

Paper Laid

Monday, August 29, 1994

HOUSE OF REPRESENTATIVES

Monday, August 29, 1994

The House met at 10.16 a.m.

PRAYERS

[MADAM SPEAKER *in the Chair*]

PAPER LAID

Report of the Auditor General on the accounts of the Deposit Insurance Corporation for the year ended December 31, 1993. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

To be referred to the Public Accounts (Enterprises) Committee.

ORAL ANSWER TO QUESTION

The following question stood on the Order Paper in the name of Mr. Trevor Sudama (Oropouche):

**Cucharon River
(Construction of Wall)**

- 144.** (i) Can the Minister of Sport and Culture and Youth Affairs inform this House when the project for the construction of a wall at one side of the Cucharon River, Debe, opposite the Debe Hindu School commenced?
- (ii) Can the Minister also give an update of:
- (a) the number of metres of wall constructed;
 - (b) the cost of labour on the project;
 - (c) the cost of equipment used on the project;
 - (d) the total expenditure on the project?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Madam Speaker, there is one question on the Order Paper and I beg to move that it be deferred for one week.

Question, by leave, deferred.

Mr. T. Sudama: Madam Speaker, is the House going to be prorogued this week? If so, what is the point in deferring this question for one week, why not just abolish the question; abolish this Parliament?

Oral Answer to Question

Monday, August 29, 1994

Madam Speaker: I do not think there should be any fears about that.

Mr. Sudama: Madam Speaker, in dealing with the PNM, one has to be careful all the time.

ORDER OF BUSINESS

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Madam Speaker, I beg to move, that the House now debate the Bail Bill instead of Motions.

Leave granted.

BAIL BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [August 12, 1994]:

That the Bill be now read a second time.

Question again proposed.

Madam Speaker: The hon. Member for Couva North has five minutes remaining of the first 45 minutes and then the 30 minutes of extended time.

Mr. Basdeo Panday (Couva North): Madam Speaker, when this House adjourned on August 12, 1994, it was in pursuance—let me put it that way—of a request by the Opposition that the Government would put the Bill out for public comment.

I know that there was no undertaking that it would do that, but we were asking—maybe this is the better way to put it—that the Bill be put out for public comment. As you know, the matter was adjourned until today. I want to point out to this House that the Government has not put out the Bill for public comment. I think it would have been a wise and proper thing to do. The Government has not seen it fit to do so; instead, the *Express* newspaper—I notice, is attempting to perform the functions of the Government, in that it has published some mechanism for people to vote on the Bill, but that is not sufficient. *[Interruption]* Yes, I have a copy here with me. I think it is very inadequate, because this just asks if one supports the Bill, yes or no.

That is a very dangerous thing, if it is intended to be a substitute for the Government setting up the machinery to ensure that there is public comment on the Bill. The setting up of machinery would have meant that the Government had

intended first of all, to give the Bill the widest publicity, so that the public understood what the Bill is.

My experience has been—since this Bill was introduced, and we have been on the hustings on several occasions—that every time we explain this Bill to people and they find out what it is about, they support the position taken by the Opposition. So that first of all if one wants to know how people think one has to ensure that there are mechanisms, not only for the Bill to be distributed; not merely for it to be even read, because as you know legislation is of such a nature, and it is drafted in such language that the ordinary person in the street cannot deal with the legalese, so to speak, and therefore it is necessary to have the Bill understood by having it explained in the simplest language. Not only the people in the higher bracket of the society need to understand the Bill; if we want public comment, we want it from the people at the grassroots as well as the elite in the society.

The Government, therefore, should have, in our view, given the Bill the widest publicity and provided for the Bill to be explained—that is, to explain the meaning, the purport, the effect and consequences of the Bill. That has not been done. The machinery that should be set up by the Government ought to include also mechanisms which will receive and evaluate public response.

