

VERBATIM NOTES OF THE FOURTH MEETING OF THE JOINT SELECT COMMITTEE ON FINANCE AND LEGAL AFFAIRS, IN THE ARNOLD THOMASOS ROOM (EAST), SIXTH FLOOR, TOWER D, PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE, #1A WRIGHTSON ROAD, PORT OF SPAIN, ON FRIDAY, MARCH 18, 2016 AT 9.50 A.M.

PRESENT

Ms Sophia Chote SC	Chairman
Mr. Michael Coppin	Member
Mr. Clarence Rambharat	Member
Mr. Randall Mitchell	Member
Mr. Wayne Sturge	Member
Mr. Julien Ogilvie	Secretary
Ms. Cindy James	Research Assistant

ABSENT

Miss Marlene Mc Donald	Member
Dr. Lovell Francis	Member [<i>Excused</i>]
Mr. Prakash Ramadhar	Member [<i>Excused</i>]

Madam Chairman: Good morning all. This meeting is called to order. This is our fourth meeting. We have some apologies; Dr. Francis has sent his apologies, he is unable to attend; Mr. Ramadhar is unable to attend; and I understand Mr. Sturge will be here, but he said he will be a bit late. Miss Mc Donald is tentative, I am not quite sure.

What I propose to do, because we have started so late, is to deal with the most important things that we have to do before we reconstitute in the public arena. So, could we just go straight to the Minutes, please? Has everyone had a chance to

look at the Minutes?

Mr. Rambharat: I have read it.

Madam Chairman: These are the Minutes of February 19, 2016, so I am just going to run through page by page. Do we have any amendments or corrections to Page one? No?

Mr. Coppin: No.

Madam Chairman: Two?

Mr. Coppin: No.

Madam Chairman: Three?

Mr. Coppin: No.

Madam Chairman: Four?

Mr. Coppin: No.

Madam Chairman: Five?

Mr. Coppin: No.

Madam Chairman: Six?

Mr. Coppin: No.

Madam Chairman: Seven?

Mr. Coppin: No.

Madam Chairman: Eight?

Mr. Coppin: No.

Madam Chairman: Nine?

Mr. Coppin: No.

Madam Chairman: Ten?

Mr. Coppin: No.

Madam Chairman: Eleven?

Mr. Coppin: No.

Madam Chairman: May I ask that someone move that the Minutes be confirmed?

[Confirmed by Mr. R. Mitchell]

[Secinded by Mr. M. Coppin]

Madam Chairman: Thank you. May I congratulate the Secretariat for producing a document which is free of any requirement for amendment or correction.

Now, I would like you to look at Page 3, Item—sorry, that would be 5.10. I just want to confirm that members have got the email which had been sent on March 15 with respect to their response, Ministry of the Attorney General and Legal Affairs. Do you all have that?

Mr. Coppin: Yes.

Madam Chairman: Now, the next thing that we propose to look at is a draft proposal for an enquiry into the effectiveness of systems and policies intended to alleviate anti-competitive practices among firms in Trinidad and Tobago. Sen. Rambharat, I would like to have your input here, because you had mentioned at the first meeting that you wish to have food fraud as a priority, would that be encompassed here?

Mr. Rambharat: Yes.

Madam Chairman: Okay.

Mr. Rambharat: The issue of food fraud; I had raised labelling and proper disclosure of origin of products and—

Madam Chairman: Your microphone.

Mr. Rambharat: I had raised the issue of food fraud which encompasses the issues of product labelling; issues at the Customs Division relating to applying the

right tariff and inspecting the goods, and also, issues relating to the origin of the product.

Madam Chairman: And, Mr. Coppin from your perspective what would this enquiry include?

Mr. Coppin: Well, it would include a holistic look at the entire economy and different sectors, which I have seen mentioned here, with regard to the type of our institutions that would be calling for enquiry. But, I did not for instance see the Telecommunications Authority of Trinidad and Tobago, which I thought, perhaps, could be included given the fact that they are perhaps the most organized or developed regulatory institution in the entire country and, I guess, lessons could be learnt from their experience. And, given the fact that the legislative framework and regulations are so much developed in the telecommunications industry, maybe, we ought to probably be looking at them as a potential big brother for the regulation of the other industries in the economy. So, that is what I was thinking.

Madam Chairman: Mr. Mitchell how do you see this enquiry proceeding? What would be the matters?

Mr. Mitchell: Which enquiry?

Madam Chairman: The proposed enquiry into the effectiveness of systems in relation to anti-competitive practices. If you look at 6.2 on Page 3 of your Minutes.

Mr. Mitchell: Madam Chairman, I think we would have to enquire into the Bureau of Standards and any other authority, coming from what Sen. Rambharat said, the Bureau of Standards. And I think there is some agency that deals with anti-competitive practices, and there is also legislation, and we would want to know the effectiveness and any successes that that agency would have achieved.

Madam Chairman: Right. Okay. The way I see it is that if we embark upon an enquiry which deals with anti-competitive practices in every sector it is going to be too huge. So, we need to have some focus, and perhaps we could word it a little differently from how it is set down in the Minutes, but I would like to have your input into that. So, could you all email me and the Secretariat to see how you think that this should best be worded? [*Secretary confers with Chairman*] And, Mr. Ogilvie is reminding me, there is a proposal that you could look at for reference.

No, with respect to TSTT, remember TSTT had found itself in a bit of difficulty and had to be taken to court a few years ago for this very thing, anti-competitive trading. So, I do not know that they would be the best—

Mr. Mitchell: He is talking about TATT.

Madam Chairman: T-A-T-T? Okay. We have a Fair Trading Commission, do we not?

[*Members assent*]

I was thinking that it might be useful to find out what they do, how they do it, as a starting point. Has anybody here had any experience with the commission?

Mr. Rambharat: Madam Chairman, the commission seem to, very recently, in fact, this week spark to life. They had been dormant for a while and I was surprised to see there is something coming up. The chairman is former Justice Amrika Tewarie, and I saw that they are going to have something, I cannot remember the details, but I know that they had been dormant for a while.

But, my interest is, of course, food and what we talked about. But, in terms of the public interest, this Telecommunications Authority on two levels: one, the whole cellular phone issue relating to billing and charges; and two, the other issue of the provision of cable services in the country. We have new players coming,

new products coming on; we have the issue of zoning. So, for example, people in Rio Claro are stuck with one provider; people in Mayaro are stuck, and there is a reason for that. But, I am not sure the extent to which that benefits the customer. So, I would like to push what I raise. But, in terms of the wider interest of the public, telecommunications may be a good area, which Mr. Randall Mitchell may not be happy with as it falls—no, no, sorry, up until yesterday it fell in his portfolio.

Mr. Mitchell: Madam Chair, I would concur with an enquiry into food and the anti-competitive behaviours of, let us say, supermarkets and the oligopolies that the population believe exist.

Madam Chairman: Yes, I agree. I think we should start with food, because I think it is a matter of common interest to everybody in society. I mean, while it is interesting to look at service providers such as Flow and so on, those are luxuries.

Mr. Rambharat: Yes, I agree with you.

Madam Chairman: So, we can start with the issues of food fraud, labelling, tariffs, inspections. So, I think the first two groups that we would want to hear from would, perhaps, be the Fair Trading Commission and the Bureau of Standards. And, I suppose, the Secretariat will guide us along as to who else might be able to assist.

Mr. Mitchell: The Supermarket Association.

Madam Chairman: The Supermarket Association, yes. Any other? Any other group that you can think of offhand?

Mr. Rambharat: The Ministry of Trade.

Madam Chairman: Ministry of Trade.

Mr. Rambharat: The Bureau of Standards, Consumer Affairs fall under the

Ministry of Trade.

Madam Chairman: Right. Poultry Farmers Association—

Mr. Rambharat: There is a very strong poultry association and those are the sectors, so, they would be helpful.

[Mr. Sturge enters Committee room]

Madam Chairman: Right. So, I suppose if we look in the agricultural sector we would find different groups that we may want to hear from. Sen. Sturge, just to bring you up to date—

Mr. Sturge: Madam Chair, sorry to be late.

Madam Chairman: Yes. What I decided we would do is we would shorten this meeting because I do not want to have the members of the public who have come here for 10.00 o'clock to be waiting for too long. So, I have decided that we will try to be down there for 10.15. So, we have gone through the Minutes, and what we have just discussed is the next issue which we want to have an enquiry into, and that is the effectiveness of systems and policies intended to alleviate anti-competitive practices among firms in Trinidad and Tobago, and we want to have a particular focus on food fraud and matters relating thereto. So, after this enquiry is concluded that would be the next thing that we would be considering.

Mr. Sturge: I hear you, Madam Chair.

Madam Chairman: Now, do we need to hear anybody else with respect to the current enquiry? The two groups who we had some difficulty getting information from were, unfortunately, the Law Association and the Judiciary. So, the president of the Law Association, I think, has indicated that they are prepared to give something in writing, and I suppose we can have Mr. Ogilvie write to them to see if they can give us that within 14 days.

The Judiciary, I have heard nothing from them since, but Mr. Ogilvie can write to see what their position is, if they wish to have an input or not. But, I think, that we cannot wait indefinitely. So, I am suggesting that we move ahead with another enquiry and say that this will be our last meeting on this issue subject to whatever anybody else may wish to send in to the Secretariat, and there will be different electronic portals that they can use to ensure that we get their input. Is that agreed?

Mr. Sturge: Just one request, do we have any intention to ask the Criminal Bar Association to make representations? I believe Mrs. Elder is the president.

Madam Chairman: Did we do that?

Mr. Ogilvie: We wrote to them.

Madam Chairman: You wrote to the Criminal Bar?

Mr. Ogilvie: Yes.

Madam Chairman: Okay. Well, perhaps we could also write a little reminder to Mrs. Elder. I know she was unwell for a bit, so, we will see how that goes. I will ask Mr. Ogilvie to indicate who we expect to have downstairs.

Mr. Rambharat: Madam Chair, just before we go, I agree that the Criminal Bar should have an input whether it is in writing. Because, going back to the Judiciary's annual report, one of the things that struck me was something that, I think, the public does not pay attention to. The fact that a point was made, there is just a small group of criminal defence attorneys working on several trials, and many times the courts could only focus on one or two because of the unavailability of counsel. And I think that is an important point.

But, out of, maybe, more than courtesy, maybe we could write to Prof. Ryan, find out from him, if there is anything further he would like to add to his

report or anything he wants to draw to the Committee's attention. Again, just because I found that that report was so comprehensive and addressed a wide range of issues including the ones that we have considered—

Madam Chairman: Well, there is no harm in that.

Mr. Rambharat:—thank you.

[Secretary confers with Chairman]

Madam Chairman: Okay, I understand that we do not have to go through the list because you have received a document, it has been circulated to everybody, with respect to who else is expected downstairs. *[Secretary confers with Chairman]* And I take it you all also have the issues papers which had been sent around to you? If anybody wants hard copies say now or forever hold your peace, because it can be organized upstairs here, but it might be a bit more difficult when we go downstairs. *[Secretary confers with Chairman]*

All right, what the Secretariat is proposing is that our next meeting will be on Friday, April 15, 2016, how does that look for you all? Is that convenient? Mr. Toppin I would like to have your feedback because it may be that you may have to Chair that meeting?

Mr. Coppin: When it is?

Mr. Ogilvie: The established meeting date, “eh”.

Mr. Coppin: When is the established meeting date?

Mr. Ogilvie: Every third Friday.

Madam Chairman: The 15th.

Mr. Coppin: Yes, that is convenient. And it is C-O-P-P-I-N.

Madam Chairman: What did I say?

Mr. Coppin: Toppin.

Madam Chairman: No, no, what must have gotten into my head. I apologize.

Mr. Coppin: All right.

Madam Chairman: Okay. So, may I then suggest that this meeting be suspended and we reconvene downstairs on the Mezzanine floor for the public hearing to continue. Is that all right with everybody?

