being identified in this procedure. I think it is his right to know why he is being in an ID procedure.

Under Division 3, which is under Interviews and Oral Admissions, we looked at 12Q, and we are suggesting that a clause again should be added, saying:

“Before the commencement of an interview proceeding a suspect and/or his representative shall be given sufficient information about the nature of the offence and why they are suspected of committing it in order to allow for the effective exercise of the rights of the defence.”

Under 12S, we are suggesting to add another clause that says:

“Whereby the interviewing officer under this section shall also, in the event that a removable recording medium is used in the recording of the interview, ensure that the new and previously unused recording medium is unwrapped or opened, loaded in the recording device and set to record in the view and presence of the suspect and/or his representative.”

Under 12S, we want to add another clause basically speaking about, where there is a change in the recording medium, or a break in the recording process, or even the failure of the recording equipment, there should be some discussions regarding that. And finally, under 12Q, 12S or 12X, we are suggesting to add a clause to provide for the interviewing and the recording of interviews of juveniles, incapable persons and vulnerable persons, and even non-English speaking interviewees or suspects. And those are our brief recommendations to the Evidence (Amdt.) Bill.

Mr. Chairman: Thank you very much. DPP, I want to come back to you as I indicated and ask you to take us through your recommendations, except for those you have already given us some detail on. I recognize you have at least 10 recommendations, and I would ask that you just take us through those recommendations, and that would give the opportunity to the members of the Committee who may have questions on those recommendations to raise those with you.

Mr. Gaspard SC: Thank you very much. The first recommendation pertains to the issue of first description under the Bill, and in particular clause 12A(2)(c), and we would have recommended that the proposed clause 12A(2)(c) be widened so as to include how many times the identifying witness

would have seen the person who committed the offence before, and whether there was anything impeding the view of the witness as is required by the case of *Laverne and Queen v The State*.

In relation to the use of photographs, and this respectfully is a particularly poignant matter. It is my respectful recommendation that photographs ought not to be used by the law enforcing authorities while a suspect is in custody. I should put that more properly. Photographs of the suspect and indeed photographs should not be used while a suspect is in custody. The photograph may be used so as to assist the police to arrest a suspect. But if the police would already have arrested a suspect, the use of photographs before an identification parade can and will make for some contamination of the integrity of the identification proceeding.

Recommendation number three: We are of the view that an identification parade should be held when it would serve a useful purpose, and accordingly. Clause 12C(2) should be amended or reworded so that the word “necessary to do so” is replaced with the word “useful”. In addition to which, when you look at clause 12C(2), you would realize that the words “necessary to do so” appear, and yet still in the very Bill if you look at clause 12C(iv), the Bill itself uses the word “useful”. So, for consistency, internal consistency, I respectfully recommend that the word “useful” should be used in both places.

It is also recommended that the identification procedure—well let me put it another way, it is also recommended that the abrogation of the need for an identification procedure if the suspect admits presence and gives a similar account, it is respectfully submitted that that flies in the face of the law and common sense, and I will tell you why: an accused person or a suspect may in certain circumstances admit presence and give a similar account as the witness does, but the court later on may find that that admission is inadmissible for different reasons. If the court makes that type of ruling that would infect the case to the extent that there would have been no identifying procedure in the case. So what you would have is, the court making that ruling and then if that is the only evidence in the case, or that is the main evidence in the case, the prosecution is fatally compromised.

I also recommend that the Committee look closely at section 12, sorry, clause 12E(1), which, again, speaks to the identification procedures and the order of priority, but in this instance I would take you further into clause 12F, where the legislation purports to give rights to the accused persons that they ought not properly to have, or that they do not have. For instance, in relation to the rights which the suspect should be advised of in the proposed section 12 or clause 12F, namely the right of being advised the legal aid. This presumably refers to the statutory right to duty counsel under the Legal Aid Act at section 4(1). But that is restricted to certain offenders and certain offences. It is not a blanket approach. It is also unclear as to why the suspect needs to be advised at that stage of his right to be presumed innocent, or that he be advised of his right against self-incrimination when we already have the Judges’ Rules and the police are already mandated to caution suspects according to the Judges’ Rules. So, one would not wish to create a situation where the courts have to settle any conflicts, overlaps or interceptions between the Judges’ Rules and the proposed legislation.

Further, the recommendation in the Bill, that the suspect be given nine hours notice for his representative to attend an identification procedure, it is a bit opaque to me as to how the drafters would have arrived at nine hours. Why not six? Why not 12? Why not three? Why nine? But more particularly, one must bear in mind that from the time someone is arrested, time begins to run, and I

am putting this liberally, against the police. So, by giving the suspect this nine-hour period, that might be too long. And in our recommendations we are submitting that the suspect be given a reasonable opportunity in the discretion of the identification officer, and this would be tested by the court and in court so as to have the suspect's representative attend. And failing that, once the identification officer is of the view that a reasonable opportunity would have been given and spurned, a Justice of the Peace, an impartial person may then be appointed to protect the accused or the suspect's interest.

It is to be noted also that this Bill places considerable reliance on Justices of the Peace, and they are in short supply. This reliance can be lessened by the adoption of the formula in rule 6 of Appendix B of the Judges' Rules, on the taking of statements, which permits a responsible member of the community to safeguard the investigative procedure. We have reached a stage where inexorably, the only body of persons we are minded to task with this particular responsibility are Justices of the Peace. But there are other persons and categories of persons in the society, in my respectful view, who can discharge this obligation outside of that category of Justices of the Peace. In other jurisdictions, for instance, in the jurisdiction of St. Vincent and the Grenadines, a lot of the times the authentication and the witnessing of statement is done by responsible members of the community. I was Director of Public Prosecutions in St. Vincent for a couple of years, and it was the norm for school teachers, principals, head teachers, bank managers, et cetera, to play the role of the authenticating or witnessing independent person.

With respect to the recommendation as it pertains to the video medium, which looks at clause 12J of the Bill, it is noteworthy that there is no independent representative or representative of the suspect in attendance at the video medium identification, and that can be perceived and characterized as unfair to the accused or suspect. In relation to clause 12K, clause 12K(5), it reads in the Bill:

“Where the suspect, his representative or a Justice of the Peace objects under subsection (4), the identification officer shall—

- (a) where practicable, take steps to remove the grounds for the objection; or
- (b) where it is not practicable to take steps to remove the grounds for the objection, the suspect, his representative or the Justice of the Peace shall be told why his objection cannot met and this shall be recorded in the approved form.”

The legislation perhaps unwittingly seems to contemplate the ineluctable compliance of the police officer conducting the identification procedure to meet and remedy the objection made by the suspect's representative. Put another way, it is my respectful submission that the identification officer shall, where practicable, and if he agrees with the objection, takes steps to remove the grounds for the objection. As it reads, once there is an objection it appears as though he must take steps. That is unfair to the identification officer, and it is unfair to the prosecution, and again it might result in common sense being our blind spot.

In relation to interviews and oral admissions, if we look at clause 12Q, I am sorry, clause 12W. Clause 12W(4), which reads:

“Where an interviewee or his representative is present at the breaking of a seal under subsection (2), either of them shall be invited to reseal the master copy and sign the seal.”

I am respectfully submitting that the law enforcement authorities would have to be particularly careful with this. If this piece of evidence is incriminating evidence or contains incriminating evidence against the suspect, it is difficult to contemplate a good reason for putting the piece of evidence into the hands of the suspect.

I have already touched on the matter of adverse inferences from silence, and also special measures, and CCTV footage, but there is a point in relation to the special measures that I would also like to raise. It is my respectful submission—and special measures appear at clause 12AG of the Bill. That would be page 48, and in particular the Witness Anonymity Orders. When you read this legislation, a huge concern attending upon that reading of the legislation is the fact that the legislation does not appear to contemplate that an accused person may wish to make an application for a Witness Anonymity Order for his witness.

In matters involving gangs and so on, you would find that an accused person may wish to call a witness on his behalf who himself might be fearful of giving evidence in favour of the accused person, whatever the interest of the State or the prosecution might be.

11.40 a.m.

So it wholly ignores the prospect that the accused might wish to make an application for a Witness Anonymity Order and to that extent the legislation is skewed asymmetrically so as to make unwittingly for an unfair outcome in the context of the rights of accused persons.

In relation to forms and procedure and in particular reference to clause 12AJ, it is my respectful recommendation that having regard to the impact—the material covered by that section could have on the criminal justice system, the Director of Public Prosecutions should also be consulted by the Minister together with the Commissioner of Police.

And in relation to clause 12AL, it is my respectful submission that this clause creates a statutory discretion to exclude prosecution evidence. But it is my respectful recommendation that the common law position be codified to the effect that a trial judge is given the power to exclude evidence that is more prejudicial than probative. What one should try to avoid is any insipient conflicts between the common law and the legislation unless the express intention of the legislation is to depart from the common law. And that completes my task of taking you through my submissions and recommendations.

Mr. Chairman: Thank you very much DPP. I know my colleague Sen. Hosein, member Hosein has a question, and after that I would ask each of you to make your closing submissions if you have any.

Mr. Hosein: Thank you very much, Chair. DPP, thank you very much for your fulsome submissions, both in writing and before the Committee. During the course of the debate on this Bill some points were raised on whether or not we should introduce criminal procedural appeals during the trial. For example, where trial judges make decisions on procedural matters, whether or not we should introduce that in our jurisdiction. Can you give me your views on criminal procedural appeals?

Mr. Gaspard SC: It is my respectful submission that the advent of criminal procedural appeals would be counter-intuitive, counter-productive and would fly in the face of any notion or prospect of

the expeditious hearing of matters. What you find happening is, criminal procedure appeals could tend to defeat the purpose of case management; defeat the purpose of the Criminal Procedure Rules; cause unnecessary interruptions in the trial; cause unnecessary interruptions in the case management process.