This attempt by the *Express*, is dangerous in the sense that no one can substantiate the veracity, the authenticity and accuracy of any results published. Without people knowing exactly what the Bill is, merely to give a two paragraph explanation of a Bill and then say vote yes or no is to insult the public's intelligence. I make this point because I have no doubt that those people who are in favour of the Bill will no doubt attempt to use this as some sort of mechanism. I want to alert the public that that would not be sufficient.

When I closed on the last occasion, I was emphasizing a point which I think can bear repetition, and that is, that many people speak glibly of the rights of the victim; it is an emotive term. Every time one speaks about people's rights in this country there is a reactionary, blind, emotive, senseless and ignorant group that says, "Oh, you are talking about the rights of the criminal; what about the rights of the victim?" That is a situation which is so stupid, it is not funny.

10.25 a.m.

The state prosecutes on behalf of the victim; the state is supposed to provide assistance to the suffering of the victim. The victim is not without representation. I want to say, the argument that we are putting forward here today is not an argument for the criminal. We actually hear people say that, when we speak of rights, that we

Bail Bill
[MR. B. PANDAY]

Monday, August 29, 1994

are talking about the rights of the criminal as opposed to the rights of the victim. We are not speaking about the rights of the criminal here today. I want to make that absolutely clear.

Madam Speaker: The speaking time of the hon. Member has expired.

Motion made, That the hon. member's speaking time be extended by 30 minutes. [Mr. R. Palackdharrysingh]

Question put and agreed to.

Mr. B. Panday: Madam Speaker, what we on this side are speaking about is not the rights of the criminal; we are speaking of the rights of the innocent. That is extremely important. How do you protect the rights of innocent people, not criminals? As far as we are concerned, criminals would be dealt with by the law. The question is what happens to the innocent people, I made this point, I will make it again. The founding fathers of this constitution decided that in order not to take away the rights of innocent citizens, to put a heavy burden upon the Opposition.

The Constitution says that whenever the Government wants to take away innocent people's rights, it cannot do so unless it gets a special majority in the House, that is to say, unless the Opposition supports the measure. So the Constitution places a burden upon the Opposition to protect the rights of innocent citizens; it gives the Government the right to prosecute criminals, it gives Government the right and power to set up courts and to provide them with the necessary machinery, so that criminals could be imprisoned, be reformed and so forth.

But it gave the Opposition the right and the duty to protect innocent citizens when the Government or the Executive seeks to encroach upon them. That is what we should do without fear, without favour, whether there be hysteria, whatever there be.

This is a duty which we will discharge because when the hysteria is gone, the same people who are demanding that you take away innocent people's rights are the very ones who would bounce on our backs and say, 'we should have had enough sense, the Constitution gives us the right and we did not do our duty.' I just want to make that absolutely clear—as indeed, the PNM did in 1988.

In 1988, the PNM was sitting on this side, and the Government was on that side and the Law Commission put out a Bill for public comment. I will read for you before this day is over the comments of the present Prime Minister, the comments of the PNM; the comments of the *Express*, the comments of Sir Ellis Clarke and Mr.

Ramesh Deosaran among others; I shall read all of those to show you how they reacted, and rightly so. I want to congratulate him on being in the Opposition. He seems to function better in the Opposition. I shall ensure that he occupy that seat come the next election. He functions much better here, he does all the right things, once he is in the Opposition. But, I must warn him that he must first win his seat before I put him in the Opposition.

This Government has subscribed to certain international conventions and one of them is the UN Convention on Civil and Political Rights. In that convention there is contained a body of principles for the protection of all persons under any form of detention or imprisonment. That convention to which this Government has subscribed, guarantees that an individual should not be deprived of liberty except by judicial process. I emphasize "judicial process" because I want to distinguish it from executive process.

This bill seeks to deprive one of the right to liberty by executive process, not by judicial process. It asks that a law be introduced and that the law deny one going before the judges or the magistrates, deny what is called "due process". This, therefore, is in contravention of that law to start with. Article 2 of the Convention on Civil and Political Rights states:

- "(a) To ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation shall have been committed by persons acting in an official capacity;
- (b) and to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial authorities."