Mr. Coppin: Yes, Madam Chair.

Madam Chairman: Thank you all very much.

10.13 a.m.: *Meeting suspended.*

10.20 a.m.: *Meeting resumed.*

OFFICIALS

Ms. Ingrid Seerattan	Permanent Secretary
Ms. Lydia Jacobs	Permanent Secretary
Mr. Roger Gaspard SC	Director of Public Prosecutions
Mr. Nicholas Suban	Senior Project Manager
Mr. Israel B. Khan SC	Director/Chairman Legal Aid and Advisory Authority
Ms. Nancy A. Arneaud	Secretary Legal Aid and Advisory Authority
Mr. Richard Ragoobarsingh	Asst. Secretary Legal Aid and Advisory Authority
Ms. Joan Eversley-Gill	Head Legal Legal Aid and Advisory Authority

Mr. Travers Sinanan

Barrister and Attorney-at-Law

Madam Chairman: Good morning all. I want to welcome you to the second public hearing of the Joint Select Committee on Finance and Legal Affairs. I also would like to welcome those viewing on the Parliament Channel, listening on the Parliament radio, or looking at the Parliament's YouTube channel. I would like those of us not actually in the room to recognize that you all can send comments to us via email at parl101@tpparliament.org, or you can go to our Facebook page where you can tweet us a comment at [tpparliament](https://www.facebook.com/tpparliament). I also want to welcome officials of the Ministry of the Attorney General and Legal Affairs; the DPP; the Director of Legal Aid; Mr. Travers Sinanan; and other officials from legal aid and other bodies.

For the purposes of the viewing audience, I am going to introduce myself and ask other persons at this table to introduce themselves before we proceed. My name is Sofia Chote and I am the Chairperson of the Committee which is holding this enquiry. I am a Member of the Senate of the Parliament of Trinidad and Tobago.

[Members of the Committee introduce themselves]

Madam Chairman: Now, Mr. Coppin is my Vice-Chairman, so, in effect if I am not here he is the Chairman, so he is not entirely incorrect.

Before we begin, I want to reread the enquiry objectives, because I want that there should be no mistake or misconception about the ambit of what we are considering. We have four objectives:

1. To gain an appreciation of the number of outstanding matters, indictable and non-indictable, before the criminal courts.

2. To understand the systemic reasons for the backlog of cases in the criminal courts.
3. To understand the efforts being made and the challenges that exist in alleviating the backlog.
4. To make recommendations for the improvement of the system of criminal justice both in the short-term and long-term.

Now, how I propose to go through this morning session is to have opening statements from those persons who are here and then perhaps we can have questions from members of the Committee. But, what perhaps would make this whole process a little easier to follow, is if we all introduce ourselves. So, I am going to ask members at the table of contributors, if we may start from this end, perhaps with Mr. Sinanan.

[Officials introduce themselves]

10.25 a.m.

Madam Chairman: This Committee is pleased to welcome a star-studded bench for this morning session. I know that there are law students and officials sitting at the back, so we welcome you and we look forward to your continued interest in this Committee's work.

Mr. Gaspard, I was wondering whether I can invite you to start off with your comments.

Mr. Gaspard SC: Madam Chairperson, before I embark on any comments in relation to this morning's exercise, might I hasten to apologize for the late submission of my responses in relation to the questions that would have been forwarded to me via the Permanent Secretary on behalf of this body.

I am merely enquiring now whether or not members of the Committee are in receipt of any documents or responses from the DPP's office.

Madam Chairman: No. We have not received those submissions, Mr. Gaspard SC.

Mr. Gaspard SC: I see.

Madam Chairman: Can you assist as to when they were sent?

Mr. Gaspard SC: It would have been sent sometime yesterday afternoon.

Madam Chairman: I see. Okay. Well, perhaps because of the time of the afternoon that it may have been sent, it has not yet reached us, but perhaps I can make an enquiry to see if we can have copies brought. Would you want to highlight some of the issues you had dealt with in that document?

Mr. Gaspard SC: Yes. Well first of all, Madam Chairperson, I did receive a copy of the Committee's list of questions which we would have attracted the responses that I would have submitted only yesterday. And if I might direct the Committee to three questions in particular which appeared to pertain specifically to the Office of the Director of Public Prosecutions. The letter in question is dated January 27, 2016 and the three questions are, first of all, what measures are being taken to build the capacity of the Office of the Director of Public Prosecutions and to ensure that it is sufficiently resourced? That was the first question that I thought directly attracted a response.

The second one was, what is the ratio of attorneys to criminal cases in the Office of the Director of Public Prosecutions by area or region? What is the international average and how does it compare to Caribbean countries? And the third question, is there sufficient number of attorneys practising criminal law in Trinidad and Tobago to ensure meaningful access to justice? I think that would

attract the attention of, not only persons in the DPP's office, but perhaps legal aid and the entire criminal justice system.

In relation to the first question, what measures are being taken to build capacity of the Office of the Director of Public Prosecutions and to ensure that it is sufficiently resourced? Since January 12, 2012, I had established a steering committee which is chaired by the Deputy Director of Public Prosecutions, Joan Honore-Paul. And the remit of that committee was to assess the needs of the office and to report to me on the capacity on sufficiency of resources at the department.

The charge of that committee involved an assessment of our staffing needs, case management needs and our needs as far as they pertain to accommodation. In respect of staffing, representation had been made or has been made to the Attorney General's Office and to the Attorney General to expand our staff complement to about 100 to 137 legal posts on the establishment and 100 non-legal or support posts. By Cabinet Minute No. 1450 of May 23, 2013, and approved on May 29, 2013, the new organizational structure as proposed was approved by the Cabinet. Having regard to our limited accommodation and with a view to absorbing contract staff first, the department advised that we would recruit on a phased basis. Obviously we did not want to seek to recruit persons without having the capacity to house them and at the time and at present we do not have the capacity to absorb the full complement of staff, hence the reason why we suggested that we recruit on a phased basis.

We therefore advised the Human Resource Department on a number of persons, falling short of the full complement, would be required to fill the posts of State Counsels, I, II and III. A number of persons filling the posts of State Counsels II and III were therefore appointed, thus allowing mid-level contract staff

to be taken on onto the establishment. It is to be noted, Madam Chairperson, that Cabinet approved a staff complement of 46 attorneys for the post of State Counsel II, 10 of which are currently occupied. Approval was also granted for a staff complement of 25 State Counsel III positions, 14 of which are currently occupied. We continue to await the interviews for the positions of State Counsel I since we have a number of persons who are working on contract for three years who can fill these posts if selected by the Judicial and Legal Service Commission.

Cabinet has also approved a staff complement of 33 attorneys for the position of State Counsel I, currently none of these positions are filled. It was agreed in a meeting with the Director of Personal Administration since July 7, 2014 that after the positions of State Counsels I, II and III were filled a request would be made for senior posts to be filled. However, upon completion of the interviews in 2014 for the posts of State Counsels II and III, our enquiries have revealed that no further interviews have been held.

In the case of case management, after several meetings with the IT and Facilities Management department of the Attorney General's office, it was decided that we would seek to have recruited a software company, namely, Digital Business limited to create a case management system suited to our peculiar needs. The case management system was to facilitate the eventual move to a paperless system which is the ideal. The system was designed to accommodate the setting up of units in the Director of Public Prosecutions—specialized unit I should say. And these units include a homicide unit, a financial crimes unit and a narcotics unit. It is envisaged that after the intake of files into the system the files would be allocated to each unit head and thereafter assigned and tracked through every stage to completion, thus, allowing communication between unit heads and the assigned

attorneys.

The case management system is also designed to house authority's cases and documents relating to each file. The system also provides reminders regarding legal requirements, timelines and outstanding task leads as they relate to each file. The system is therefore expected to create an improvement in our level of efficiency. Suffice it to say, that the system has had a number of trial runs and there are certain kinks that are currently being worked out.

With respect to accommodation, the steering committee, on the understanding that an increase in staff would require a concomitant increase in accommodation, recommended that our spatial requirements in Port of Spain and San Fernando be increased. It has also recommended that an office be set up in Tobago since, and the unsatisfactory conditions existing in the San Fernando office has also fuelled a burning need for better accommodation. These recommendations would have been advanced and championed with the Attorney General for the better part of the last, perhaps two years. After viewing a large—several locations I agreed to an office location in Gulf City, Tobago after being invited to view same by the then Attorney General. Currently, NIPDEC is in the tender phase of the project in order to acquire a suitable contractor to outfit the Tobago office in accordance with the approved designs.

Further, we have selected a Gulf City location for the San Fernando office since it had proven particularly problematic to get an office within close proximity of the court which would meet our needs. At the instance of the then Attorney General I viewed office space at the Gulf City location and I made a recommendation in favour of that space. We have been advised by the Facilities Management department that the Property and Real Estate Services Division is yet

to organize a valuation so that negotiation may begin with regard to the rental price. We are considering a location also at the Corner of Park and Henry Streets, Port of Spain. It is expected that we will make a final decision as to whether or not—or whether and to what extent, I should say, that building will be suited to our needs by the end of next week. That is the building that currently houses the RBC Bank.

There were some additional concerns as well. The DPP's office has been faced with a perennial problem of chronic haemorrhaging of experienced staff and, I dare say, inexperienced staff from the department. Other Ministries which offer more attractive remuneration packages have been the beneficiaries of these departures. The main reason for exiting the department has been the glaring disparity between pay packages of those Ministries and that of the Office of the DPP. This has also led to growing discontent among attorneys at the department. Junior staff have left for Legal Aid and Advisory Authority and the Ministry of Justice while staff with five years' experience and more have left for the Magistracy and senior legal posts at other Ministries.

Fourteen attorneys have effectively resigned over the last three years to join the Legal Aid and Advisory Authority or work privately for more attractive packages. Attorneys who have departed within the last five years have stated unambiguously that their remuneration while at the DPP's office was one of the principal reasons for their decision to leave. As a result of this haemorrhaging, several vacancies have arisen at senior levels within the department. Currently there are two vacant posts for Deputy Director of Public Prosecutions, four posts—and I should say that would be two out of three. Four posts out of the 6 posts which makes up the complement for Assistant Director of Public Prosecutions are

currently vacant. And in respect of the posts of Senior State Counsel, 14 of those posts are currently vacant. The department has also been unable to attract experienced staff at the more senior level on account of what, in my view, is an unattractive remuneration package for persons who can boast of over five years of experience.

Prosecutors, perhaps unlike any other officer in any other state department, face clear and present danger in the conduct of their duties. They are viewed as being, at least in part, responsible of a person brought before the courts and being sentenced to terms of imprisonment. They are objects of disaffection and there have been incidents in which prosecutors have been vilified and threatened by accused persons and their families and supporters in and out of court. Prosecutors have had to make reports to the police and to be escorted to and from court under armed police guard. The exposure to risk includes travelling all over the country and keeping late hours. The risk also extend to their children, spouses and other family members, and to protect them prosecutors have had to expend large sums of money for security measures especially in light of the brazen acts of violence which are common place in our society.

One reason why competent persons shy away from prosecution is because of the exposure to these risks. Interestingly, and instructively job descriptions for all state counsels seem to contemplate and recognize this risk by including what is termed “safety precautions”, the words “safety precautions”, may be necessary. With the prevalent use of cellphones even by prisoners, prosecutors have been subjected to threatening text messages and calls from accused persons and their assigns during the day and night. Owing to the increase in the violent nature of prisoners, prosecutors have had the terrifying experience of having missiles thrown

at them, as are magistrates, and on at least two occasions, prosecutors have also had to brave the exchange of bullets when accused persons saw it fit to carry out their intentions in very close proximity to court compounds.

It is a matter of public record that Ms. Dana Seetahal, SC, was violently assassinated while driving her vehicle in the vicinity of Woodbrook, Port of Spain. She was a prosecutor with an insurmountable wealth of experience and it was not uncommon for her to lend her services to the DPP's office. At the time of her death, Ms. Seetahal was heavily involved in a number of high profile matters which would have engaged the attention of the department and I dare say, this untimely demise would have also contributed to persons seemingly shying away from seeking to enter the DPP's office even on a contractual basis.