Procedural issues in my respectful view should be dealt with at the trial or the earliest in some cases at the case management hearings. If those issues go the wrong way or if there is a feeling that they should be appealed or an appeal should be brought in relation to the rulings on those issues that could be taken up after. But it has been my experience. One of the most inglorious instances would have been the situation as it pertains to the Piarco cases. There were several interlocutory, to use the civil term, applications made during the pendency of those proceedings and some of those applications would have found themselves going right up the chain to the Privy Council. It resulted in almost scandalous delays in the carriage of those matters and those matters would have taken a much longer time than they should have and in other jurisdictions those types of interlocutory applications may not have been allowed, perhaps may not have been allowed in a jurisdiction like the UK, they would have been taken up after. So they allow for constant interruptions of the process and they would be counter-productive given what we appeared to be trying to do.

Mr. Chairman: Thank you. Mr. Sankar. Member Thompson-Ahye.

Mrs. Thompson-Ahye: Mr. Gaspard, DPP, I must tell you thanks very much for the very comprehensive document that you supplied to us. I am sure you see this legislation as a new way of thinking of the Government to have prosecution—people who have committed crimes brought to justice by providing as much assistance as possible and especially to the prosecution who are sometimes very constrained. Would you therefore agree that with this new thinking of the Government should come along not just and look at this legislation but other legislation that may be relevant in terms of how we treat with potential witnesses?

Do you see any need for us to look at legislation such as the Police Complaints Authority Act, where you may have a witness who will come under the description of being vulnerable and yet when you look at how the person may be treated in that the person may be threatened to—that you can have a conviction fine of \$50,000 and claim imprisonment for five years if they not cooperate with the Police Complaints Authority. Can you see a situation where a police officer, because of, perhaps his history or because of the nature of the offence, may in fact provide such fear or give such fear to a witness that the person may not want to come forward. And therefore the legislation could be amended and perhaps include, “without reasonable excuse” or something like that to assist in those circumstances. Because eventually it is going to come to you in your department to deal with.

Another thing, would you agree that perhaps the Justice Protection Act should also be looked at because all of that is involved when you have to provide protection for a witness. We have so many witnesses who have been killed because they walked out of protective custody and you have some jurisdictions which actually provide that someone who is in protective custody, as happened recently with the lady who went to the birthday party or whatever, that that person should be accompanied by someone. So that provision could in fact be one that could come into our legislation.

When you look on page 50 of the Bill and you see the provision, clause 12AG (4)(e), and it speaks about:

“whether the fear of giving live testimony by an intimidated witness is well-grounded and that the risk of intimidation justifies it;”

Do you think that clause could be improved by instead of using the word “well-grounded” that it is supported by credible evidence as occurs in some jurisdictions.

You would be aware of the controversy between the European Court of Human Rights and the Supreme Court because of the whole question of anonymity of witnesses and the amount of confusion that arose and the head of the Supreme Court had her say and a number of things happened. I think now there is now some kind of truce but it aroused a number of—a bit of ill-feeling between the Supreme Court of England and the European Court of Human Rights.

So perhaps we ought to look to see how at the end of the day we could learn from the experience, because any erosion of common law rights creates a lot of uneasiness. And although this legislation is well founded because of a real problem in society that perhaps we ought to look to see how other jurisdictions, a bit more, have tried to improve on the legislation, on their way of dealing with the—the old situation that we have grown up with and all the common law rights that are being eroded and there are some concern in the community about that. I am saying this particularly because we do not always catch the Attorney General in these fora. So as he is here listening and he spoke about that he is the draftsman so I take this opportunity to speak to him by speaking to you, Sir. Thank you.

Mr. Al-Rawi: I am right here, [*Laughter*] and always available, hon. member, especially to you. But DPP’s is as good a candidate as anyone else.

Mr. Chairman: Thank you, Mr. Sankar, and Mr. Lewis any closing comments?

Mr. Al-Rawi: Last question is for the DPP.

Mr. Chairman: DPP.

Mr. Gaspard SC: Thank you. Hon. member, you would appreciate that you somewhat conflated several questions with some of your observations which made it a bit difficult to identify clearly which questions you wanted me to answer.

Mrs. Thompson-Ahye: All.

Mr. Gaspard SC: What I got clearly is that you were using me as a conduit to make a convenient echo in the ear of the Attorney General and I have no problem with that. But to the extent that I understand and I would have been able to grasp exactly what you wanted me to deal with, in relation to the PCA, it cannot be gainsaid that the legislation creating the PCA and governing the PCA may be in need of amendment.

In relation to the Justice Protection Act, which is the Act creating the Justice Protection Agency, which is the agency which is mandated to carry out tasks pertaining to the protection of state witnesses—if a state witness goes to a party, you do not have to legislate that somebody should go with her. While you cannot prevent somebody from leaving protective custody to go anywhere,

because being in protective custody, as a witness, is entirely voluntary. You could advise, but there are other ways, some covert, that can employed to monitor the witness who despite better advice chooses to leave the sanctuary of protective custody. It is not something that—sometimes we try to legislate practices that really should be undergone by way of the initiative being taken by the responsible authority and the responsible authority being charged and tasked with managing their affairs properly. Not everything we might be able to legislate for.

Mrs. Thompson-Ahye: I will provide you with the Caribbean legislation.

Mr. Gaspard SC: Yes. In relation of clause 12AG, you raised the issue of whether the fear—the subclause:

“whether the fear of giving live testimony by an intimidated witness is well-grounded and that the risk of intimidation justifies it;”

Admittedly the term “well-grounded” is not a term that you would usually find in legislation. It sounds very prosaic and it also sounds somewhat amorphous. But to suggest that it be replaced and I know it was only a suggestion, you were illustrating how it perhaps might be changed by the term “by credible evidence”. Sometimes a reason may be justifiable notwithstanding the fact that there is no credible evidence of it. Sometimes what you have is credible intelligence of it; sometimes what you have is credible information of it, but no credible evidence of it.

So in respect to the concern expressed that this legislation might chip away at certain human rights and so on and so on, we have to be mindful of the society in which we live, our policy and anything that I would said here today should not be construed as though or to the effect that I am saying there should be no further discussion on the matter. And you would also have used a term that “the Government is trying to do X, Y and Z” by dint of this legislation. I prefer to look at it in a context of what the country is trying to do since there is also contributions from Independent persons and Opposition personnel.

Mr. Chairman: Thank you very much DPP. Member Cox.

Ms. Cox: I just wanted to refer to (d), the last paragraph, with regard Rule Six of Appendix B of the Judges Rules, undertaking of statements and you spoke about your experience in St. Vincent and the Grenadines, where it speaks about permitting a responsible member of the community to take statements to safeguard the investigative procedure. I just wanted to find out, should these types of responsible people be itemized?

Mr. Gaspard SC: Yes.

Ms. Cox: Do you think they should be itemized? Because for me who I might think are responsible somebody else may not feel that that person is a responsible enough person. So I was just asking your opinion and if you think that they should be itemized.

Mr. Gaspard SC: Hon. member, the problem with itemizing is that you create an exhaustive category. So anybody falling outside that category even though they may be a very responsible member of the community they will not be able to make a contribution. What you can do is itemize

some persons or some categories of person. So you would use the word “including”. So the category is not closed.

Ms. Cox: Thank you.

Mr. Chairman: Thank you very much. Mr. Sankar, closing submission.

Mr. Sankar: Thank you, Mr. Chairman. The Forensic Science Centre under section 14D of the original Evidence Act states that:

“(1) In any criminal proceeding or inquest, any record kept by a Government expert relating to anything submitted to him for examination, analysis or report shall be *prima facie* evidence...”

And a Government expert at section 19(4) includes the:

- “(a) Senior Pathologist;
- (b) Pathologist;
- (c) Government Chemist;
- (d) Armourer;
- *(e) Forensic Document Examiner;
- (f) Forensic Biologist;
- (g) Scientific Examiner...”

So we are in the original Act and it is very appreciative that in the amendment that we are considered in terms of managing the forensic expert, in terms of the other aspects of the process in court, for example, in video linking, in the anonymity. Because, these are real issues that the experts have concerns with over the years and the nature of the cases that we are involved in before the court. So we are very appreciative of being part of this process where the Bill is being amended—at the Bill stage, the Evidence Act is being amended, and we at the Forensic Science Centre are very, very, grateful to be here.

Mr. Chairman: Thank you. Mr. Lewis.

Mr. Lewis: Yes, I want to piggyback on what Mr. Sankar said. We are grateful as well to be here for our contribution to be heard. I must add that we as custodian scientists are also witnesses in court as well to give evidence, so we should fall under the vulnerable persons if that would be considered in the future. That is all I have to add. Thank you.

Mr. Chairman: Thank you very much. I want to thank the three stakeholders who have appeared before us and you have spent your time going through your written submissions and taking the questions from the Committee. I am sure as the Committee does its work we may have further questions and if you have any thing that you would like to share with us that you have not shared already you are free to make further written submissions.

I want to thank the Committee members, the representatives from the AG's Office, our Secretariat from the Parliament, and most importantly, viewers and listeners who would see this broadcast, listen to it now and those who would listen to it and watch it later. I know the Parliament Channel has a massive viewership and a lot of members of the public are interested in what you described in your opening, DPP, as the cocktail that is being created to deal with the criminal elements in this country. And I like how you closed, that we have our own issues in this country to deal with, and sometimes it requires unprecedented action in the form of legislation that is properly passed by people like the members of this Committee today. Thank you very much, thank you hon. Attorney General for coming. I know you had scheduling issues this morning but we always appreciate your input and support. Thank you very much. Meeting is adjourned.