That is the crux here in this case: the removal of the right to go before a judge. We say, deny bail, we are agreeing that the courts should deny bail to persons who are charged with offences or convicted for offences. What we say is, the policeman should not be the one to determine that; that must be determined by the court. The judge must determine that, the magistrate must determine whether a person who has previous convictions or whether he has been previously charged should or should not be given bail.

Do you know why the law does that? The law does that because the variety of human circumstances is infinite, and you cannot legislate for every single eventuality of human circumstance. There are scenarios which you and I could never dream of. How, therefore do you legislate for things you know not of?

The law is that legislation should allow the judge when somebody is brought before him to look at that particular case and to look at that particular scenario and

Bail Bill
[MR. B. PANDAY]

Monday, August 29, 1994

decide whether that person should be granted bail. We can put in the law—and we have no objection to this—all the criteria by which the judge or the magistrate should act; we have no problem with that, but what we are saying is, do not make it such that a policeman can decide, the Executive can decide that a man will not get bail. That, we say, is wrong and it is in violation of the principles of which we speak.

It also says that persons who are charged should be brought—anyone arrested or detained. This Government has agreed to this international convention. Article 9(3), says that:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for the trial."

We have absolutely no problem with that.

I want this country and this Parliament to understand what we are arguing about in this House. As I said, we are prepared to put our political careers on the line in order to do what we swore in this House to do, that is to uphold the Constitution and the rights of innocent people, not criminals. I cannot emphasize that long and often enough.

This country has spoken, and I believe that this is why the Government is afraid to put the Bill out for public comment. You will recall the Attorney General saying that in 1988 the Law Reform Commission had submitted a Bail Bill for public comment, and that Bill was given very wide publicity and there was a public outcry against it.

Contrary to what the Attorney General has sought to do in his presentation, to distinguish this bill from the one that was put forward by the Law Commission in 1988, is to attempt a sleight of hand. That is to say, it is essentially the same thing, in that it has what is called an automatic denial to bail.

10.35 a.m.

Automatic denial was the grouse in that Bill. Although there may be slight variations in its proposal, the automatic denial of bail, that is to say, the removal of the right to go before a judicial officer to determine whether bail should be granted, had been the problem with that Bill.

I want to point out how the public reacted to that Bill. After public reaction a second Bill was produced, and a third Bill was produced—one in 1988 and another in 1990. We have not seen the 1990 Bill. There was a crime committee set up to examine this Bill. That committee comprised the former President of the country, Sir Ellis Clarke, Dr. Deosaran, and Mr. Mouttet.

If they looked at this Bill and commented on it, surely that report should have been made available to the Members of Parliament so that we could have seen how the crime committee was thinking. Maybe this is one of the things the Member for Couva South was speaking about a few days ago when he was speaking on freedom of information.

There is a committee report on the Bail Bill; we are debating a Bail Bill and the Government refuses to allow or to lay on the Table the report on that Bill. Are they hiding something? They do not want us to know about it. Lay it on the Table! If they lay it on the Table, we would look at it and comment on it. They have not sought to do so.

When the original Bill was put out for public comment by the Law Commission, an opinion appeared in *The Sun* of April 15, 1988. At that time, the Sun was an Express newspaper. It said:

"Guilty people can be imprisoned right now."

The same point we are making now is the point they were making; that is, guilty persons can be denied bail right now. As it was then, so it is now. *The Sun* said:

"There is no need for legislation to take away the right to bail from innocent people."

This is the identical point we are making. Innocent people! The newspaper said:

"There is no need to, and no sense in imprisoning innocent people.

And it is very, very dangerous to allow the police what is, in fact, the right to decide the guilt or innocence of someone."

I refer hon. Members to that opinion in *The Sun*.

Madam Speaker, *Sunday Express* of April 17, 1988 states:"

"Is this Bill the answer?