Because of these risks, I would have had discussions with at least one Attorney General with a view to exploring the prospect of a risk allowance being advanced for members of the DPP's office. I also canvassed this prospect before the Salaries Review Commission for their consideration. The Ninety-Eight Report of the Salaries Review Commission of the Republic of Trinidad and Tobago dated November, 2013 however, highlighted that they were unable to recommend the introduction of any new allowances at that time. The Commission further indicated in the said report that security arrangements were not considered to be a term and condition of employment of office holders and recommended that the matter be dealt with administratively, whatever that means.

In 2010, legislation was introduced to protect the interest of witnesses who are in fear of exposure to risk to their family and themselves. Provisions were made whereby the statement of a witness in fear can now be read to the court without having the witness himself present for the trial. Despite this, the concerns

of the high exposure to risk of members of the DPP's department seem to go unacknowledged. The Salaries Review Commission highlighted in the said Ninety-Eight Report in 2013, that the payment of all extra allowances should have been considered in an upcoming job evaluation exercise and compensation survey. To date, the said evaluation and compensation survey, I understand, is yet to be completed.

With respect to that issue I alluded to earlier, just by way of some amplification, the issue of the retention of experienced staff, the department as I intimated earlier continues to suffer from the hemorrhaging of State Counsel, most painfully those at middle to senior level. Bearing in mind, the average complement of staff for the department ranges from 30 to 50 prosecutors. The following statistic serve to further accentuate the hiring reality which confronts the department. Between 2000 and 2003, there were eight resignations from the department, six of those concerned persons who are between four to seven years' service. Between 2004 to 2006, there were 10 resignations from the department, seven of those concerned persons who had four to 10 years' service. Between 2007 and 2010, there were 22 resignations from the office, eight of those concerned persons who had seven to 20 years' service. Between 2011 to 2012, there were five resignations. Between 2013 to 2014, there were 13 resignations, and this involves four persons who had between five to 13 years' service and six of whom would have had about three years' service. Between 2015 and 2016, there have been five resignations, two of those persons were persons who had over eight years' service and two of whom had about three years' service.

If we look perhaps more microscopically at the staff complement at the DPP's office, the approved staff complement and approved as per Cabinet, as far

as legal staff is concerned, concern a total number of prosecutors of 130. The positions currently filled, 49. The number of vacancies, 99. If we look at the prosecutors assigned to the Magistrates' Court from the south office and from the north office, the north office serve the courts, I should say, North of Couva and the south office serve courts South of Couva. Attorneys from both the north office and the south office would also prosecute in Tobago.

There are 14 prosecutors currently assigned to the Magistrates' Court who operate out of the north office. The number of prosecutors in the Magistrates' Court—well first of all we should look at the number of Magistrates' Court in the north office. They amounted to 27 and 14 prosecutors basically operate in those courts. The number of Magistrates' Court in the south region amount to 15 and there are 11 prosecutors, state counsel, legal officers, attached to these courts.

If we look at the ratio in the Magistrates' Court, from the Port of Spain office, the ratio is one attorney to 38 matters. And from the south office the ratio is, approximately the same. At the Assizes in Port of Spain, there are currently six Assize courts. And I would have taken—looked at three-month periods in 2010, 2012, 2014, 2016, so as to establish a pattern and what it has revealed is that increasingly the ratio is progressing to the detriment of the public interest and is placing increasingly a huge strain on the office. Of the 66 matters in the High Court in Port of Spain in 2010, the ratio is one prosecutor to 66 matters. In 2012, one prosecutor to 78 matters. In 2014, one prosecutor to 84. In 2016, one prosecutor to 150 matters.

In San Fernando, the ratio is approximately one prosecutor to 72 matters. In Tobago, the ratio is one prosecutor to 44 matters. If we look at the situation as it obtains in Jamaica—first of all, the way the system, the criminal justice system is

structured in Jamaica and the way the DPP's office in Jamaica serves or deals with the criminal justice system it is such that they have what is called a Clerk of Courts. The Clerks of Courts strictly speaking are not members of the DPP's office. So the State Counsels assigned to the DPP's office are not Clerks of the Courts and the Clerk of the Courts tends to serve all the resident Magistrates' Court.

The attorneys attached to the DPP's office usually operate out of the Court of Appeal and the specialized courts and Circuit Courts. Prosecutors from the DPP's office also offer service both to the Jamaican Gun Courts and to the Rural Circuit Courts. Electronically, we have been able to source certain figures coming out of Jamaica and it is interesting to note that on average one prosecutor from the DPP's office handles approximately 19 cases per court term, from 2014 to 2016 in the Rural Circuit Courts, at a ratio of one prosecutor to 19 matters.

In the Gun Court the average is one prosecutor to seven matters. On average it can be said that a prosecutor from the DPP's Office of Jamaica may handle approximately 26 cases per term. If we look at the situation in Grenada, during the four year period of 2009 to 2013 the DPP's office in Jamaica would have had a ratio of one state attorney to 39 matters.

Madam Chairman: Mr. Gaspard, just an enquiry at this stage. What would be your ideal ratio for us in Trinidad and Tobago? Well give me a range.

Mr. Gaspard SC: Are you speaking generally? Or is the question looking to target the Magistrates' Court or the High Court or generally?

Madam Chairman: Generally.

Mr. Gaspard SC: I do not think that a prosecutor ought to be asked to be placed in conduct on more than 20 to 25 matters.

Mr. Mitchell: Is there an International Best Practice?

Mr. Gaspard SC: If there is, I am not aware of it.

Madam Chairman: I know you are going through your presentation, but I also wanted to find out with respect to the implementation of the IT system for case management, how soon do you think that that will be on track and fully operational?

10.55 a.m.

Mr. Gaspard SC: Madam Chairperson, I had expected it to be on track already, but owing to the kinks and to a certain degree of sluggishness, it is very difficult for me to say how soon it is expected to come on train.

Madam Chairman: Well, are we looking at six months, a year? Any idea?

Mr. Gaspard SC: I will expect it to be completed within this year.

Madam Chairman: All right. What I wanted to ask you as well, because I know that members of the public sometimes do not understand the process between committal at the Magistrates' Court and indictment by the director, can you tell us what is the current procedure for that process?

Mr. Gaspard SC: Well, first of all, because of the fact that we have preliminary enquiries, all indictable matters, before they reach the High

Court, they usually go through the committal proceedings or a preliminary enquiry hearing. After that hearing is completed, the evidence garnered during the hearing, together with some of the exhibits, are forwarded to the DPP's office by the respective clerks of the respective Magistrates' Courts throughout Trinidad and Tobago.

When these documents come to the DPP's office, we have an internal vetting system where the documents are perused by at least two persons before they are perused usually by the DPP or the deputy DPP for the preparation of an indictment. When that indictment is perfected and executed, it is filed into the criminal High Court registry and from there the matters go on to a cause list at the High Court.

Madam Chairman: Is it that the litigators, your advocates who are going to deal with matters in courts, are these the same persons who are required to do the office work prior to the preparation of the indictment?

Mr. Gaspard SC: All attorneys in the DPP's office are required to prepare draft summaries and draft indictments for the vetting of senior persons in the DPP's office.

Madam Chairman: And currently, is there any method by which the time factor is evaluated? So let us say a state attorney gets a file and has to do a summary and prepare draft indictment, is there anything within the administrative department which allows that department to say, well this file is too long on this attorney's desk?—for example.

Mr. Gaspard SC: Yes. What happens is that the distribution of files is reviewed by persons distributing files. In addition to which, from time to time there are special matters. Representations are made in writing. People

come off the street sometimes to the DPP's office, and in those cases, what would happen is that we tend to give those matters priority if we can. Very often, what you find happening is that matters—and the public tends to be unaware of this. But very often, especially coming out of Tobago, Arima and at one point Tunapuna, even after the preliminary enquiries would have been completed, the documents would take more than five years to reach the DPP's office.

So, accused persons, aware that their matters—the preliminary enquiries have been completed—they harbour a reasonable expectation for an indictment before the High Court in short order. Very often you would write—I would write—to the Ombudsman, attorneys in private practice and even to the members of the families of accused persons, to indicate that these files are yet to come to the office, and without the evidence contained in the files, I cannot prepare an indictment.

Madam Chairman: Do you think that legislation setting out a timeline for the transmission of documents from the magistracy to the DPP's office would be of assistance?

Mr. Gaspard SC: It should be of assistance, but there is legislation, for instance, setting out that magisterial officers, as a matter of law, must provide reasons for appeals, and when I do appeals, most of them do not have reasons.

Madam Chairman: Yes. Is there any way, in the absence of legislation, that an administrative link could be forged from your office with the magistracy so that your office is aware of files which are on their way to you?

Mr. Gaspard SC: Yes, I think that can be done. From time to time, what happens is that entreaties are made to the Chief Magistrate at the level of the head of the office, or the deputy DPP and sometimes also informally. These types of discussions are also had with the Chief Justice.

Madam Chairman: Yes, Mr. Gaspard, thank you for accepting these questions. I believe Mr. Sturge has a question.

Mr. Sturge: Mr. Gaspard, in light of the fact that it takes—and I am not casting blame your way, just yet—but the time between a charge being laid and a person coming to trial, finally, in Trinidad and Tobago, is around, on average, eight to 10 years. In Jamaica, as we have seen with Vybz Kartel and the taxi-driver who was charged with the murder of former Minister Coudray's son—

Hon. Member: Daughter.

Mr. Sturge:—they were brought to trial within two years. Can you give any indication as to what is different in Jamaica that will enable such a society of comparable violence to deal in such a short space of time with murder trials, as opposed to our situation where we take eight to 10 years?

Mr. Gaspard SC: Yes, I can. One of the reasons why we might take eight to 10 years is because of the fact that Trinidad and Tobago faces—the respective stakeholders in the criminal justice system, I think they face certain challenges. For instance, in Trinidad and Tobago, say, unlike the system in St. Vincent, we have a situation where persons, if they wish and if they satisfy certain tests, they may seek the assistance of the Legal Aid Authority. In Trinidad and Tobago, there are matters for which indictments would have been filed since, say, 2008, 2009 and no trial would have been

had in the High Court as yet. And the reason that I am hearing, and which would have advanced from time to time, is that accused persons seek assistance and representation from a small pool of attorneys, and once these attorneys are caught up in certain trials, you find that those matters are almost continually adjourned.

I do not know that that obtains in Jamaica. I do not know that Jamaica has the same ratio—prosecutor to High Court matter. I do not know that they have the same ratio. I do not know exactly how effective it is for a lot of—the fact that there is some diversion in their system. When I say diversion, diversion away from the High Court into, say, a specialized court, like a gun court. If, for instance, Trinidad and Tobago were to have specialized courts, perhaps a gun court, a sexual offences court, maybe the burden would be much less on the High Court with respect to murders, et cetera. I do not know if we are comparing apples and oranges, except, of course, that in Jamaica, that is a particularly violent society and so is Trinidad.

Madam Chairman: And I think, Mr. Gaspard, you had taken us to some comparisons between our situation and the Jamaican situation which will, perhaps, lend towards an explanation for the apparent speed of those cases through their system. Does any other member have a question at this point?

Mr. Sturge: Yes, please. You would agree we have 10 courtrooms operating in Trinidad and Tobago—six in Port of Spain, four in San Fernando and sometimes one in Tobago, which would make it 11.

Mr. Gaspard SC: No, I would not agree with that. What I would agree with is that we have six in Port of Spain, usually three in San Fernando and

one in Tobago.

Mr. Sturge: So 10, basically.

Mr. Gaspard SC: Yes.

Mr. Sturge: Can you tell us from your comparative study how many courts try indictable matters in Jamaica as compared to our 10 courts?