12.01 p.m.: *Meeting adjourned.*

VERBATIM NOTES OF THE SECOND MEETING OF THE SPECIAL SELECT COMMITTEE (SENATE) ON THE EVIDENCE (AMDT.) BILL, 2019, HELD IN THE ARNOLD THOMASOS MEETING ROOM (EAST), LEVEL 6, (IN CAMERA), AND IN THE J. HAMILTON MAURICE MEETING ROOM, MEZZANINE FLOOR, (IN PUBLIC), OFFICE OF THE PARLIAMENT, TOWER D, PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON THURSDAY, NOVEMBER 14, 2019, AT 3.08 P.M.

PRESENT

Mr. Clarence Rambharat	Chairman
Mr. Nigel De Freitas	Member
Ms. Donna Cox	Member
Mr. Saddam Hosein	Member
Mr. Anthony Vieira	Member
Mrs. Hazel Thompson-Ahye	
Mr. Johnson Greenidge	Secretary

Mr. Brian Lucio

Procedural Clerk Assistant

TRINIDAD AND TOBAGO PRISON SERVICE

Mr. Dane Clarke

Deputy Commissioner of Prisons

Mr. Garvin Ferette

Legal Officer

CHILDREN'S AUTHORITY OF TRINIDAD AND TOBAGO

Mr. Hanif E.A. Benjamin

Chairman

Ms. Sharlene Jaggernaut

Legal Services Manager

LEGAL AID AND ADVISORY AUTHORITY OF TRINIDAD AND TOBAGO

Mr. Gilbert Peterson SC

Director/Chairman

Mr. Ravindra Rajah

Legal Officer II

Mr. Martin Joseph

Legal Officer II

**JUSTICES OF THE PEACE
ASSOCIATION OF TRINIDAD AND TOBAGO**

Mr. Don Asgarali

Vice President

LEGISLATIVE DRAFTING DEPARTMENT

Mrs. Lorraine John

Assistant Chief Parliamentary Counsel

Mrs. Veronica Sahadeo

Senior Parliamentary Counsel

Mr. Chairman: Good afternoon. This is the Second Meeting and second public hearing of the Select Committee of the Senate on the Evidence (Amdt.) Bill, 2019, in this the Fifth Session of the Eleventh Parliament.

This hearing is broadcast on Parliament Channel 11, Parliament Radio 105.5FM and the Parliament's YouTube Channel, *ParlView*. I am Clarence Rambharat, I am the Chairman of this Committee, and I now invite my colleagues from the Senate to introduce themselves starting on my right.

[Introductions made]

Mr. Chairman: Thank you. The Committee is also supported by the Secretariat provided by the Parliament, Mr. Lucio and Mr. Greenidge. We also have representatives from the Office of the Attorney General, the Chief Parliamentary Counsel who support us.

I want to thank the stakeholders who are here and have accepted our invitation to be here. We have today representatives of the Legal Aid and Advisory Authority, the Children's Authority and the Trinidad and Tobago Prisons Service. We also have the representative from the Justices of the Peace Association, and I thank you for the coming.

We have received written submissions from Legal Aid and Advisory Authority, the prisons service, and the Children's Authority.

We have invited the Justices of the Peace Association, not in respect of a written submission that they have given us. We would not ask you to make an opening statement, but we would ask you from time to time during the proceeding on your opinion on matters that would arise, because we know that the Justices of the Peace in this country pay a particular and very important role in criminal procedure. We believe that you would have an opinion, based on your experience, on matters that you may hear while you are part of this session, or matters that members of the Committee may direct to you. I will not ask you Mr. Asgarali to make an opening statement, but from time to time we will indicate when we would invite your contribution, or you can indicate whether you wish to make a contribution on something that has arisen.

I want to invite the other three stakeholders. We have received your written submissions. I want to invite you to make an opening statement, and as we go along you would have an opportunity to take us through the details of your statement, if there is anything beyond your statement.

So I want to invite the Legal Aid and Advisory Authority. We are very privileged Mr. Peterson to have you. You are not only the Chairman of the Authority, but a senior counsel with a significant number of years in the criminal realm. So that we invite you to make your opening submission on behalf of the Authority.

Mr. Peterson SC: Thank you very much, Mr. Chairman and members of the Committee. I do not propose to be long, Mr. Chairman, but what I wish to say is that I wish to rely on our written submission, and I am certain that we will be grilled on some of the areas that we have purported to address in our written submission.

What I will say about the draft Bill is that I think it is a progressive move. I think it has attempted, to a great extent successfully so, to codify a lot of what has been practised in the courts to some extent, and it has sought to codify and address some of the areas that are usually challenged by attorneys during the course of the trial. So what is refreshing about the draft Bill is that it has assisted in rendering some clarity to the process, some certainty to the process, so that attorneys both for the prosecution and for the defence will be clear as to the areas in which they would be called upon to operate.

In particular it is quite refreshing to see some of the drafting with respect to the identification procedures, and with respect to the anonymity orders with respect to witnesses, which we all recognize over time that the fear that witnesses tend to harbour has been very effective in prejudicing the justice system and undermining the integrity of a lot of trials. So I would say that the Bill is a good start, and I am sure by the time it has gone through this Committee and eventually on the floor of Parliament that the end product would be very welcome at the Criminal Bar in particular with respect to trials and the comfort of witnesses in the course of trials.

Mr. Chairman: Thank you very much, Mr. Peterson. Mr. Dane Clarke who is the Deputy Commissioner of the Trinidad and Tobago Prisons Service. Mr. Clarke.

Mr. Clarke: Thank you, Mr. Chairman and other members of the Committee. First, let me apologize for non-appearance of Mr. Wilson, the Commissioner of Prisons. He is due to proceed on pre-retirement leave on Tuesday, so he is taking care of some other matters as we speak.

From a prison perspective we appreciate what the Bill can do for the Trinidad and Tobago Prison Service. From our perspective today the prison opened with a population of 4,117 inmates, which is actually a 16 per cent increase from January 2017. What we expect to happen with the passage of this Bill is that we could see a further increase in our population due to speedier trials and what have you. However, what will be significant for us is that the remand population, which now stands at approximately 58 per cent of our population, could be reduced due to those speedier trials.

As you may be well aware, the remanded inmates' population is where we face our greatest challenges. Having those speedier trials will reduce the amount of time spent in the Remand Prison, from an average of seven years for the charge of murder to well over 15 years in some cases. So it is expected that with the passage of the Bill and success, the prison service would see some measure of relief as it relates to that, especially as the prison service is better geared towards the treatment of convicted inmates than remanded inmates. So with a higher convicted population we will be in a better place to treat with our rehabilitation and reintegration programmes.

So the Bill actually impacts us in two direct ways. One is with the anonymity of officers giving evidence, again due to the fear factor that we have been challenged with, and as it relates to the Children's Authority. One aspect of it in terms of appropriate adult. At the appropriate time I guess my legal officer would treat with those questions if and when necessary. So thank you for the opportunity, Mr. Chairman.

Mr. Chairman: Thank you very much, Mr. Clarke. Mr. Hanif Benjamin, Chairman of the Children's Authority of Trinidad and Tobago.

Mr. Benjamin: Thank you, Mr. Chairman, for the opportunity yet again for the Children's Authority to be a part of these deliberations. We see this Bill as quite progressive, and more so for us as we have grappled in the last five years of the Authority's existence, anonymity is a serious and critical area in terms of reporting child sexual abuse and other types of abuses. So this can further extend the protection to people who wish to make reports, not just via the telephone, but even family members who may come forward and give evidence, whether it is to police and/or the Children's Authority, this can help us to get people more out there to come forward. This can help us to get family members, community, as well as the professional services.

We have a challenge right now where people in the professional service, whether it is doctors, lawyers, nurses, social workers, teachers, are afraid to come forward because they do not want to be implicated in their workplaces. And I think this will give us a greater ability to get people to come forward and to share the information. So we look forward to the delineation today and we thank you for the opportunity.

Mr. Chairman: Thank you very much, Mr. Benjamin. Mr. Clarke, I will now return to you. You have made your written submissions in respect of three specific areas of the Bill. Either you or your legal officer we now invite you to make your submissions. We have the written submissions, we have read them. If there is anything now that you want to explain to us or take us through on your written submissions we give you the opportunity to do that now.

Mr. Clarke: Thank you, Mr. Chairman. At this time I will ask Mr. Ferette, the legal officer to take us through.

Mr. Ferette: Through you, Chairman. Firstly, I will go to the issue of the “appropriate adult”, which is defined at Part 1A, Police and Criminal Evidence, of the Bill. As the Commissioner of Prisons is the designated authority in charge of rehabilitation centres, he has control of all aspects of the rehabilitation of children at these centres including those convicted and remanded. What we have seen in the past is attorneys, and in one case a police officer would have visited the station to see minors.

Now, the issue that we have is that the attorneys would come on their own volition to see a resident—that would be the appropriate term for them—and we would have had to turn them back. The reason being is that they would have come without a person who is an appropriate adult, a parent or a guardian. The issue we are having is in our legislation, the Child Rehabilitation Centres Regulations—let me quote for you. At section 44 of those Regulations it reads as follows:

“A resident is entitled to receive visits from his Attorney-at-law in the sight but not the hearing of an officer of the Rehabilitation Centre.”

At part (2), 44(2):

“The Attorney-at-law for a resident shall visit the resident in the company of his parent, guardian or person with responsibility for the resident, an appropriate adult or next friend.”

Right, so as I have mentioned before, the issue we are having is that attorneys show up to the centre to visit persons who are under the age of 18, and as we interpret the regs they must be accompanied by an appropriate adult, a parent or some other person with responsibility for the child. So that is one issue in our Act. So what we need some clarification on from the appropriate body who legislates is whether in fact that that child who is under the age of 18 at our rehab centres is entitled to see an attorney-at-law in his own right or whether this stands. Because as it is at this point in time, this regulation is consistent with the Children Court Rules, the Judges Rules for children, which speaks to the same issue.

Mr. Chairman: Okay. Then you have also made submissions on clause 3 and clause 4. So do you want to take us through those submissions?

Mr. Ferette: In relation to those clauses, our submission is that we were in agreement with those clauses as they support and enhance the Bill at this point. That is basically it.

Mr. Chairman: Okay, thank you very much.

Mr. Ferette: One more thing I want to touch on is the anonymity orders. We are having another issue at the prisons, in civil cases especially where officers are reluctant to go to testify due to situations that arise in the prison service. We see this as a great help if it could be extended to civil matters, because a lot of the times officers appear in the civil courts in relation to incidents that happen in the prison. So we would like to see if this could be extended to civil cases also in respect of these officers, because it would provide an additional layer of protection for them and it would encourage them to come and give evidence if they have this protection.

Mr. Chairman: Thank you very much. Sen. Hazel Thompson-Ahye has a question for the Trinidad and Tobago Prison Service.

Mrs. Thompson-Ahye: Are you saying that this Bill is in accord with the Judges Rules for children as far as “appropriate adult” is concerned? Is that what you are saying?

Mr. Ferette: Yes.

Mrs. Thompson-Ahye: But when you look at the Judges Rules for children, an appropriate adult does not include the following person, and at (5) it says, “a person employed at a detention centre”. Yes?

Mr. Ferette: Yes, I agree with that.

Mrs. Thompson-Ahye: And when you look at the Bill, it says 12(k), what it does not include: “a person employed at a Rehabilitation Centre other than...”

Mr. Ferette: Yes.

Mrs. Thompson-Ahye: And one of the exceptions would be a person with whom the child is comfortable. So “a person employed at a rehabilitation centre other than”. So that if you are employed at a rehabilitation centre and you are a family member or person who is well-known to the child, or a person with whom the child is comfortable, would you not agree that this Bill is saying that you can in those circumstances be an appropriate adult?

Mr. Ferette: Yes I agree with that situation, but just from our past experience that was not the case at all, where the child would have been comfortable with anybody at the rehab centre, or it was not a family member to the child. So just in that regard we are speaking of.

Mrs. Thompson-Ahye: So you are talking about the history. You are not talking about what is going to happen if this Bill is passed into law?

Mr. Ferette: Yes, yes.

Mrs. Thompson-Ahye: Because it certainly makes a difference here now.

Mr. Chairman: I would now want to invite Mr. Peterson on behalf of the Legal Aid and Advisory Authority to take us through your written submission. It is very comprehensive. You cover 17 areas, and if there are those aspects of your written submissions that you wish to highlight for us, we now invite you to do so.

Mr. Peterson SC: Thank you very much, Mr. Chairman. I first wish to highlight section 12A(1). With respect to the identification procedure to record the first description of the suspect given by an eyewitness. I just wish to underscore that this is welcomed, but in practice now it is common for the prosecution to disclose the first description of a witness purporting to make an identification. That is standard procedure. But what this amendment would do, or what this codification would do, is to put that first description into a form, and I gather from the working of the Bill that the recording of this first description in a standard form would lead to two things: consistency of the recording of the first description, because there would be a standard established form, and it would be a form that would be

disclosed in the normal course of disclosure, as opposed to the present practice where the first description is transposed from the witness's statement into a letter or document and sent to the opposing attorney. There would be a standard form which is welcome, and then that form is signed. What this does is lead to consistency and eliminates possibilities of discrepancies in the description, and also it safeguards the investigating officer against allegations being made that he has tweaked or in any way tampered with the first description given by the witness. So that is a very, very welcomed codification of what presently obtains in practice.

I wish to follow on to section 12B(2) which deals with the identification by photographs. The section speaks about showing a minimum of 12 photographs to the witness to make the identification. One understands the reason for that number, as opposed to where you have what I could call a live ID parade where normally nine persons would be used. The fact that they are using photographs, the number has increased to 12 to give a greater degree of fairness, where a witness is identified by paragraphs. But I think coming out of our work, members of the Legal Aid team that helped to put the submissions together were of the view that there should be imported there a maximum number of paragraphs within a certain time, because the witness is using photographs and have been shown photographs, the witness could then become overburdened and it could lead to some inaccuracies, or a witness tending to make a positive identification where otherwise he may not have. So there should be a balancing of the amount of photographs when employing the process of identification by photographs.

Section 12B also provides for where a suspect has been positively identified by an eyewitness. We recommend in this provision that there should be a specified procedure for movement of photographs. For example, a separate database or ID logbook. But subsequent to sending this submission in, I had considered that there should be consideration for disclosing copies of the photographs used to the defence. So if a positive identification is being relied upon by using the system or the medium of identification by photographs, in fairness the defence ought to be given copies of what I would call the “dumb photographs”, the photographs that are just put to create the process. That they should be given, if not copies, but access in the form of disclosure to possibly attend and view the photographs.

It may not be advisable to send copies because you do not want copies of the photographs that are being used from other persons who may lend their photographs to the process, to be floating around all over. So what can happen, in order to ensure fairness and balance to the prosecution and the defence, is to have as part of the disclosure regime where there is identification by photographs, that the defence be given an opportunity to attend, whether it be at the police station or the Director of Public Prosecutions office at a fixed time to view the photographs that were used in the photo identification process.

I then to deal with 12D(a)(ii), the conduct of ID parade procedure in respect of investigations are not in any way involved in investigation. This again is a codification of what obtains now in practice, and this is also commendable. Because it is a practice usually that presently where you are using even the one-way mirror and you line up nine men, and they put the suspect among eight persons, totalling nine, to have the identification, usually it is someone of a rank of Inspector and up and higher, and someone not involved in the investigation. That is to eliminate allegations that the person who has conduct of the identification parade and supervisory conduct, did not alert the witness as to the suspect

that is in the line. So this is a codification of what, from my practice and my years of experience, I have always found that this is usually observed rigidly by the police service. But it is just a codification on it, so it is welcome and it is commendable.

I move on. I will not deal with every section. Section 12AG(4)(h), Mr. Chairman, that deals with special measures, evidence by video link and Witness Anonymity Orders. This is not new to some jurisdictions, but it is fairly new to ours. But presently again the practice has developed and the practice has been employed, and up to over the last two months or so I know of two or three cases where this has been employed. Over the last three years I know of about five or six cases where evidence by video link has been employed.

I have been involved in matters where we have taken evidence from witnesses in the United States, where we have taken evidence from witnesses by video link in England. It creates some degree of difficulty sometimes with the logistics, but not insurmountable difficulties. For example, some of the difficulties—and I do not think I have seen it addressed in the Bill, some of the practical difficulties—and I do not immediately have the answers to how some of those difficulties can be overcome, but I am sure members putting their heads together will be able to come up with a drafting formula that could deal with it. But some of the practical difficulties that I have experienced with video link evidence is the simple thing of taking the oath of the witness. The witness is in the United Kingdom or United States taking the oath or the affirmation to give the evidence.

3.35 p.m.

Recently we had that difficulty, no one thought of a simple thing as having a *Bible* on the link where the camera is on the other side. That was easily overcome. But then there was another matter in which we were involved in, apart from just taking the evidence, the accused who was granted bail and was abroad and unable to travel for the trial for the preliminary enquiry in the particular case, was willing to participate in the preliminary enquiry. He was not absconding. So we decided to do the preliminary enquiry by video link.

The practical difficulty that arose there is that under the Preliminary Enquiry Act in Trinidad when you complete the preliminary enquiry and the person is about to be committed, they then have to sign a recognizance. Now, the problem with that is that the person was abroad, we finished the evidence and the magistrate was about to commit and it requires the person to sign a recognizance to either take bail at that stage upon committal, because if they were previously on bail, it expires on the committal.

So the person was abroad, PI is finished, if the person is committed and the recognizance lapse then there will be no instrument in the system to compel them to appear. How we got over that with some degree of cooperation by the defence is that, we stood the matter down, faxed the recognizance abroad, got the person to sign it, faxed it back and the court treated it and got the person to confirm on the video link. It took some time and then we had different time zones and that kind of thing. There could be rules that could deal with once you go the way of video link, all those procedures are deemed to be taken orally. So that you can say that, do you swear that you hereby accept your recognizance, you could say, yes, and that is recorded, even though not documented, but video link, that could replace the paper recognizance that is usually attendant on a committal. But as far as the video link is concerned it is fine.

The bigger thorny question is the anonymity order. Now, in the United Kingdom I have been to the Old Bailey and witnessed that witnesses are giving evidence from behind a screen. I could see this provision getting some resistance because persons like to subscribe to the old adage that he who accused, I must be able to see my accuser and all of that. I see no magic in the accused person seeing the person who is accusing him, what he is accused on is the evidence. So there is no gain per se by him seeing the person, because we know from history that some witnesses get amnesia when they enter the court and they see the person who has caused them allegedly harm, so they are not willing at that stage to continue giving evidence.

The only difficulty with that anonymity provision is that sometimes an accused person or a suspect may not be aware of the identity of the person who is making the accusation. So sometimes for them to give instructions, for example, they may want to say that that person has a grudge against me for the longest while. But if they do not know the identity of the person, apart from seeing them, they may not be able to give proper instructions and there will be a case where you will know the person's identity once you get their name, but then there will be some persons you may know by an alias, for example, and you do not know that the person whose name is given in the evidence as the accuser is the person who you know as the alias. So, to that extent, that is the only area where I see there could be some discomfort with respect to the anonymity order, but I think in the climate in which we have now advanced that that is a welcomed provision and it is a necessary one in order to not to defeat the ends of justice.

Now, in our submission, some members of my team had referred to a 1934 case, but I did say to them that we will put it in because I thought the Committee should have the benefit of a wider range of input not only that of the Director/Chairman, but I have said to my team that we have come a long way since 1934 and the climate in which we operate we have to be different, we have to do things differently because we no longer operate in 1934, things have changed.

Without me condescending to further particulars on what I mean, I think we all understand why this incursion into what someone may call an incursion into one's rights by having a Witness Anonymity Order, I think it is necessary in the climate now.