Mr. Gaspard SC: No, I cannot assist you with that now, but I can furnish you with that information in writing at a later stage.

Madam Chairman: Mr. Gaspard, you raised one issue in your last answer about specialization. How is that done in your department? Because if it is your litigators are in court every day and they also have to do the administrative work for the preparation of indictments and so on, how are you able—or are you able at all—to ensure that there are attorneys developing a particular kind of specialization in any area of law? How is that managed?

Mr. Gaspard SC: Well, basically by the exercise of your discretion as to, from time to time your assessment of attorneys and the quality of the attorneys' work and sometimes the matters for which the attorneys would have demonstrated the greatest prowess.

The thing about it is, the question that you are posing, Madam Chairperson, is the question that would have caused us to propose a new staff structure, so that you would have increased staff, and then, and only then, can we afford ourselves the luxury and the comfort of placing attorneys in specialized units. As it is now, everybody has to do everything.

Madam Chairman: So how is training accomplished? Because the criminal law is something which has developed at a very fast rate, I would

say, over the last 15 years or so.

Mr. Gaspard SC: Yes.

Madam Chairman: How is training managed? Because I would expect that that would have a direct impact on the speed and quality of litigation provided by your department.

Mr. Gaspard SC: Well, the thing about it is, some of the new areas, and the more challenging areas in criminal law, we would invite persons of experience into the office to do training; we would have received training from our foreign partners—the United States Government, the Canadian Government—and we also train persons internally, relying on our internal resources.

What happens is that this training, we would not be able to—usually, if we have a whole day training, or more than one, what we do is we would write the Chief Magistrate, we would write the Chief Justice asking that attorneys attached to those courts on that day be excused. And more particularly, we tend to direct our training periods; we try to have them coincide with the vacation period at Easter or the August vacation or some time in December. We try to do that. Sometimes the international trainers, our foreign partners, are not able to help us because those periods do not mesh with their schedules.

Madam Chairman: I see. Okay. Do we have any other questions? Yes, Mr. Coppin?

Mr. Coppin: Good morning, Mr. Gaspard.

Mr. Gaspard SC: Good morning, Sir.

Mr. Coppin: As a civil attorney myself, I would have studied abroad and

criminal law was actually one of my favourite topics. However, coming back to Trinidad and Tobago, there was never anyone from the DPP's office, or I did not know of any programmes or any outreach whereby persons like myself could have been engaged to, perhaps, come to the DPP's office. Is there any current programme, or strategy in relation to engaging academia, perhaps providing scholarships for persons who want to become, or may be potential prosecutors in the future, or any outreach programmes or any funding arrangements which the DPP's office advocates or currently has in place which would perhaps, not stem the acute shortage of senior prosecutors, but perhaps help with getting new prosecutors into the system?

Mr. Gaspard SC: Well, Mr. Vice Chairman, first of all, the entry into the DPP's office is via two streams: as legal counsel or as state counsel. With respect to the latter, the gateway is manned by the Chief Justice and the Judicial and Legal Service Commission. With respect to the former, those positions are contractual positions between the applicants and the PS, the Ministry and the CPO.

The DPP's office does not have its own budgets. The DPP's office is having a problem acquiring photocopiers, paper, ink. In those circumstances, and having regard to the need to prioritize, while in an ideal world you might have outreach programmes and so on, at the moment that is just beyond our capacity.

Madam Chairman: Thank you. Mr. Gaspard, we now have hard copies of what you had sent before us, but I believe Mr. Mitchell has a question.

Mr. Mitchell: Just to follow up on that point. So you are saying that the Ministry of the Attorney General and Legal Affairs, they are responsible

with respect to contract officers for the recruitment and selection, and with respect to state counsel on the establishment, the Judicial and Legal Service Commission is in charge?

Mr. Gaspard SC: Yes, Sir.

Mr. Mitchell: I had that same question. I mean, what is the recruitment and selection strategy? I guess it is better put to the Permanent Secretaries before us. Because I am aware that there has been an explosion of attorneys being called to the bar, so I am not sure why there should be a shortage, at least, you know, attorneys under five years call.

Madam Chairman: Mr. Gaspard, at the private bar it appears as though gender is an issue in terms of people who are willing to practise at the criminal bar. Is that an issue for the prosecutors?

Mr. Gaspard SC: Well, it is an issue but I do not think it is an issue in the same way that it is an issue, say, in the context in which you are speaking for members of the private bar. For instance, most of the prosecutors—the DPP’s office, in my view, has a woeful shortage of male state attorneys—in my view. Most of the prosecutors in the DPP’s office are female, and not by a little way. So it might be an issue in the sense of balance, but it is not as though, say, females do not seem to have a place or command a place in the prosecutorial system in the DPP’s office. There is a healthy lot of female practitioners in the DPP’s office as state attorneys.

Madam Chairman: Thank you. Mr. Mitchell, I think, perhaps—I know that you have a question for the PS, but perhaps we could just reserve it until—

Mr. Mitchell: It was the same question.

Madam Chairman: Yes. All right. Mr. Gaspard, I want to make sure that we have time for the other persons who have come to provide us with information. I want to thank you very much for your input. You have given us extremely important feedback that I think we will be able to use in our report when we prepare it. If there is anything else that you wish to add, feel free to write to us, because this is going to be our last public sitting before we present our report. But we, of course, will be receiving other information.

Mr. Gaspard SC: Madam Chairperson, I would like to thank you for extending the invitation to me and my office, and I also want to extend an invitation to you and all the members of the Committee to write to me, perhaps through the PS, or however you choose to do it, and any other issue which you feel I may be able to assist you on, feel free to write to me at my office and I shall respond in writing.

Madam Chairman: Thank you very much. I am sorry, Mr. Mitchell has one more question.

Mr. Mitchell: And perhaps we can write this to you. I just wanted to know—because it is a hot topic—the effects on delay for trials by jury and these voir dices, trials within a trial, and what is the future for these criminal trials at the High Court, in your opinion?

Mr. Gaspard, SC: My opinion? With the greatest of respect, it might be me, but your question is not clear to me exactly what you are asking me. Is it that you are asking me as to what is the way forward with respect to the jury system because of the delay? Is it that you are asking me?

Mr. Mitchell: Yes.

Mr. Gaspard SC: Well, there has been some discussion about the doing away with the jury system. I know that it is not a discussion that has been embarked upon by some members of the criminal bar with any degree of joy. So discussions are taking place. I think more discussion needs to take place. Some people are of the view that a large part of the delay is because we have jury systems. I am not of that view. I am of the view that in this system there must be a certain degree of nexus and connectivity between the man in the street and the dispensing of justice. I am of the view that a wholesale doing away of the jury system is tantamount to severing the umbilical between the man in the street and the dispensers of justice. I understand, and I would agree, that for complex fraud matters you might need a certain type of juror—special jurors—but I do not think that in the normal matter—the average matter, the usual matter—you need to do away with the jury system.

You also have to look at how that might be perceived. Many persons who go on to become judges may come from a particular background. They may come from a particular type of school, whether you call them prestige schools or otherwise, and there might be the perception on the ground that the dispensers of justice are “them” or “they” and the people on the ground are “we”. And that is not a perception that you might want to cultivate.

Madam Chairman: Thank you, Mr. Gaspard.

Mr. Sturge: Madam Chairman, I just have one last question.

Madam Chairman: Mr. Gaspard, we cannot seem to let you go.

Mr. Sturge: Well, I will first like to thank him for what he has just said about the jury system. Mr. Gaspard, can you enlighten the public, since you

are consulted most times when charges of murder are laid, is there a difference in the standard required when you assess evidence to give instructions to charge, and a difference in standard the magistrate uses to commit, which is prima facie, and a difference in standard when you come to prefer an indictment? Because what I am getting at, if the magistrate already commits on the basis of prime facie evidence and you prefer the charge in the first place on the basis of the standard you use, which would be similar to a prima facie case, can we not pass legislation to do away with the procedure whereby you review the committal bundle and not much changes at committal, and you can simply, on the basis of the magistrate committing, formally file an indictment as opposed to having that delay that may take some time before you prefer an indictment?

Mr. Gaspard SC: Sometime around 2011/2012, I would have launched a code for prosecutors. In the code for prosecutors—and one of the reasons for it was to move away from any arbitrary or capricious consideration of what was required before you went forward with a particular matter. There is a two-stage test and the code for prosecutors is patterned and based on the English full-code test. And like in England, there is a two-stage test. The sufficiency of evidence is the first test, the first limb of the test, or tier. And if there is sufficient evidence, then you go on to consider the public interest factor. Right? Now, with respect to the first limb, I do not proceed on the basis of prima facie evidence. I look at it in the context of a likelihood of conviction, not just prima facie. Now, the magistrates, they go with the prima facie test.

Mr. Sturge: Is that not law?

Mr. Gaspard, SC: Yes. But what I am saying is, at my stage, the charging stage, I do not go with whether it is prima facie.

Mr. Sturge: You go with a higher test?

Mr. Gaspard SC: Yes.

Mr. Sturge: They go with a lower test?

Mr. Gaspard, SC: Yes.

Mr. Sturge: And then you have to prefer an indictment.

If you take murders, in particular, since there is no bail, since you already formed a view, indicted on conviction, the magistrate would not commit formally. Then since you formed that opinion, is it really necessary to go through this period where you review the committal bundle all over to prefer an indictment, or can we simply not ease you up, so to speak, since you already arrived at that conclusion when you gave instructions to do away with the part so that you can formally file an indictment?

Mr. Gaspard SC: Well, what is happening is, sometimes it has been my experience that even though on paper, the papers are submitted to me, or the evidence, I am of the view that there is a strong case. As a result of cross-examination, in the Magistrates' Courts in preliminary enquiries, the evidence becomes sometimes diluted. The evidence sometimes becomes diluted, or it might be viewed as manifestly unreliable. There have been several cases in the past, for instance, where magistrates would have sent on a matter; in other words, would have ordered a committal and when it came to the DPP's office, even though one could argue that prima facie, you know, 51/49, you could go forward, I would have stopped those matters. And one of the factors I consider in dealing with those matters is whether or

not the persons involved are able to get bail.

Mr. Sturge: Guided. Thank you.

Madam Chairman: Thank you, Mr. Gaspard.

I think I will now have to ask Mr. Khan, Director of Legal Aid, whether he wishes to make a few opening comments.

Mr. Khan SC: Much obliged, Madam Chair, for indulging me in this opening comment. Some 40 years ago the Government of the day took a sagacious decision to establish the Legal Aid and Advisory Authority, and that was to assist impoverished people in getting legal advice and legal representation both in the criminal and civil courts.

Millions, or hundreds of millions of dollars have been spent—taxpayers' money—during the 40 years, and I must say it was well spent. The Legal Aid and Advisory Authority is indispensable to the liberal democratic State of Trinidad and Tobago and the rule of law. In listening to Mr. Gaspard and the DPP's problems, and having our own problems at Legal Aid, I suspect if nothing is done quickly, what will happen is that life will become short, nasty and brutish in this country. We are already there.

The criminal justice system is about to collapse. It is a scandalous state of affairs when you have several hundred indictments for murder and there is a presumption of innocence and you have to wait approximately 10 years to have a trial. It is a scandalous state of affairs, especially for Trinidad and Tobago, a country that is so rich in relation to the other Caribbean jurisdictions.

So the powers that may be must not treat the Director of Public Prosecutions department and the Legal Aid Authority as civil servants

administering justice. They are special departments. Because in order for an accused person to get a fair trial and uphold the presumption of innocence, you must not only have a fair and impartial judge, you must have a competent and experienced prosecutor and a competent and experienced defence attorney to match the skills of that prosecutor and vice versa.

What has happened, the Legal Aid and Advisory Authority, in assigning attorneys, has outlived its usefulness. We cannot cope. So the Legal Aid and Advisory Authority came to the decision, which is supported by the Chief Justice and the present Attorney General, that a public defender's department must be established. We must establish a public defender's department, separate and apart from the Legal Aid and Advisory Authority who can take care of the civil briefs and give advice.