The Bill also deals with identification parades, it also deals with confrontation identification. Confrontation identification is something that is already employed, but in our submission, one member of the team came up with a very helpful proposal which I think would assist. Confrontation identification sometimes takes place where a suspect has declined the avenue to have an identification parade done; in the normal course of things where eight persons are lined up together with him making nine and he is behind a one-way mirror and the suspect is called to identify him with a representative of the accused present or his attorney, and a Justice of the Peace as the case may be.

Where that is declined, the police sometimes could employ a confrontation identification where the suspect is in a room and the witness is brought and he said, "Yes, that is the person," because the suspect, at that stage, had declined the fairer process that was given to him. One of the proposals that is being suggested in our submission, where that suspect has declined the established fair identification parade procedure, what can be done in a confrontation is to add other persons into the room that generally looks like him. He does not have to participate, he is there, but he is among other people

and the witness coming in could see six or seven persons and pick out that person. It is a move away from the established rigid identification parade procedure, but it is also a fairer process than just a one-on-one confrontation. Because if I could say, Mr. Chairman and members, the identification parade procedures, whichever one is adopted, generally is designed to try to be as fair as possible and have the person identified as objectively as possible. And whatever systems could be employed over and above even what is provided in the statute, if the statute says nine persons and they put the person among 12, I cannot see a person complaining that you had too many persons on the parade for the person to pick me out. I mean, that is as more objective as you can get.

So the parades are designed to or the identification procedures are designed to lead to fairness and the more fairness that can be employed, I think the ends of justice will be preserved. Mr. Chairman, could I just check with my colleagues to see if there is anything they wish I should highlight?

Mr. Chairman: Sure. While the members of the Committee who have been taking a lot of notes get ready to ask you some questions. Proceed—

Mr. Peterson SC: Members of my team said that they do not wish me to highlight anything else on the submissions.

Mr. Chairman: At this time, I would invite the members of the Committee to raise any questions they wish to Mr. Clarke or to Mr. Peterson SC.

Ms. Cox: Good afternoon.

Mr. Peterson SC: Afternoon, Sen. Cox.

Ms. Cox: I will deal with your last point concerning confrontation. But I wonder how fair it is if others are just put into the room with a suspect. By his body language, I think that person would be easily identified.

Mr. Peterson SC: That is actually correct, Senator. But the difficulty that I could see an investigating officer facing at that stage is that I have offered you, I, the investigating officer, I have offered you this established rigid, tested, objective mode of identification, you have declined it. I could bring in the witness to confront you, probably maybe in a room sitting by yourself, possibly handcuffed to the chair depending on how inclined you are to make free your escape. In that case, that is the least fair way you can have. But one cannot have the suspect to retard the progress of the investigation. So the next best thing would be what would amount to a group identification. In that way, it is true that the other persons in the room may appear to be jovial because they are free, but the suspect is obviously going to be giving off his body language, but that is what he will have to suffer having declined the earlier offer of the most objective mode of identification. It is not perfect but fairness is what they will most likely aim at and hope to achieve.

Mr. Hosein: Thank you very much, Chairman. This one is for Senior Counsel. Senior is our resident in JSC witness having appeared in most of our Joint Select Committees. And I thank you for your submissions that you made this afternoon. So I want to look at the thorny issue that you raised with respect to witness anonymity. Now, it is a very special procedure that we are going to put into the Evidence Act. Our Constitution protects us having a right of fair trial. Now, you would imagine that

is an exceptional tool that the prosecution would want to use with respect to prosecutions for various matters.

Now, the question is whether this special measure of Witness Anonymity Orders should be for all offences or should we specify the types of matters in which these orders can be granted? And I say this because in other jurisdictions you have the order being available for matter of terrorism, for gang-related offences and even in some cases of murder. As presently drafted, it seems as though this order we can get it for almost any offence a person is indicted before or charged in the Summary Courts Act. What are your views on that?

Mr. Peterson SC: First, Senator— thank you, Senator for the question. A Witness Anonymity Order is a serious thing. It is a clear incursion into what we have come to understand to be our right, to know who our accuser is. But the difficulty that the prosecution or the prosecuting arm of the State, if I can speak on behalf of them to the extent to which sometimes I do that, they have been experiencing is witnesses tend to have amnesia. And the Evidence Act attempted to deal with that before by a section 15 amendment, I think it is 15C amendment, where the statement that the witness gave stood as the witness's evidence in chief.

So prior to that, it would have been the hostile witness provision where that evidence will come down to almost nil and have very little effect where the witness has departed from the statement. They deemed hostile, but once you deemed hostile then you are cross-examined by the person who called you and the evidence is of very little value. The amendment allowed that statement to now stand as the witness's evidence in chief. The difficulty with that procedure why we would probably have to go the way of anonymity is that sometimes a witness really, really would like to support the statement because when we go this way of section 15 it undermines the integrity of the prosecution's case and I will explain what I mean by that.

If you have a key witness departing and separating himself from a statement that he gave previously, usually the allegation is that the police fabricated that statement, I never gave it so the prosecution now has to make a section 15C application, call the officers who were involved in the taking of the statement and give evidence as to the circumstances under which the statement was taken to try to show the court that the witness is not speaking the truth when he is separating himself from the statement. But, of course, that is a question of fact and that allegation stands in the case and there is always that blot against the integrity of the entire prosecution.

So what you could find in a jury trial is that any doubt with respect to an attack on a particular aspect of the case going along, the jury will always bear in mind, "you remember that key witness, on the first day of the trial, remember he was saying the police, they have been doing this". So that undermines the integrity of the prosecution's case which is what no prosecutor would like. Apart from just that witness, it permeates the entire case, the integrity of the case. But when you have the Witness Anonymity Order, the witness will have a bit more comfort in—I know I am not answering the part of the number of offence, I am coming to that, the witness will have a bit more comfort in supporting his evidence as previously given because he would have given it voluntarily to the police.

Now, I think we can at least start with serious offences and if you get as more— well, I do not like to say offences are trivial, but when it get less serious offences, you could see witnesses not being

inclined to at disavow their statements but with respect to your question, I think at least we should consider gang-related offences, terrorism and murder if we are to proceed to listing witnesses—listing offences.

Mr. Hosein: It is just a follow-up question, Senior. Now, I appreciate the Witness Anonymity Order and we could look at specifying various offences. One issue that still troubles me is that the character of that witness. Because you have witnesses or people saying all sorts of things, making all sort of wild allegations and we have to test that evidence eventually. Now, when you look at this you do not know who the witness is because of whatever grounds on which the prosecution will make the application on. The question I want to as is that we have seen prosecutions failed in the Appeal Court because the prosecutors failed to disclose the character evidence of the witness. How can we deal with situations like that where we do not know the identity of the witness and the defence now being denied the opportunity to cross-examine that witness based on the credibility of their character?

Mr. Peterson SC: Senator, that is a very—if I could say so, and I could say to the greatest of difference, that is a very difficult situation to deal with. It is a very practical one, it is a real one because you need to attack the witnesses, if the witness is a witness of bad character, the witness cannot hide behind an anonymity order to insulate his bad character. But then you have— how do we balance—and that is really a practical problem. It is something that gave me some pause when I was considering that part of the Bill. I really do not have the answer at this point but it is a very, very, very important point to consider. How do you assess the witness's character as you are entitled to do, to attack the credibility of the witness because of their historical bad character without knowing the identity of the person? And that is the difficulty. I think at the end of the day we all have to come up with some formula that would allow a balance between the right of the accused to attack the bad character and let us know the nature of the person who is making the allegations against him and at the same time protecting his identity. That is the balance that needs to be struck to be achieved.

Mr. Vieira: Thank you, Chair. Director Peterson—

Mr. Peterson SC: Yes, Senator.

Mr. Vieira: Welcome. I recognize you as a leader of the Criminal Bar and your voice is very important at this hearing, because as Chairman of the Legal Aid and Advisory Authority you are representing the public defenders office so you speak really on behalf of defenders. Now, thank you again for your very helpful, specific recommendations. In summary, you found that the Bill brings clarity in the procedures and measures to be adopted in properly taking evidence. Correct?

Mr. Peterson SC: Yes.

Mr. Vieira: You did indicate you had a concern about what happens if these new procedures are not properly observed or implemented. Could you expand on that?

Mr. Peterson SC: What we are really referring to there, some of it has to do with resources because a lot of these, like, the video link for example, some of the matters have been involved in by video link, simple thing as bandwidth for the reception keeps breaking up, you have to keep dropping the calls, sometime we reschedule and you have to reschedule venues abroad and you have to pay for venues twice and that kind of thing. We have been locking some of the matters to use some of the consulate

offices that we have abroad but there are some jurisdictions for which we have no presence. So there has to be accommodation for room for witnesses twice and that kind of thing because simple things like the bandwidth and resources and the quality of the digital and all of those kinds of things. So that is what we are referring to with respect to implementation and resources.

Mr. Vieira: And I think you also were talking about sometimes the mismatch between officers, for example, who were supposed to walk with their diaries or the station diaries and are not showing up court. What your recommendation would be to address that deficiency?

Mr. Peterson SC: I have observed, to be fair to the investigators and the police, sometimes the court system—one can anticipate where that case is going and the present Criminal Procedure Rules will help a lot in alleviating some of the historical difficulties. Sometimes you will go to court and you will see 10, 12 police officers stand up along the wall waiting to get to the prosecutor when their case is called. Ten out of those cases obviously cannot go on that day. If they are to send disclosure, if they have sent the status of their witness's statements, the preparations of their statements, the preparation of their file, all of that could be sent in a report by one messenger, if you want to call the person that. Instead of having manpower lined up there all day when they should be out on the streets.