And I think we have a few suggestions for the backlog. The empirical evidence will suggest that the first thing you must do is categorize murder into first, second and third degree. That has been touted many years ago, before the Prescott Commission—first, second and third degree, and make it bailable for second and third degree. And whether you retain the death penalty for first degree, that is not our concern.

11.25 a.m.

The second thing to do is immediately establish, by legislation, a plea bargaining process. Make it very simple, not cumbersome as it is. And most of all, in order to have the people who were serving their time and going back in again and again, is to pour money into rehabilitating the prisons.

I have a personal suggestion how that could happen, but I do not know if I

can, as an experienced practitioner, give that suggestion because I am here representing the Legal Aid and Advisory Authority. If the prisoners are allowed the constitutional right to vote in a general election—the prison is located, embracing too marginal seats, you will see how the Government of the day and other Governments will pour money into the prison system because a lot of people are not concerned with what is happening in the prison until it comes home with a relative or a friend, or something, but we have people going into the prison, coming out and going back into the prison, coming out and going back into the prison.

Now the Legal Aid Authority makes every attempt to give a person charged with a murder the lawyer of his choice. That is why they go to a small pool of lawyers because it is a life and death situation. We try very much so, but they do not the constitutional right to have a lawyer of their choice. They must pay for a private attorney, but legal aid will make every attempt to see if we can do that.

We have sent in a written document as to what suggestion and what is happening with the backlog and so on. What has happened also is that we must instill into the young graduates, and even not so young, that Legal Aid is not there to assist them in making a living. What legal aid is there for is to assist impoverished people, and they owe a duty to the society because

taxpayers paid them through law school, especially the local lawyers, to assist impoverished people.

Very often they find the fees are very unattractive so they would not take a legal aid matter. Many times some of the lawyers will look at the deposition, and if they believe they cannot win the case they will send back the brief; and many times the client themselves will change attorneys; and many times the courts are not ready to proceed with a matter.

Madam Chairman: Mr. Khan, perhaps I could ask you this? If it is you have information that an attorney, who is on your panel or on your legal aid roll, is treating legal aid matters with a less degree of attention than private matters, are steps taken by the board, let us say to tell that attorney thank you very much, but you will no longer be part of our pool?

Mr. Khan SC: No, Madam. We are grateful they are still on record.

Madam Chairman: Sorry?

Mr. Khan SC: We are usually grateful that the attorney is still on record because what will happen is that you cannot get a trial. You see, a trial at the Assizes, the criminal law is so cumbersome with the presumption of innocence, and the protection of the accused person, and the right to cross-examine, and good character, and dying declaration, *res gestae*. I could go on and on and on. It is very cumbersome. What must happen, they must simplify the law by rules and the trial judge must take things in his hand and expedite the trial. But if we have plea bargaining—a lot of people like in the United States will plead guilty if they know they are going to get a severe sentence if they contest a matter. We will not want to force people to plead guilty if they are innocent.

Madam Chairman: No, that is not quite what I am asking. What I am saying is

if you have an attorney not doing his job by giving less attention to his legal aid cases, not providing the quality of representation that is required for his legal aid cases as he would had he been privately retained, does the authority then say, “You are not assisting us. You are part of the problem; we are taking you off the roll”. Attorneys have no right to be on the legal aid roll as I understand it.

Mr. Khan SC: They have a right to be on the legal aid roll by convention, but they do not have the right to be retained.

Madam Chairman: Right. So is it that the authority then can, I suppose, police the conduct of attorneys who treat legal aid matters with less interest in this way by removing them from the panel.

Mr. Khan SC: We would not know, Milady, until the matter commences. We would not know because the courts are bogged down. They go down there, a trial is in progress and the matter is adjourned. So we do not know if they have treated the matter lightly until the matter really commences. Because what will happen, the blame ought to fall squarely on the trial judge, because once you are on record the trial judge must insist that you are not getting an adjournment if you need an adjournment, and we proceeding to trial.

Madam Chairman: Could I just ask this? Once an attorney is appointed by the authority, is it that unless something peculiar happens, the next interaction of the authority with the case would be when the attorney writes to say, “Person acquitted, person convicted”? Is it that it is left in the hands of the attorney post appointment?

Mr. Khan SC: Yes, Milady, he has full conduct of the trial.

Madam Chairman: Is there any way of monitoring the service that that attorney provides to the Legal Aid Authority? Is there any mechanism by which the

authority can evaluate the service provided?

Mr. Khan SC: Well, his service is a criminal matter. I prepare the brief, I am ready to start, I am going to court and the matter is not commencing.

Mr. Mitchell: I think the question is whether there is a monitoring and evaluation unit as there is in other Ministries with this agency?

Mr. Khan SC: We cannot evaluate anything. They are lawyers who would say, I represent the accused and I am ready to proceed. We do not know what he is doing in his chambers; and what happens in his chambers within the client and himself are very confidential.

Madam Chairman: Well, could the Legal Aid Authority liaise, let us say, with the judges at the criminal courts?

Mr. Khan SC: Maybe Mr. Ragoobarsingh could assist in that regard, Milady.

Madam Chairman: Yes, certainly. Thank you. Mr. Ragoobarsingh.

Mr. Ragoobarsingh: Yes, Madam Chairman. We do have a process. The process will happen in several ways. One, we do request status reports from time to time from criminal attorneys. You would get a monitoring that happens in a systematic way. Either one, for example—if I could simplify it—a client complaint. Especially if it is clients who are within the incarcerated system, they would complain to, well primarily me since I am the one that goes, so I will get the complaint that look, this attorney XYZ. Sometimes the complaint of the accused person misunderstands why an attorney may not have come at this point. But a complaint would generate there and that will generate from us a status report request to the respective attorney, and many times followed up by telephone conversations as to what is your interest in this case, are you continuing in this case, are you appearing in this matter.

So we do have a check and balance that takes place within our internal criminal registry with those attorneys. We cannot monitor 100 per cent because you are an attorney. We expect that you have a professional ethic at work in terms of dealing with a brief. But those complaints either generate one, from the client, the accused person; or it can sometimes generate from the judicial officer, meaning the judge or magistrate with regard to a particular matter. Judges may send correspondence via their respective JSOs as to the conduct of an attorney with a respective matter, can you clarify what is their position.

So you get alerts and red flags coming through the system that would monitor the approach of attorneys in dealing with it, but the backlog in itself contributes to an attorney being assigned a brief and then life goes on. They get their private briefs and after a while even though they may have had an interest at one point, at some point, because there is such a backlog, that interest wanes and briefs are returned. So it is a complex interconnection of systematic failures that buffer, and what the Legal Aid and Advisory Authority tries to do is have some synergistic involvement in how we deal with reassigning and trying to balance in tandem with the court, the judicial officers and with the attorneys that we speak to, and the accused having some input.

Mr. Sturge: Madam Chairman, I have two questions for Mr. Khan. Mr. Khan, in light of the fact that there are two types of attorneys when they are qualified—there are those who spend their money to be educated and there are those who the State would educate through subsidization at Hugh Wooding and so on—do you believe in light of the large amount of attorneys coming out, which does not translate into criminal practitioners, would you support a system whereby persons who received subsidies, or subsidized education through Hugh Wooding and so on, that when

they graduate they either give the State their first two years either at legal aid or the DPP, do you think that would assist?

Mr. Khan SC: Well I will support that. Just recently, I saw that somebody who was on a scholarship had to pay back some money, three-something, and if they are going to the Faculty of Law in Trinidad and the Hugh Wooding Law School and is heavily subsidized, I think that they should have some arrangement whereby they could. I will support that.

Mr. Sturge: And the second issue. You raised an issue with respect to plea bargaining, but plea bargaining usually takes place where there is full disclosure generally and there is not full disclosure in Trinidad and Tobago, so do you believe that we should have full disclosure; and do you believe well if we do, that will facilitate a more effective plea bargaining system?

Mr. Khan SC: I do not subscribe to your view there is no full disclosure.

Mr. Sturge: You do not?

Mr. Khan SC: No.

Mr. Sturge: So there is full disclosure in Trinidad and Tobago?

Mr. Khan SC: Of course, there is full disclosure. You are entitled to get only what will assist you in your defense.

Mr. Sturge: That is not full disclosure, Mr. Khan.

Mr. Khan SC: Well that is full disclosure in Trinidad and Tobago under common law.

Madam Chairman: Okay. Can we move on? Mr. Mitchell, you have a question?

Mr. Mitchell: Yes. I am aware of a system in the UK where discounts in the sentence, one-third, half, et cetera, where early guilty pleas are provided. Would

that help? Do you think that would help?

Mr. Khan SC: We have that here too.

Mr. Mitchell: That is good year indication, but, for example, if you plead guilty and you confess at the police station, you would be given a certain amount of discount on your sentence.

Mr. Khan SC: We do not encourage that, to confess to the police. [*Laughter*]

Madam Chairman: Mr. Mitchell, I think when we get to the stage where confessions are recorded, we have video recordings as well as audio recordings that might be a safer process.

Mr. Sturge: Agreed.

Mr. Coppin: Question, through the Chair, to Mr. Ragoobarsingh. With relation to civil matters, I had the opportunity to work recently alongside some attorneys on a legal aid matter, a civil matter, and the matter, as I saw it really, had no chance really to succeed—a civil matter—so the question to you really is: from the perspective of legal aid is there a filter, first point of contact when a person comes to you saying, “I think I have a case. I would like legal aid to take it up”. So that if you are able to identify that this case perhaps has a very little or no prospect of success, that you say, Okay ma’am, I am sorry, or sir, I am sorry, I think you ought not to pursue this matter, and therefore, not—it does not come to an attorney-at-law and perhaps incur cost and then clog the system further. Is that something that you all have at the Legal Aid?

Mr. Ragoobarsingh: Yes, certainly. The point on which a client walks into a legal aid office, their first interfacing in terms of advice would be one of our legal officers. That legal officer will filter and screen. Can some cases go through the system and be approved for aid that may be assessed at a later point as being

maybe frivolous? Can that happen? Yes, it can, but any error I think that has to be made is made on the part, in favour of the client once we believe there is an arguable case. Not necessarily winnable, but that it is arguable in terms of a right. But I think the Secretary might be better able to answer to that, Ms. Arneaud, so if I could pass on that to her.

Ms. Arneaud: Okay. Just to add, there is a system in terms of civil matters coming before the authority. The authority decides on the merit and the eligibility of the clients as to whether aid will be granted, and there will always be matters, for example, where someone has to defend a matter in the civil High Court. We cannot just say that because they may not have a case they are not entitled to representation. And so, it is up to the report that comes before the authority, and once they are eligible, as to whether aid will be granted. So it is difficult to sit on the outside and sort of assume that because the person does not have a good case on the merits of the matter that aid should not be granted.

Madam Chairman: Ms. Arneaud, could you just make it clear for the purposes of our viewing audience and listening audience what is the position with respect to criminal matters? Is it not the case that an accused person has a right to having a legally appointed attorney once he is charged for a matter and he applies?

Ms. Arneaud: So, if I should go through the process for you, we even start from the moment of detention. We have a Duty Counsel System, whereby minors, once they are detained by the police, the police has a responsibility, a mandate, to call our Duty Counsel call centre and request that this person be given a legal officer for advice. Then we go to that Duty Counsel attorney who is assigned to that, its minors—it operates with minors and persons charged with capital offences.

That Duty Counsel would go to the first hearing of the trial and then the

responsibility ends there. If the person is charged and the matter is going on, they apply for legal aid under the normal legal aid system which is, when they get before the magistrates they indicate that they need legal aid, or if they are in custody a legal officer would visit and take an application. That application goes to the respective court before which the matter is being heard, and it is the magistrate's responsibility to say whether legal aid would be granted.