So you find that sometimes, some of the officers are absent, cases are dismissed or cases they are recorded as being absent which that record may appear to be innocuous on the occasion. But two months, three months down the road when the case is called the third time and the record shows he is absent twice, it is because he probably worked all night on some exercise or in the station all night, knocking off duty at 7.00 in the morning or 8.00, trying to get to court for 9.00, or tired, fell asleep, absent, so all of those things are some of the things that we need to address.

So those are practical things that could alleviate some of those difficulties. But with the Criminal Procedure Rules now, with the case management system that is now imported into the criminal procedure, it leads to more certainty so that officers and the prosecutors will know this case is not likely to go on because it has not been trial ready through the process. So that has been less a difficulty lately.

Mr. Vieira: Well, I am glad you said that because that is also my own view that these Criminal Procedure Rules and the recent Practice Direction should assist. But really it is a culture change that we need to see.

Mr. Peterson SC: Yes. And with time it is getting there.

Mr. Vieira: Another point you had raised is that the Legal Aid Act does not give across the board representation for all accused just in respect of a limited category of offences and under certain circumstances. Could you elaborate on that and make a recommendation?

Mr. Peterson SC: A lot of what you are referring to there is the duty counsel system. Presently the duty counsel system applies where there is a counsel on call, we have a 24-hour hotline system, but that applies only to murder and to juveniles. So a lot of children, when children are detained in stations they get a—they make a call, the police officers most of them on duty they have a schedule, they call, a counsel is assigned during the nights and that counsel takes care or over the weekend, takes care of that accused person rights or the child's rights until the first appearance in court on the next

occasion, which most times is the Monday morning. But that could be widened, but when we made this recommendation we did not factor in that we have the public defenders system which is moving apace which is—we have started to roll out, I do not know if you have seen in the papers we have RFPs out for the facilities and all of that and we have started interviews for public defenders. So the legal aid system would be virtually divided into the civil and then we have a whole public defender system akin to something like what we see in the United States. So that is going to help with a lot of that.

Mr. Vieira: Good. And so what I am getting to because the Witness Anonymity Orders, for example, have been very controversial and from your experience and perspective as a very Senior Defense Counsel and as Chairman of the Legal Aid Authority you do not see a challenge you are not—you do not see this as a serious abrogation of citizens' rights, you think that this is a necessary step in the legislation, do you?

Mr. Peterson SC: It is an incursion into one's right because one always tends to guard the rights historically as to how they know it to have existed. But society has evolved and we could no longer—for example, one could also put into that the right to silence where historically you remain silent throughout but now that is being eroded or being—it may have been reducing the impact, the sanctity of that in that if you do not, you could remain silent, but if you do not certain inferences could be drawn and all of that. That is an incursion into that historical right to silence.

The thing about witness anonymity is before we always used to say he who is accused must prove and you must know your accuser. But those days, we do not have the comfort to those days anymore. So even though it is an incursion, there will be some challenges, one we will want to consider whether we go fully there or whether we have some case by case basis and whether we get—we seek an anonymity order and justify it on a particular case by case basis. All those safeguards could be put in place, because there will be the case where it is necessary.

Mr. Vieira: But in terms of getting there, would you say that the Witness Anonymity Order should be a measure of last resort to be used in limited circumstances?

Mr. Peterson SC: At this stage, that may be the appropriate course to achieve some measure of what we need. We need it. I will not say we need it in every case, but I have seen cases where I think if we had it, wear the hat as a prosecutor, I think I have seen cases where if we had it life would have been easier.

Mr. Vieira: So, I just have two more questions. You recognized that it is within Parliament's right to make these changes to the Evidence Act which traditionally have been features of the common law. Do you?

Mr. Peterson SC: Yes.

Mr. Vieira: And on balance, would you say that the legislation achieves a fair balance?

Mr. Peterson SC: I think so. I think it is a good draft. Yes.

Mr. Chairman: Thank you very much member and Senior Counsel. I noticed Mr. Asgarali was paying very careful attention and shaking his head as you got into a discussion on station diaries and

before that, witness identification. Mr. Asgarali, some people but not everybody in the country knows what role a Justice of the Peace plays in the criminal trial procedure, particularly that part of it that before the accused is charged. So perhaps you can spend a few minutes just telling us and telling the listening and viewing public the role of a Justice of the Peace, particularly in the criminal law arena and also, anything that you want to contribute in relation to what has been said today, particularly your interest in station diaries and witness ID and so on.

Mr. Asgarali: Thank you very much, Mr. Chairman. First of all, let me thank the Committee for inviting JOPATT to be part of this. A Justice of the Peace really, he is one who had to—you sign warrants, you sign summonses, you do ID parades, you authenticate statements, mainly it is that that you do. And I was very interested and I wanted to say this, especially where the ID parade is concerned, I listened to Mr. Peterson SC, and he was saying that when you do the ID parade with the one-way mirror and the person is not identified that what could be done—I do not know if this is what—that you could bring them into a room with the witness and maybe have him handcuffed, well that is out of the question. I do not know. I do not think that is right. I do not know if that is what you said.

I was in an ID parade that was really professionally done by an inspector in Four Roads Police Station. Now if the witness is not identified or where the confrontation is concerned, they normally take them into a public place. I did one where the guy was taken, the accused or suspect was taken at KFC and he sat among other customers and then the victim said, “Listen, you can walk around and if you see him then you could point him out.” That is what the confrontation is all about.

4.05 p.m.

So that was done, and I will tell you something, witnesses are very afraid now, they are scared to identify anybody at all. So the police might arrest you or they suspect, they call them. I saw one where they fella just came in and they numbered them during the ID parade, and he just glanced around like that from one to nine, and he said, “No, the man is not there”. I could tell that he was afraid, you understand.

When the ID parade is done with nine persons, I went into the station and I spoke to a suspect and I said, “You are about to be on an ID parade. Did you agree to this ID parade”? And he said, “Yes”. The line up for the ID parade is that all of them must be of similar height, the clothes must be similar, because the one that I went to, the guy was not a stupid boy, when they lined up he had on three-quarter pants and all of them they were in long pants. And before I could tell the inspector, I said “Listen, we have to get this guy to change his pants”. He indicated well, “Sir, you know I have noticed that they are all wearing long pants and I have on a three-quarter pants”; so he knew what he was doing. He was the only one in slippers, the others had on shoes, and he said, “Sir, you know I am the only one wearing slippers”. And I said to them, he is perfectly correct, all of this has to be done, because he is only in slippers and the others have on shoes, if he was the only one in a three-quarter pants and the others had long pants, he would have been easily identified.

So that is the way it is done. The confrontation, the confrontation, as I said, is one in a public place where they take you into a public place and you sit down with the public, and he walk around, and if

you have to point them out, you point them out. So I am interested in those two points that I wanted to talk about.

Mr. Chairman: I believe that you are about to be cross-examined by member Vieira.

Mr. Asgarali: No problem.

Mr. Vieira: Mr. Asgarali, you are a very experienced Justice of the Peace.

Mr. Asgarali: Well, this year will make me my 19th year.

Mr. Vieira: Very good. And so you will agree with me that certainly with the identification parade the Justice of the Peace is like a referee to ensure that it is conducted fairly.

Mr. Asgarali: Yes, Sir.

Mr. Vieira: Now my question is this. All Justices of the Peace have your many years of experience. Do you as a body, as a profession get investigative training?

Mr. Asgarali: We do not get investigative training.

Mr. Vieira: Do you get any training in criminal practice and procedure?

Mr. Asgarali: No, Sir.

Mr. Vieira: So would you say that all Justices of the Peace may be astute as you are in discerning the slippers and the three-quarter pants?

Mr. Asgarali: I would like to think so. [*Laughter*]

Mr. Vieira: In the off chance that we are disappointed, do you have any recommendations in terms of what support we can give to the Justices of the Peace to ensure that your role, the very important role you play in this legislation, you meet that role?

Mr. Asgarali: Well, we have been asking to meet with members or the Attorney General or whoever it is, it is important that we meet with them, because what happens is that they are appointing Justices of the Peace and we do not know anything about it. At present, there are about 168 Justices of the Peace, and as an organization we have been asking that when you appoint these Justices of the Peace, at least, you should let us know. We do not know anything, we do not know how they go about appointing them now because we have training sessions for Justices of the Peace. At our meetings we have a meeting every second Sunday in every month, and at our meetings whatever training we can do to the limited amount of Justices of the Peace that we have, we try to train them. We know we have some new ones who just came, and we have training sessions.

Mr. Vieira: Who is doing that training? Is it the older Justices of the Peace?

Mr. Asgarali: The older Justices of the Peace, we are doing the training.

Mr. Vieira: But are you getting sort of, for example, seminars or training from experienced attorneys, from maybe the Judiciary, anything like that?

Mr. Asgarali: At some of our meetings we have invited attorneys to be present. And an attorney, I am trying to remember his name, but he came especially, and he explained about the identification parade. As a matter of fact, he wrote a little paper on it for us, and we have that.

Mr. Chairman: Mr. Asgarali, I know you have to leave us shortly, I want to thank you for being here and for making your contribution. I undertake to bring your submissions to the attention of the hon. Attorney General. I am sure he would be happy to meet with the association particularly in the context of this particular Bill, and some of the other issues you have raised before us.

Mr. Asgarali: Thank you, Mr. Chairman, and we have written to not only this Attorney General, the ones before him and the others and we have been asking them for meetings with them, and so far we are not successful in meeting with them. So I am hoping that maybe something might be done or something could be done. Again, thank you very much, Mr. Chairman.

Mr. Chairman: Before you leave, member Thompson-Ahye has a question she would like to pose to you.

Mrs. Thompson-Ahye: Mr. Asgarali, in respect of the training, following up on what Sen. Vieira asked you, have you as a body or an association had training like, for example, from the Children's Authority in respect to child rights, how you should treat with children?

Mr. Asgarali: No, Ma'am, we have had no training with child rights, but I am very involved with the CPU, the Child Protection Unit. You know, when they have to do statements and they have taken statements that I have to authenticate, I am called upon by the police a lot especially I deal with the CPU, the Child Protection Unit, but we have had no training where that is concerned.

Mrs. Thompson-Ahye: All right. Thank you.

Mr. Chairman: Thank you very much, Mr. Asgarali. You are free to leave.

Mr. Asgarali: Thank you, Sir.

[Mr. Asgarali exits room]

Mr. Chairman: I want to now invite my colleague member Cox who has a question for the prison service, and then my colleague member De Freitas and then member Vieira, and then we would go to the Children's Authority. We have received your submission in the main three areas you have addressed. The theme in your submission is a request for the extension of the provisions in the Bill to offer the Children's Authority and its officers and representatives some of the protection that is being offered in several areas of the Bill, and then you also addressed a specific technical issue relating to—let me just make sure I get it right—under 12X, the issue of psychological assessment of potential child offenders. So I will invite you to just highlight for us the key areas of your written submission after we have had the opportunity to hear from the three members.

Ms. Cox: Hi good afternoon, again, and thank you very much for your submission. One of the major problems that exists in the Trinidad and Tobago Prison Service is the overcrowding at the Remand Yard. Would you agree that the passage of this Bill will assist in this overcrowding? And if that is the case, then in what way?

Mr. Clarke: Thank you, Madam Senator. We expect once the passage of the Bill and the evidence begins to flow, we expect that the population will go up. However, it may not be the “unconvicted” population, because the matters will be going through the court faster, so you may get more convicted persons coming into the environment which then would reduce the remanded population.

As I said before, the remanded population is the challenging population for us because the fact is that they do not know how many more years they would be in our custody. So while we expect an increase in the population, I am not certain that it will be in the remand population.

Ms. Cox: You are not certain?

Mr. Clarke: Well, as far as the remanded population goes—

Ms. Cox: Yes.

Mr. Clarke:—as I said we are now at 58 per cent.

Ms. Cox: Right.

Mr. Clarke: However, with the passage of the Bill, we expect that we will get more convictions in court—

Ms. Cox: Yes.

Mr. Clarke:—so that the convicted population will go up.

Ms. Cox: The remand population should go down.

Mr. Clarke: Should go down. Yes.

Ms. Cox: Okay. Thanks.

Mr. Chairman: Thank you. Member De Freitas.

Mr. De Freitas: Thank you, Mr. Chair. Good afternoon, again. This may seem like an unorthodox question, but I promise you there is a reason that I am asking it, and this is really to Mr. Peterson, so I am really trying to just get some information to clarify some thoughts in my head from practitioners within this sphere. So I ask the first question: Do you trust the judicial system as it is right now?

Mr. Peterson SC: Senator, you are correct, it is unorthodox. Yes. Well, I trust the system. Are you referring to efficiency of the system of the system, the integrity of the system?

Mr. De Freitas: The way the system is itself because it is set up in a particular way when you are dealing with an accused or a trial in general, so you have prosecution, defence, judge, jury and so forth, so that model I would say of justice, I am assuming once you are in the legal fraternity, you learn about that system—

Mr. Peterson SC: Yes.

Mr. De Freitas:—and therefore, you trust that system. Right. So the reason that I am asking that is because we are dealing with the Witness Anonymity Order, and in the Bill it speaks to the application

being made to the court. So just for my clarification because I have something in my head, when you hear that, who is that application being made to?—let us say by the prosecution. It is to the judge, correct?

Mr. Peterson SC: The judge and magistrate.

Mr. De Freitas: Or the magistrate? Right. So, so far, in speaking about the Witness Anonymity Order, I am realizing that there are certain things coming forward, and this is concerns in relation to something that I assume is an entrenched right when dealing with trials which is the right to fact your accuser, and also the possibly of the witness being not credible and making stories up and what not. But to me when I read the Bill and how it treats with that order, it speaks to the decision to grant such an order being done by the magistrate.

Now, if you trust the system, it means that you trust that the magistrate the following the Bill would not just grant that order to use the word “willy-nilly”, you take into account a lot of factors, one of which is the right to face the accuser and, two, the credibility of the witness amongst other things.

Mr. Peterson SC: Yes.

Mr. De Freitas: So it seems to me that the Bill takes care of a lot of those concerns by the mere fact of using the process which is as old as trials themselves, which is the judge’s discretion. And want to assume, and I made this point in the debate itself before it came here, that if you trust that process and you trust that the judge will always do the best that they can, given the information that they have, but the beautiful thing about the Bill is that it takes into account human error—

Mr. Peterson SC: Yes.

Mr. De Freitas:—so much so that the judge can revoke that order should new information come to them. So given that that is what is happening in the Bill, do you still have those concerns knowing that a judge will take into account all of the entrenched rights that are there before, and everything that you have said before and make a best-scenario decision based on the information that he has. And the way that this is written it is already case by case, so you do not even need limit, it is already case by case, because as you all know, every case that comes before the court is unique—

Mr. Peterson SC: Yes.

Mr. De Freitas:—so it has to be case by case. So do you think—

Mr. Peterson SC: Yes, Senator, I now understand the context of the first question, and that is why I said that that the anonymity order will be the provision that will attract the greatest attention and disquiet among us all, because historically we are accustomed to facing the accuser, but your point is well taken if I could say that, and I say it with the greatest of respect, that the order would—you have to apply for an anonymity order, you have to justify it, you cannot just come and say, I want an anonymity order, you have to demonstrate—there would almost be like what we call a trial within a trial, just like what we do for confessions. When a confession is challenged in a trial, there is a trial within a trial and they hear all the—a trial may have 10 witnesses, one witness speaks to the confession, they will break away into trial within a trial, and it could have 15 witnesses giving evidence on that confession as to whether it is voluntary or not.

Similarly, with an anonymity order, one would apply for it, they will go and demonstrate in a trial of the issue as to whether such an order would be made, and the magistrate would not grant it lightly, the judge would not grant it lightly, they are going to investigate and interrogate the circumstances, and the requirements as to why you need an anonymity order, and it is nothing new. And that is why I said, and I will come to say, where my area of not discomfort but of pause is the question coming from Sen. Saddam Hosein a while ago.

When you apply for an interception of communication that is usually done *ex parte*, you go to a judge and you justify the need for it. It is done, you do not even know that you are being intercepted because you cannot be alerted. Under the financial legislation with respect to tipping-off, you are being investigated financially, you are not tipped-off, all those things. You go behind in an *ex parte* position, get an order from a judge, but you have to justify it. And that safeguard exists in the Interception of Communications Act where an order to intercept is given, if you no longer need it or any new information or all of that, you have to destroy the material or it could be revoked. So that applies in the same section 15 application under the Evidence Act to put in the witness's statement to stand as his evidence, you have to apply and justify why you should be granted a section 15C order. So those safeguards are there, and that same kind of safeguard will be transposed into the anonymity order.

The only area that I have some pause that I have not been able to clearly work out in my mind, is the question coming from Sen. Saddam Hosein with respect to, how do you have the anonymity order, have the bad character avenue where you could attack the witness bad character to show the kind of person who is now making the allegation against this person on trial without—how do you avail yourself of the bad character challenge without disclosing the identity of the witness? That is the only area where, I think, we have to have some tweaking and pause about, but your point is well taken, that it will not be granted willy-nilly, you have to demonstrate to get that, and that already obtains, that regime already obtains in the Interception of Communications and the section 15 provision.

Mr. Chairman: Member Vieira and then member Hosein.

Mr. Vieira: Thank you, Chair. Deputy Commissioner Clarke, I want to thank you for your submissions because even though as you pointed out, the Bill has limited application to the prison service, and that in the main you are supportive of this legislation, you raised two points that intrigued me. The first one was, you said, the new procedures for identification of suspects, the proposed Witness Anonymity Orders which will boost prison officers who face threats daily in their work environment. So I get from this that you are supportive of the Witness Anonymity Orders for prison officers. Could you expand a little bit about this so we can get some meat to the submission?

Mr. Clarke: Senator, as you know prison officers, many prison officers have been killed in Trinidad and Tobago over the last few years, and some of the challenges we face is the issue of threats against prison officers. Many times in the normal course of their duty, prison officers have to take action in terms of disciplinary matters against some of our charges. In some cases these matters come to court and the officers' lives are threatened.

And in many cases as well, once it gets to court, as you know with the discloser and so on, the name and address of the officer is disclosed to the defence in court, this then brings a lot of fear in the environment to the officers.

So if the officers can give the evidence in court anonymously then, of course, that will allow some of the matters to be better heard to be brought to trial, so that the officers safety and security will be better addressed once they are allowed to testify in that matter.

Mr. Vieira: Right. So this is a very real risk that you live with in your work environment?

Mr. Clarke: Continuously.

Mr. Vieira: My second point, you raised concerns about children committed to rehabilitation centres. Could you expand on that, please?

Mr. Clarke: That was directly as it relates to the appropriate adult persons coming to visit, again, going back to what Mr. Ferette had indicated, attorney or police persons coming to interview children under the age of 18 without having the necessary appropriate adult present, that is, of course, a concern for us.

Mr. Vieira: Thank you.

Mr. Chairman: Member Hosein.

Mr. Hosein: Thank you very much, Chair. Senior, I just have another question for you. When you started off your submission, you spoke about the use of photographs in assisting the witnesses to identify the relevant suspect. Now, Senior, we have heard submissions from the DPP with respect to this matter that photographs should only be used in certain circumstances, and I want to get your view wearing your defence hat, of course. If the suspect is in custody, do you think that in light of the fairness of the identification procedure that has to take place afterwards whether or not photographs should be shown to the witness prior to the identification procedure if the suspect is in custody?

Mr. Peterson SC: No, I saw them as alternatives. I thought you use the photograph, the mode of photograph as the mode of identification. If you intend on having an ID parade which would be the best process, that is the first best step, the formal, what I could call the traditional ID parade, then that is the first best practice. If you do not, I always saw the photograph identification by the use of photographs to be an alternative mode of identification.