I think people get that blurred a little bit. So we can only appoint an attorney on the basis of the magistrate's authorization that aid should be granted, and it is on that basis that an attorney is appointed to that person.

Madam Chairman: I see.

Ms. Arneaud: Similarly, in the assizes matters, again, it is the responsibility of the presiding judge to give a certificate authorizing legal aid for that person and we can only, upon receipt of that certificate, appoint an attorney for the accused.

Madam Chairman: And what about ratios? Does the authority monitor, let us say, just as Mr. Gaspard was able to tell us the ratios of his prosecutors in relation to cases, does the Legal Aid and Advisory Authority have statistics like that.

Ms. Arneaud: Well just to clarify, in terms of appointing attorneys we do both in-house—we have a cadre of 25 legal officers in-house that we can assign matters to, as well as the panels of attorneys, persons who have asked to be included in our panels of attorneys doing specific matters. The discretion with respect to criminal matters, High Court matters, it solely rests upon the Director/Chairman as to the appointment of attorneys.

Madam Chairman: But that does not quite answer what I am asking. Do you have any information with respect—let us say, the panel of attorneys is housed at legal aid, what is the ratio among the number of cases they are doing and the

number of attorneys?

Ms. Arneaud: So, for example, we have—it is a range. So, all legal officers would do a combination of matters. Some would practise only in the criminal assizes, some would do a combination of criminal assizes and Magistrates' Court, and some would do civil.

It is a little difficult to give ratios at this time. It is something that we can probably address, but what we would probably also want to share with you, via statistics—and just to indicate that we would have submitted some statistics to you today. These are recent statistics that we would have compiled—it is difficult to say a ratio as per what the DPP would have submitted, but it is something that we can submit at a later date to you.

Madam Chairman: Okay. Thank you.

Mr. Khan SC: If I may indicate, Madam Chairperson, when it is a murder trial we do not look at ratio. We look at the competence of the attorneys in that arena, and because of the backlog of the cases we know that we will not be humbugging the accused from getting a trial. And if it is in the Court of Appeal, we know certain lawyers who are better in the Court of Appeal; and we do not allow an attorney under three years to go in the assizes, and without seven years, to represent an accused person against the attorneys coming from Mr. Gaspard's office. Not looking at ratio so much, but the day will come where we will have to look at ratio. And if you will permit me just to endorse Mr. Gaspard's position in relation to trial by jury. I am of the view that nobody should tamper with the jury. Nobody! Trial by jury is necessary in a plural society. This society is too young and not mature enough to handle a single judge trying this matter.

The first thing an accused person will want to know, or he will ask you,

“What kind of judge we have”? And when he asks what kind of judge we have, he does not want to know whether he is a Presbyterian or a Hindu. He wants to know his racial origin. This is the empirical evidence because the people who are facing the criminal assizes, they still think in a primordial way. There is a case which is engaging our attention, 600 people have been called for selection on jury and something happened there. I better stop there. I think the public is listening.

Madam Chairman: Okay. Mr. Khan, just to wrap up with the Legal Aid and Advisory Authority, would you want to just make a few comments about some ways in which you think perhaps steps could be taken, whether by legislation or otherwise, to assist with relieving us from this burden of this backlog?

Mr. Khan SC: Well, it is already on the table to abolish preliminary inquiries; plea bargaining; having more judges. Everybody knows what we have to do. We just have to have the will to do it and the money to do it, because what do we put the resources in, in health, infrastructure, in education? Many people do not force the system to take care of the downtrodden who are in prison, and those are our clients. We all know what to do. It is just to do it, Ma’am. For time we have been saying that again, and again, and again, and again, and again, we just do not do it.

Mr. Sturge: Mr. Khan, would not the abolition of preliminary inquiries simply shift the bottleneck from the Magistrates’ Court to the High Court?

Mr. Khan SC: Well I have no doubt about that.

Mr. Sturge: So then how is that helping?

Mr. Khan SC: Well we have plea bargaining there.

Mr. Sturge: We already have plea bargaining.

Mr. Khan SC: Well, not quite, it is very cumbersome. And in order for plea bargaining to really work, Mr. Gaspard was at a seminar chaired by Ms. Seetahal

and he made a very important point that plea bargaining will only work when the accused knows that the evidence is cogent, compelling and convincing and he will be convicted.

Mr. Sturge: Which is full disclosure.

Mr. Khan SC: Full disclosure, for you to get off?

Madam Chairman: Well I do not know that many people are aware, but there is the system of the maximum sentence indicator—it is similar to plea bargaining—whereby the parties agree on a set of facts and a joint document is prepared, placed before the judge, and the judge gives an indication of the range of sentencing that an accused person may attract based on the facts before him or her, and from what I understand quite a few matters have been disposed of happily from all sides by the judges in the system. So I suppose once this becomes better known by practitioners this option will be used more often.

Thank you, Mr. Khan. Unless there is any other point that you or your team would like to make before the Committee—I am sorry, Mr. Coppin, my Vice-Chairman, has a question.

Mr. Coppin: Just out of curiosity, I notice the statistics with relation to the fees paid, and the Naipaul-Coolman case was responsible for a large bump in the total fees paid, could you tell me what was so special about this case that has resulted in such a large increase?

Mr. Khan SC: I prefer not to answer that because—I think it is not prudent to answer that now because the jury is still and that might affect their minds.

Madam Chairman: Thank you, Mr. Khan. Mr. Gaspard, I am wondering about mediation. Is mediation still available on the books for minor criminal matters?

Mr. Gaspard SC: Only in a very informal and ad hoc way, and the position of the

DPP's office is that that appears to be a somewhat nettlesome and gray area since we try to avoid the perception of settling matters. It has been my experience in the past that certain persons would advocate for the prosecution of certain matters, only for the prosecution of those matters to be used as leverage in some sort of bargaining compromising position.

Madam Chairman: I was thinking more in terms of situations where you have children in high school and so on charged with criminal offences, sometimes even against fellow students, do you think that there would be a role there for mediation or for some sort of informed mediation process?

Mr. Gaspard SC: Yes, I think that there would be a role or there will be role for that, but I understood your question as being whether or not, currently, mediation takes place in those matters. What is happening is that that type of consideration is subsumed usually under public interest factors. So there are certain matters where, instead of advising the police to charge, I would seek to have other interventions which do not engage the criminal justice system.

Madam Chairman: I see.

Mr. Sturge: Just one question, Mr. Gaspard. Are you in favour of the current age, minimum age, of criminal responsibility; or do you believe it should be raised?

Mr. Gaspard SC: I believe it should be raised.

Mr. Sturge: To what age?

Mr. Gaspard SC: Somewhere in the vicinity of 10 to 12 years.

Madam Chairman: Thank you, Mr. Gaspard. I am now going to invite Ms. Ingrid Seerattan. Ms. Seerattan would you be good enough to share a few opening comments with us, with respect to the role of the PS in the Ministry of the Attorney General and Legal Affairs, in terms of the administration of criminal justice?

Ms. Seerattan: Thank you, Madam Chair. At the Ministry of the Attorney General, given that I assumed office only in September 2015, what has been our responsibility, one of the things that we have been doing, we have been looking at the systems that have been operating. Quite a number of systems and based on some of the questions that were asked in the listing that came to us to respond, we recognized that a number of systems were not in place to capture any kind of information. So what we have been doing in terms of trying to provide that information is to ensure that systems are in fact put in place.

Now to answer the question you have just asked in, what are we doing to help the system, is that presently, given that we deal with the contracts, we are presently advertising positions within the system for legal officers, legal counsels particularly, to enter into the system via the route of contracts.

11.55 a.m.

Given that we are waiting for the judicial and legal system to begin their process of interviewing for the positions, as Mr. Gaspard alluded to earlier—a number of vacant positions—that we can only be in discussions with the Judicial and Legal Service Commission, the secretariat, to determine what is happening there as to the filling of those positions.

We were initially told that interviews for those positions would have been held in March of this year for the process of recruiting persons into, at least, the level of State Counsel I, but given that there was an absence of a member of the commission which has only recently been appointed, I was told that that is supposed to happen soon that they would begin the recruiting—the interviewing process, rather, for those positions.

Madam Chairman: Could I just ask you to tell us how many positions then are

likely to be filled post the interview process?

Ms. Seerattan: In the established positions or contract positions?

Madam Chairman: Yes, established.

Ms. Seerattan: Well, having had a discussion with Mr. Gaspard and given the constraints of space that we had, he had indicated to me that he can at least safely take about 15 State Counsel I to be comfortable given space constraints at this point in time. There would be a list that would be established, so given perchance that we do succeed in the accommodation issues that the office of the DPP would have and we are able to expand in terms of space, we would be able to bring on additional personnel. But at this point in time, given the space constraints, and on Mr. Gaspard's recommendation, we can safely take about 15 State Counsel I.

Madam Chairman: Okay. Well that leads me to the other issue which is to say, clearly plant and equipment need to be enhanced for the DDP's office. So how soon can the DPP expect that the resources of the Attorney General's Ministry will ensure that the DPP's office is properly housed and equipped?

Ms. Seerattan: As Mr. Gaspard has identified, we have identified locations. Some of it, we have to wait on responses from the Property and Real Estate Agency in terms of the valuation of some of these accommodation sites that have been identified, we have to wait on outside forces. So we have been working assiduously with these agencies in order to receive.

Madam Chairman: This particular agency, what was it?

Ms. Seerattan: Property and Real Estate.

Madam Chairman: That falls under which Ministry?

Ms. Seerattan: The Ministry of Public Administration.

Madam Chairman: I see. Okay.

Ms. Seerattan: So we are working assiduously with them to ensure that the matters that need to be dealt with on their part are handled in terms of the valuation. Those issues where it is being tendered out by those agencies, perhaps NIPDEC for the outfitting, as has been done in the office in Tobago, we are waiting for those tenders to come in so that they may begin the tendering process for outfitting at least for Tobago.

For the south office, we are waiting for a valuation estimate from the Property and Real Estate Services Division to ensure that these things happen. We are also, for the Port of Spain division, where it is expected or it is hoped, if I may say so, that the DPP's office would be moved to a larger accommodation which is the Park Street venue; it has been identified. We are waiting on certain specific information, as Mr. Gaspard has alluded to, from him to tell us what are his requirements so that we can put it forward now and make a proper recommendation.

Madam Chairman: Well, what I would want to ask and what I think perhaps other members and members of the viewing and listening public would like to find out is, when? Do we have any sort of time frame for any of these plant and equipment improvements? Because your Ministry, Ma'am, holds the purse strings, so could you tell us when?

Ms. Seerattan: It is estimated that for the Tobago office, we have an estimate of August for completion of that project, the outfitting and hopefully the move for the DPP's office into Tobago. For the San Fernando office, we are waiting on Property and Real Estate to do that. We are assiduously liaising with them to ensure that we—to have an early resolution.

Madam Chairman: Could I ask how long it has been in their hands?

Ms. Seerattan: If I may pass to my Project Manager who is in, Mr. Suban.

Madam Chairman: Yes, please.

Mr. Suban: Well, generally, these buildings would be decided upon based on visits with the DPP's office which we have commenced since at least 2014, since the approval of Cabinet. The San Fernando would have been identified sometime in 2014 but would have been decided upon by the DPP, I think, 2015. So it would have been with the Property and Real Estate Services Division for at least a year. Port of Spain is about the same time frame, generally, about a year.

Madam Chairman: What will be the reason? I do not understand; perhaps, you knowing the system might be able to explain to us and to members of the public. Why would it take a year at the property division?

Mr. Suban: That is not a question that I am capable of answering. It is done by the external party. The Ministry has no authority to decide on rentals or valuations or safety.

Madam Chairman: Well, what is the process then that is carried out there?