Mr. Hosein: Because my interpretation from reading the Bill is that the photographs are not one of the identification procedures, because if you look 12E of the Bill it sets out five procedures which are video then the “identification parade”, then “public place with consent of the suspect”, then “public place without the consent of the suspect”, and lastly, “confrontation”.

Mr. Peterson SC: Yes, but you see, all of these—that is why I thought it was a mode of identification, it might be a matter of drafting. But if you notice all of these presupposed the custody of the person. So you have an ID parade by video, you have the person done by video, by public you have the person to take into the public with their consent, you have all of these presupposes, the physical custody of the person.

What I understood the photo identification mode to be is, where you are investigating, you do not yet have the person nabbed, but you need to get to the identity of the person that you are pursuing, then you use the photos. Because these modes in 12E presupposes physical custody of the person.

Mr. Hosein: Because I think it will be—a defence will have a field day—

Mr. Peterson SC: Yes.

Mr. Hosein:—if you show the witness photograph—

Mr. Peterson SC: Yes.

Mr. Hosein:—before you conduct—

Mr. Peterson SC: Right. Because once you use the photographs, you will have a difficulty thereafter mounting a parade having shown them the photographs. What I think, you could be employing subsequent to that is a—I am looking for the phrase—verification. Right. A verification process, and the verification could be obtained in two ways. The person may identify the person by photo and say, “that photo”, but they may not know their name, so they could verify that this is the person I have been referring to as “Bubba boy”, for example, to use an alias, or in a recognition situation where I know “Bubba boy” for 20 years, when they hold “Bubba boy” whose name is John James, he will then have to verify that the “Bubba boy” I spoke about is this person who is John James.

Mr. Hosein: Okay. Point taken, Senior. Thank you.

Mr. Chairman: Member Thompson-Ahye.

Mrs. Thompson-Ahye: With regard to vulnerable witnesses who are vulnerable witnesses and their eligibility for special measures. In (a) the first category we looked at the age, the legislation speaks about the “age or immaturity of the witness”, and it goes on, “physical disability”, “trauma”, “fear of intimidation”, “the witness being a virtual complainant”, but the Youth Justice and Criminal Evidence Act 1999 was amended by the coroners and justice Act 2009, I believe it was, that came into force in 2013, and the effect of that is that there is automatic eligibility for a child. So once you are under 18—that is one.

Now also, if it is an offence involving a weapon like knife or gun, you know, that is an important consideration as well that makes it eligible. Do you think that our legislation would be improved by actually specifying that?—instead of having it broad as age or immaturity of the child that, you know, you are automatically eligible and then, you know, you have the enquiry. Mr. Legal Aid, do not look on your right, I want you to answer; Mr. Benjamin, I mean. *[Laughter]* Children Authority. Sorry. No. I saw him looking across.

Mr. Peterson SC: I always thought it was Mr. Benjamin.

Mr. Benjamin: I was waiting on the good Chair, to let me know when to start.

Mr. Chairman: The member did, in fact, start off directing to one person, and we landed by you, which is where we planned to end up anyway.

Mr. Benjamin: And which is where, thank you, Chair, I plan to start, and I know we have an order in the document, but because of this seriousness of the discussion in relation to the anonymity and that area, I want to start there. And I want to preface by saying off the bat that children should fall into a category even without having to make an application to the court. I think that once you are a child and you are in relation to any form of abuse, that you fall under that category without any application to a court. Additionally, we are looking for an extension in relation to persons who may make reports in relation to abuse of children.

Over the last five years of our operation one of the greatest challenges that we have been facing with is reporting of abuse. Not just reporting of abuse, but follow up and follow through to prosecution. And so what we are seeking to do via this important piece of legislation here, is to include persons who may make an application or make a report to the Children's Authority about an abuse, and we are looking at it from two perspectives. We are looking at it from one perspective that person has to cover, and so we made some indication medical profession, educators, the neighbour or the father in a home or the mother, whomever it is.

But the second part of this is that, if this person should be called to testify, that again, should have the cover of this Act, where that if you are to testify about an abusive situation, through our forensic interviewing process, you can have that cover. Yeah?

Mr. Chairman, we have established by the Children Act our Forensic Science Centre where you can have forensic interviews, the two-way mirror, the recording, the video conferencing and stuff like that, but there has been a reluctance to use it thus far, whether or not it is for fear of newness or it is untested so far, but we have within our purview at our assessment centres that ability. And so we want to be able to utilize that facility to record these statements, and to be able to give the persons or the child or children that level of protection by utilizing that.

As it stands, the CPU, the Child Protection Unit of the police service, works hand in hand with us, and they are present to record these statements, yet we are having challenges with it going forward as evidence. Right.

4.35 p.m.

And so with me today is Sharlene Jaggernauth, Legal Services Manager, who has ably pointed out that under the new clause 12Q that is where we are seeking to have an extension, not just investigating officer, but the Children's Authority of Trinidad and Tobago added. Also, under 69—

Mrs. Thompson-Ahye: What page?

Mr. Benjamin: Under Recording of Interviews, the new clause 12Q. And so under this area of special measures we are seriously advocating for that inclusion, for the protection of children. I would now move to the first area on our submission, which is that of provision for recording of interviews.

Mr. Chairman: Okay Chairman and I gather from the written submission that you are seeking to have the Children's Authority included in the specific section of the Bill.

Mr. Benjamin: Correct.

Mr. Chairman: And in the opening I referred to that, because you believe that where the Authority itself takes statements, and you just alluded to it, video recorded statements, it should be covered by this Bill.

Mr. Benjamin: Correct.

Mr. Chairman: I would now ask you to go to your second submission which deals with 12X of the Bill.

Mr. Benjamin: And so for this point I would ask our Legal Services Manager to guide us through, and I will assist as needed.

Mr. Chairman: Ms. Jaggernauth.

Ms. Jaggernauth: I am grateful, Chairman, members of the Committee. The point to be made in relation to the proposed section 12X which speaks to—it prescribes procedures for the taking by the police of oral admissions given by accused persons who are giving statements. What we see here, the wording of this section actually assisted us in identifying a lacuna in the law that is very applicable to our process insofar as we are straddling both as the agency with responsibility for child protection, there is a straddling of that area between civil arena, the public law element in which we seek care orders, and wardship orders from the Children Court, and then there is the other element that is dealt with by the CPO, which is the criminal prosecutions of those matters. So that this straddling will take place in relation to pretty much, a matter arising out of the same case, the same report being made to different agencies doing separate investigations for that report.

Now, our investigation would include the civil investigation, that would involve both our clinical interviews as well as in depth assessments of both the child victim and the potential perpetrator of the act, and during that process in many occasions we have situations in which oral submissions are made. Lo and behold thus far, have we seen any provisions which treat with the admissibility of that evidence in the taking through the civil investigation process in the criminal proceedings that are related. We understand that it will, of course, be a contentious issue. In other jurisdictions there are difficult approaches that are taken.

In the UK, for instance, there is a provision for joint case management by both courts. So, what we are just asking at this point is that consideration be given, whether it is in this Act or perhaps in other law, but there is need for some regularization of that area. How do we treat with oral admissions made to the Authority, and the admissibility, which is critical to the prosecution of the re-related criminal offence. That is the crux of the submission in that regard.

Mr. Chairman: All right, thank you very much, and I know at least one member has already turned in my direction and said this is going to be very contentious.

Ms. Jaggernauth: It will.

Mr. Chairman: We appreciate the submission. Your third submission as I alluded to earlier deals with similarly the extension of provisions in the Bill, and in particular 12AA and 12AG, to the proceedings of the Children's Authority. Is there anything in that submission you would like to highlight beyond what is in the written submission? We understand we have also heard from the

Trinidad and Tobago Police Service, the need to have those provisions as similar provisions extended to cover some of their officers.

Ms. Jaggernaut: So, with respect to section 12AA, the special measures, now, a lot of this already exists by virtue of the Children Act at Part 13 deals with the application, where again the court has the discretion or the jurisdiction to hear applications which would allow the court to put in place certain—special measures in place to protect the vulnerable witnesses. We are saying that it would be prudent to include a provision that would cover also victims of things like spousal abuse, which we also see coming up in our matters. Yes, that is the crux of our argument.

Mr. Chairman: Okay, I see members nodding in agreement and maybe happiness. I do not see any of my members trying to get my attention, so I want to proceed to thank the three groups which are before us today, Legal Aid and Advisory Authority, Senior Counsel Gilbert Peterson. I was watching the clock. We have cost you maybe an hour and a half. *[Laughter]*

Mr. Peterson SC: I would apply the published rates of the Judiciary. *[Laughter]*

Mr. Chairman: And I was about to say that you having extended to this country a lot of public service, and we appreciate and we appreciate the team you have brought from the Legal Aid today.

Mr. Peterson SC: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Clarke, thank you very much for taking time. We know you have a lot of work to do. We appreciate having your team here with you, your legal officer who has provided support to you. On behalf of the Committee we want you to extend to Mr. Wilson thanks for his service, and we wish him well in his retirement. Mr. Benjamin and Ms. Jaggernaut you have been before various committees of the Parliament, we appreciate your contribution, your written contribution, your submissions before us today, and if there is anything all three stakeholders wish to contribute further, you can do so in writing. And to the members of the public who are listening now and viewing on television and who would listen later on and view the rebroadcast, we thank you very much for your participation. Members of the Committee, representatives from the Office of the Attorney General, and the Chief Parliamentary Counsel, and of course the Secretariat provided to us by the Parliament, and of course the media. I see Mr. Douglas in the corner there, thank you very much for covering and for reporting fairly and accurately on these proceedings. Thank you very much. This meeting is adjourned.

4.43 p.m.: *Meeting adjourned.*