Mr. Suban: The general process, as I understand it, the Ministry would make a request for a facility. In this case, we would go with the DPP. The DPP would submit in writing, I agreed to X building. Thereafter, the Property and Real Estate Services Division, once we write to them saying this is the building, they would investigate by making enquiries to the Town and Country Planning, Regional Corporation, OSHA, the Ministry of Works Structural Department, fire services to make sure the building is up to code. Once those approvals are in place—they would also liaise with the valuation division of the Ministry of Finance. Reports would be received from those divisions. Once they are received, the Property and Real Estate Services Division will take a Note to Cabinet advising or requesting

that this building be approved for rental by the Ministry at a particular rate.

Madam Chairman: Well, if what has been described as the former Royal Bank building has been approved or accepted as a possible office space for the head office for the Office of Director of Public Prosecutions, is it then that the only thing left to have done is to have the Cabinet Note drawn up?

Mr. Suban: No. Once the building would have been valued and Cabinet would have approved, there is still a process of getting the DPP's requirements for the facility design. So this would have been an empty building. If the DPP has to come in here, there would need to be a design for 10 attorneys, three secretaries, three clerks, whatever the case may be.

Madam Chairman: And whose responsibility is that?

Mr. Suban: That would be internal of the Ministry. So once the building is approved, the Ministry is in control of the outfitting of the DPP. So we would liaise with the DPP to get his stakeholder requirements and that would be outsourced. The actual project of outfitting would be outsourced to a special purpose enterprise like NIPDEC or UDeCOTT

Madam Chairman: Right. So what I want to know, you have told us or we have heard that the Tobago office is supposed to be ready to go by August or you are hoping that that is the case. What I want to know, what is the time frame for San Fernando and Port of Spain? What stage of the process are we at?

Mr. Suban: Right. We are still in the building acquisition stage which is external to the Ministry so I cannot give you an idea. We can give you an idea on Tobago because it is with NIPDEC. The facility is secured. The NIPDEC has given us a timeline of August anticipated. So because the facilities have not been acquired for San Fernando and Port of Spain, it is pretty much impossible for me or the

Ministry to say what time frame we would be working with.

Madam Chairman: Thank you.

Mr. Sturge: I have a question, Madam Chairman, and directed to the Permanent Secretary of the AG's office. I do not know if I misunderstood Mr. Gaspard. But I know for a fact because I am a practitioner and then sometimes prosecutors have difficulties, in one instance, the photocopier or both photocopiers were not working and so on. How do we get around these sorts of administrative difficulties so that the DPP himself can have access to funds to deal with these day-to-day issues so that we do not have to go through all the red tape before he can simply get funds to run his office?

Ms. Seerattan: Well, to answer that question of allocation of funds to the DPP so that he can have his own budget, that is a question for the Executive to determine and the budget division to determine that, in terms of the office of the DPP having their own funds.

But presently, what we have undertaken to do is that we have done an assessment of all the equipment in the department—DPP as well as all of our main offices. We have, presently, a contractor on board who is in the process of servicing, repairing. They have made an assessment of all that needs to be—maybe if we need new equipment, they have since done that to us. So we are presently in the process right now of handling that particular issue of the equipment for all of the departments, DPP included.

Madam Chairman: Mr. Mitchell.

Mr. Mitchell: To the Permanent Secretary, over the last few years, we have heard a lot about these judicial court centres to be built all over Trinidad and Tobago. Can you give us an update on what is going with those?

Ms. Seerattan: Well, yes, Sir. That project was initially under the then Ministry of Justice. Even before the dissolution of the Ministry of Justice, that project was put on hold and it was never taken up again since that process was put on hold. So, at this point in time, we are unable to indicate what has become of the project. Thus far, it is not on any of our books in terms of included in any of our development projects since it has been put on hold by NIPDEC due to lack of funding.

Madam Chairman: Ms. Seerattan, could I ask whether, as Permanent Secretary in the Ministry, you are able to have any input with respect to remuneration of State Counsel with the DPA? I believe it would be the DPA that would be responsible for the packages?

Ms. Seerattan: CPO.

Madam Chairman: CPO?

Ms. Seerattan: Yes.

Madam Chairman: So is it that your advice is sought by the CPO when determining whether to recommend an increase, let us say?

Ms. Seerattan: No, that is totally out of our hands. Remuneration packages are solely the purview of the Chief Personnel Officer. What happens when an officer comes on board, contract officer, they come on board, what they do, they would present a proposal to us based on their years' experience and so, which we would then remit to the office of the CPO and based on that, their terms and conditions are determined based on their proposal. There are many of the offices that are already standardized that have been done by the CPO and that is across the board for some of the legal offices that exist in all, whether it is in the criminal, whether it is in the civil arena. There are standardized terms and conditions for some of the

offices.

What is done is that when an officer takes up office and presents a proposal, it goes to the CPO and then the CPO may determine whether, based on that person's experience, whether they should be at the minimum or whether they should be elevated to a different level in terms of the salary range.

Madam Chairman: Sure. Well perhaps, I can ask Ms. Arneaud this question. How is it then that people are leaving the DPP's office and going to the Legal Aid and Advisory Authority and getting better pay? What is the process there?

Ms. Arneaud: Madam Chair, I think that was a prior situation when our terms and conditions would have been much more—I would say attractive—to legal officers. But I must say, a manager at this position, at this point in time, that is not the case, because we would not have benefited or we would not have—maybe not as yet—because our terms and conditions are presently before the CPO and we have not had an increase in terms and conditions since 2012. So we are hoping that we can keep that parity that we had before when the CPO considers the new terms and conditions for our legal officers and we have a combination of established and contract as well within our organization.

Madam Chairman: Well, it seems to me as though the CPO in the past then, if I am to understand what has been said, the CPO has treated with salaries under the DPP's office in a different way from that of Legal Aid and Advisory Authority.

Ms. Arneaud: Yes, because we may have additional duties as legal officers. We do advisory as well as representation. So the combination may be what they take into consideration when they look at the terms and conditions. Remember, members of the public walk off the street and we give advice as well. The remit of the authority is to give advice and legal representation. So it may be the

combination of duties that our legal officers are responsible for.

Mr. Sturge: Can I ask—this is directed to the DPP. Does the DPP's staff also not advise Ministries and so on, on criminal issues?

Mr. Gaspard SC: Well, Mr. Sturge, the distinction or difference posited by my friend is not really a distinction or difference I agree with. The DPP's office, apart from representing persons in court, conducts training sessions for police officers, customs officers in the past. We conduct training sessions for the Commissioner of State Lands, Town and Country at one point in time, forestry. And we give advice to people coming off the streets. We give advice to family members of accused persons. We give advice to the police, different departments.

So the DPP's office does not just provide legal representation in the courts. The DPP's office, I believe, gives advice and opinions to perhaps even more bodies than Legal Aid does.

Mr. Sturge: So what you are saying in essence there is that there is a distinction without a difference and therefore you—

Mr. Gaspard SC: Well, I might find that semantic so I would just say there is no difference.

Mr. Sturge: Right, so there is no basis really for Legal Aid getting more money than a prosecutor.

Mr. Gaspard SC: Yeah. If that is the basis to advance, I do not agree with that at all.

Mr. Sturge: Guided.

Ms. Arneaud: I just wanted to clarify, if I may, that the present situation is that our legal officers do not enjoy the terms and conditions right now that the DPP legal officers enjoy. We are presently below their present terms and conditions.

Madam Chairman: Well, it seems to me that even though now you are below, the idea is that there must be some sort of parity. So I am very grateful to you for giving us that information because perhaps we need to enquire of the CPO, what is the reason for differential treatments of attorneys in different Ministries? That might be useful for the public to know. I see that we have two Permanent Secretaries here. Ms. Jacobs, could you make a few opening comments?

Ms. Jacobs: Okay, Madam Chair. We do have two Permanent Secretaries in the Ministry. As you would know, this is a merged Ministry, so we do have the Legal Affairs division which I am responsible for and the AG's division which PS Seerattan is responsible for. We also have a distinction in that she is the accounting officer and therefore holds responsibility for certain financial aspects and things like that. So that is the difference hence we have two Permanent Secretaries.

But what I would just say is, I will support my colleague in the sense that from September, we have really been trying to put systems and structures in place having gone into a new place to really improve efficiency. So some of things she would have mentioned, that is also evident at my end, on the legal affairs end. So the function is slightly different and we have different responsibilities. So, like the Legal Aid and Advisory Authority will filter through me to the Minister and other entities.

Madam Chairman: So you would be responsible for Legal Aid, Registrar's General Office, that kind of thing?

Ms. Jacobs: Correct, but the authority, so less things have to really pass through.

Madam Chairman: I see.

Ms. Jacobs: Because the authority, under the Act, they are responsible for their

management of their business.

Madam Chairman: Yes, and the DPP would have to speak to Ms. Seerattan when he wishes to have a photocopier bought? [*Laughter*] Interesting.

Ms. Jacobs: Yes, Ma'am.

Madam Chairman: Okay. Can we move on now to Mr. Travers Sinanan? Mr. Sinanan attended our first public hearing and he very kindly prepared a paper for us which we have all got and he has been kind enough to accept our invitation to make a few comments with respect to his proposals for the amelioration of the criminal justice system.

Mr. Sinanan: I am grateful, Madam Chairman. A pleasant good afternoon to everyone. First of all, I, like the hon. DPP, have been a tad naughty because my submissions were very late. But I must thank the staff, Mr. Ogilvie and Mr. Sieunarine, for doing their utmost to get it to yourselves. It was sent at 10 o'clock last night, so I do apologize.

Can I make this very brief opening statement? You have the submissions and I would not take up much of the time because I am looking at the clock and I know we have been here for some time. These comments are my comments based on my own experience as a practitioner and a prosecutor for some 25 years in the United Kingdom and as a former DPP within the region. Can I say this? I had planned to make a brief opening statement but I think I would want to say this first in support of DPP Gaspard. The office of the DPP, the world over, has always been seen as the Cinderella of the government legal service. I leave that comment there. It is unfortunate but it is true.

The priority and ultimate goal of a civilized society is to eradicate the triple evils that haunt us: delay, cost and complexity. All of which may be generated and

interrelated from the uncontrolled nature of the criminal litigation process. It is an inescapable fact that the criminal justice system in this country, sad to say, is riddled with endemic delays. We speak of the golden thread that runs through the rule of law and the presumption of innocence, but the criminal justice system is hanging by a thread. That is not meant to be sensationalist; that is the truth of the matter.

Everyone sitting at this table and in this room knows what needs to be done. It is not rocket science. We know where the problems lie. We have to work smart, not hard. It is unfortunate that this jurisdiction, Trinidad and Tobago, which not so long ago was once renowned for having one of the strongest and erudite bars in the legal world of the Commonwealth Caribbean now finds itself being looked upon with scorn and dismay.

In some quarters, it is believed that this standing has been lost. I beg to differ. Trinidad and Tobago has the knowledge, it has the experience, it has the personnel to combat this particular problem. All that is needed is the sensible and robust deployment of resources and I say that with capitals and in bold and italics if you like, in this regard.

I have prepared my paper, I have submitted it and I have tried to deal with it from both the Magistrates' Court right up to the High Court, the assizes. Everything that has been said here in one form or fashion echoes what is on my paper. I am happy to receive your questions, comments and criticisms.

Madam Chairman: Mr. Sturge.

Mr. Sturge: Good day, Mr. Sinanan. We have a situation in Trinidad and Tobago where prosecutors—and I am not blaming them really because I know sometimes it is the fault of the police. Prosecutors would rise to tell a court that they are

ready. The accused is arraigned, the jury is impanelled and then the next day, we find out that witnesses are unavailable because they are either dead, very ill, out of the jurisdiction.

There may be bad character applications, applications for fresh evidence and so on and so on that arise during the trial. And I believe largely it is the fault of the police officers not communicating with the State in terms of updates. But can you give us some idea as to how we can get rid of this problem because it causes multiple applications during the trial while the jury is already hearing evidence and therefore causes the trial to be prolonged?

Mr. Sinanan: For far too long, prosecutors have always been the cannon fodder. They are the ones with the cold face. But when the problems occur, no one wants to hear about the officer has not done his job, it is the prosecutor who is both the messenger and who gets shot, although they say do not shoot the messenger.

In my paper at page 3 and set out on to page 5, I deal with plea and case management hearings. It is important, it is imperative and it is vital that plea and case management hearings be had, heard and conducted by judges who dispense a robust approach to these matters because that protects a number of issues and ensures a quick trial, a fair trial, cost-effective and a timely hearing of the case. Prosecutors who come before the courts and have to say that they have not received papers, may sometimes sound monotonous but unfortunately, they cannot say anything else. And judges should then have the power to summon to that court the officer in the case.

Ask the OIC. This is a small jurisdiction and we are blessed with telecommunications, speeding police cars who know how to get through traffic at the drop of a hat. They should therefore make sure that officers be ready and

available at every plea and case management hearing.

When there is a case for plea and case management hearing, the officer should be linking with that prosecutor well in advance to know what the prosecutor needs, when the prosecutor needs it, when it can be supplied if it is lacking, and how soon they can get into court. Getting into court and standing around scratching one's head saying, "well I do not know" is limp and inexcusable. So the judges, if a prosecutor has a problem, the judges should then take a robust approach and ensure that the police officer is there if he is not there, because he or she should be there in the first instance.

Mr. Sturge: Mr. Sinanan, there is a question I wish to ask. Years ago when I first graduated, trials were much shorter, objections were dealt with immediately. You object, what is your objection, the prosecutor, what is your response and the judge would summarily deal with it. And Mr. Khan can bear me out. We have now a proliferation of legal arguments and most arguments being dealt with in writing during the course of a trial and judges delivering multiple rulings during the course of a trial, which, in any event, can bind no one because of deduction of stare decisis. Does that happen in the United Kingdom?

Mr. Sinanan: No. What tends to happen is you have a plea and case management hearing. On the plea and case management hearing form, you fill out the issues to be identified. You set a date with that judge, it may be two weeks hence. If it is going to be a dismissal hearing, let us say, for lack of evidence, or if you have a particular issue with a voir dire or a statement. That is heard beforehand. That ruling is then binding. Well, that is a ruling but you still have the opportunity to raise it and the way it is raised at the trial is only if there is other evidence that surfaces that gives you cause to revisit it.

But these matters are dealt with as preliminary matters. That is why it says plea and case management. Dealing with these preliminary issues beforehand is case management. Pleas, when they come to court and they give a plea and it is not guilty, it is expected that the defence would be ready, once they have been provided with a term that has been used disclosure. Once disclosure is served upon them, then the defence should have no excuse of coming to court ready.

If there are no issues, it is very—put it this way, it is a brave practitioner that raises before the trial judge, “Oh, there is now an issue”, simply because the question would be: why did you not raise it at the plea and case management hearing? It is a filter and it is a way whereby it narrows the issues, it streamlines what has to be done, it is cost-effective. That is why when the London riots happened, the additional 750 cases a month, in addition to the existing 200 per month, posed no problem because matters were dealt with in a very focused way.

12.25 p.m.

Mr. Sinanan: There is no reason why this country, blessed with its technology, blessed with its knowledge, blessed with its resources and its legal personnel, cannot achieve that. As I said, resources must be deployed. Give the DPP what he needs. Do not have him going into court with one hand tied behind his back, a patch over his eye and he is limping. I left out the parrot.

Madam Chairman: Mr. Sinanan, thank you for making that observation because while Mr. Gaspard was speaking it could not—I had to take into account that some of the difficulties that he is encountering now are difficulties that the DPP 20 years ago had. And I find that the DPP’s office has always been treated very badly and unfortunately that is because the officers, generally speaking, work well and work well in spite of what they are given or not given. But I think that is no excuse for

not making sure that they are properly paid, that their security is assured and that they have everything that they need at their disposal, to ensure that there is quality justice.

I know that Mr. Rambharat wishes to make a comment. Now, I am looking at the clock and the reason for that is because we have Members from the House of Representatives on the panel. So I need to knock off at about 12.30. I know Mr. Rambharat wishes to say something.

Mr. Rambharat: Very briefly, Madam Chair. I just wanted to thank the DPP and the Legal Aid and Advisory Authority, the Ministry. I see Mr. Daniel Khan has returned with his students, to thank them. I found the written submissions to be very comprehensive. It would help us. I found the data in this country, it is very difficult to get data and we do not have a habit of making decisions using data. I found the data to be helpful, frightening at times. I think that this Committee has enough to work with.

I just want to point to two things. One is something I have been saying often: in the more recent reports from the Judiciary, there is this point being made about the pool of defence lawyers in criminal matters shrinking and it is affecting the pace at which trials proceed. The first time I saw it, I was taken aback because it is not something I had personally considered, in relation to the speed at which trials move, and I just wanted to get your feedback on that.

The second thing is something which, of course, I always raise. I wanted to know if criminals accused in rural areas faced any additional disadvantage based on the challenges facing the criminal justice system and, in particular, whether the DPP found that criminals accused in rural areas, if it was more difficult to assign lawyers to those cases on a consistent basis and whether the Legal Aid and

Advisory Authority found any difficulty in supporting and allocating counsel to clients in rural areas? Thank you.

Mr. Gaspard SC: First of all, if I may take your last enquiry first, in relation to accused persons from rural areas. As far as I am concerned there is no difficulty in assigning prosecutors to deal with accused persons in rural areas. That is not one of our bugbears.

With respect to the criminal justice system, it has been my experience that there may be some difficulty, in terms of people in rural areas, say, accessing—let us take the south of the country, the High Court trials take place in San Fernando and, say, people from Mayaro, Guaya, Rio Claro, et cetera, they have some distance to go to reach and access the courts, especially given the traffic situation.

What you also find happening is that, in the case of witnesses, the so-called stipend that witnesses are paid to secure their attendance or so, as to assist them to access the court, the stipend is abysmally low. It is a stipend from a different era. So you have a situation where witnesses sometimes have to forego job opportunities, salaries and remuneration to come to court, perhaps doing their civic duty, and at the end of the day they have to take moneys out of their pockets and sometimes even prosecutors are attempted to have to provide these witnesses with transportation money, thus running the risk that some people might say you are bribing the witness to come to court. But the witnesses would tell you point-blank that to come from Guaya, to come from Icacos, and then at the end of the trial you get a little stipend that is abysmally low, they may feel it is not worth their while. Some of them may go into hiding so that they cannot be served with the requisite court process, so as to secure their attendance at court and I think that that is something that needs to be looked at.

If we are looking at the issue of the accessibility of persons in the outlying districts to the criminal justice system, either as witnesses, accused. I think that that is a matter that needs to be looked at.

Madam Chairman: Thank you. Mr. Coppin has a question.

Mr. Khan SC: In relation to legal aid assigning an attorney—

Madam Chairman: I beg your pardon. Sorry Mr. Khan.

Mr. Khan SC: On the issue of assigning attorney, the people accused for crime the rural areas are at a big disadvantage because the experienced and competent attorneys congregate in Port of Spain or San Fernando and you would not get them to go to the district court in order to represent an accused person at a summary matter. It is only if the matter comes to the Assizes. The lawyers who congregate, or who live in the district, let us say, of Mayaro, for what reason the lawyers in the country district could stop reading or stop developing their skills and those are the lawyers that would be appointed by the magistrate in order to represent the accused persons. So they are definitely at a disadvantage. If you want a competent attorney—and also some lawyers are of the view that, in the Port of Spain and San Fernando, “is peanuts yuh paying dem in order to go down to the country district and yuh better look fuh a monkey.” That is their attitude. You give peanuts to a monkey. You do not give it to me. They tell you openly they are not going. You see, what they have in mind, they are not assisting the country.

Many of the lawyers coming out from Hugh Wooding Law School, they think from the time they become a lawyer they have a magic wand in their hand to make money.

Madam Chairman: Mr. Khan, so if a lawyer says listen, I am not going to the district court because you are not paying me enough, does that lawyer remain on

the roll?

Mr. Khan SC: Yes, my lady, because we are grateful he is on the roll.

Madam Chairman: Okay, we have a question from Mr. Coppin.

Mr. Coppin: Through you to Mr. Gaspard again, Madam Chair. You spoke earlier about the threats that are faced by prosecutors as being one of the major obstacles in attracting persons to the DPP's department. I know you would have spoken about bullets and missiles and threatening texts and you had put forward a suggestion to the AG, or a proposal for some sort of risk allowance. Now, I know that is quite pecuniary but is there any other strategy that you would advocate, which would, perhaps, mitigate or help persons to basically still feel safe in the arms of the Office of the DPP?

Mr. Gaspard SC: Well, I would also have put forward a number of measures to the Commissioner of Police, in relation to the safety of officers at the DPP's office. But if I might identify one particular factor that could assist and that would redound, in my respectful view, to the amelioration of the criminal justice system and eradicate delay, a lot of time is spent bringing prisoners from the prison to the respective courts. It might be that, given the fact that we are in 2016, we can deal with the issue of remanding prisoners by video link. We can deal with the issue of remanding prisoners by having a particular court dealing with the remanding of prisoners, so that magistrates, when they sit at nine, they actually sit to hear evidence and not to be going through their list for an hour or two dealing with the remanding of prisoners, and so on.

If we have a remand court, for instance, which is situated closer, in closer proximity to the prisons it will be cheaper for the State, I expect; and State Counsel, people attached to my office, do not have to run the risk of travelling

from Port of Spain along the bus route, the Eastern Main Road, the highways, et cetera, to get to Arima, to get to Grande, to get to Mayaro, to get to Rio Claro, to get to Point Fortin, to get to La Brea when that court sits.

Madam Chairman: Thank you, Mr. Gaspard.

Mr. Sturge: Madam Chair, I have one last question.

Madam Chairman: Is it a very brief question?

Mr. Sturge: Directed to both Mr. Gaspard and Mr. Sinanan, do you think the decriminalization of marijuana would assist the criminal justice system?

Mr. Gaspard SC: I think the decriminalization can assist, in terms of the reduction of the backlog and the sluggishness of the system. Since there are many persons who are not really—and to some extent, to the Chief Justice’s credit, the drug treatment courts is an idea that has been advanced and has the capability of helping out in this regard. There are some persons who end up in prison and before the courts, who are not criminals, per se, but who have a drug addiction problem. Those persons, again, you can actually do some diverting, deal with the persons, in terms of their drug addiction problem or some sort of ticketing system so that you would remove some of the burden currently plaguing the Magistrates’ Courts.

So I do think—and the thing is we would also need, in order to get that idea to fly properly, you also need a public sensitization programme. It is not as though you are saying marijuana, for instance, is legal. It is decriminalize, which is a completely different thing from some people thinking that you are legalizing marijuana. The distinction and the difference need to be concretized by means of a public education process.

Mr. Sturge: Thank you.

Madam Chairman: Thank you, Mr. Gaspard.

Mr. Sinanan: I would be very brief. They attempted to downgrade marijuana or cannabis, as it is called in the UK, from grade B to grade C. They found that then there was an increase in its usage and they had to re-grade it or upgrade it. I think it depends on the quantity, it depends on its usage, it depends on the circumstances. But there must be, obviously, as has been said, a public programme to let people know that, you know, in some instances the possession of a small quantity of marijuana or weed has resulted in cautions at the police station. People admit and say, yes I had it on me; and the police say, well here is the caution. But we have to very cautious as to how we approach that and make sure it is not something that is abused.

Madam Chairman: Thank you all very much. This has been an enriching session. You all have very kindly provided us with written and oral material that we will certainly be relying upon to produce our report.

My invitation to all of you is, if you have any other comment that you wish to make please feel free to communicate with Mr. Ogilvie who is the clerk to this particular committee because we would welcome your comments prior to the production of our report.

Thank you very much for attending today. This session is adjourned, I suppose, or at an end.

12.39 p.m.: *Meeting adjourned.*