Personal liberty is not to be infringed upon lightly and although there is a clear appreciation of the exceptional circumstances which brought about the thinking behind the bill, there is rarely sufficient justification for laying down laws

Bail Bill
[MR. B. PANDAY]

Monday, August 29, 1994

which tend to run counter to basic tenets of democracy. It is in that recognition of the rights of all that we distinguish ourselves from those who would banish such rights in the name of law and order. We advise caution on this bill."

That was the *Express* in 1988. What happened to them? What made them change their minds? Is it importation of second-hand motor cars? Is it the advertising revenue? I do not know. Where is the principle of the people who control this newspaper? They are supporting the Bill now, and I have not seen a single word in which they say what distinguishes this Bill from the former one.

Dr. Ramesh Deosaran, who, as far as I am aware, is a member of the crime committee and whose report I seek—I want to know if Dr. Deosaran is a chameleon. Do you know what is a chameleon? A chameleon is an animal that changes its colour relative to the background against which it stands.

Mr. Maharaj: There are many people like that.

Mr. B. Panday: When I was a young fellow, it was called "24-hours." When I was even younger, it was called "maboya." I am sure people know what is a "maboya". A "maboya" is a "24-hours", and a "24-hours" is a chameleon. If it sits on something brown, it turns brown. If it sits on something white, it turns white. If it gets a job with the *Express*, it changes its mind. If it gets a job with the *Guardian*, it changes its mind again. That is a chameleon

Madam Speaker, the *Trinidad Guardian* of April 23, 1988. Dr. Deosaran, Independent Senator, Lecturer at UWI. Would basic freedoms be unwittingly undermined? It states:

"But, like many others, I am looking at the extent to which these Bills in their present form could unwittingly undermine the fundamental freedoms of the wider society."

I want to know whether Dr. Deosaran has changed his views. Let me have his report on this Bill, please. Let me know. If Dr. Deosaran gives me sufficient reasons and tells me, "Member of Parliament, you are wrong; look, this is why we have changed our minds," we may be tempted to go along. But please tell us! We have two Bills violating fundamentally the same principles—one in 1988 and one in 1994—and he has changed his mind from 1988 to 1994. Something went wrong!

There was published in the *Express* of Saturday April 23, 1998, an opinion by one Camille Robinson, lawyer. I strongly suspect that this is the same lady who

now goes by the name Camille Robinson-Regis. The photograph certainly looks like her. It says:

"Camille Regis, lawyer: It is appalling that such a Bill, which is contrary to all the tenets of our legal system, should even be considered. A man is innocent until proven guilty. The Constitution ensures that the liberty of the citizen is of paramount importance. Under no circumstances should his liberty be denied."

Camille Regis, now Camille Robinson-Regis, Member of Parliament, Senator, Acting Minister in this Government changes her mind.

Mr. Sudama: Acting Attorney General.

Mr. B. Panday: The learned lady is a colleague of mine and she should tell me why she has changed her mind.

Mr. Sudama: What is a female chameleon?

Mr. B. Panday: She has not said a single word and, I imagine, she supports this Bill now; unlike my Friend, the Member for Port of Spain North/St. Ann's West, who is a man of class, I must admit.

Mr. Sudama: Do not jump to any conclusions.

Mr. Maharaj: He disagrees with class.

10.45 p.m.

Mr. B. Panday: On April 24, 1988—*Express*, pages 1, 18, 19 and so on—the hon. Member for Port of Spain North/St. Ann's West, Mr. Desmond Allum S.C., speaking on this Bill with the same provisions said:

"The real danger of the legislation, ... was the power given to the police to imprison without trial."

That is why I say you cannot distinguish this Bill from the one we had before. That is the essence to imprison without trial. The hon. Member went on to say—

"A citizen has the right to reasonable bail,...and to take that power away from the judiciary and to hand it to the police at a time when public confidence in the police is at its lowest ebb is certainly a very retrograde step."

The only difference between that statement and this one is that the police are now at an even lower ebb. That is the only difference between the two statements. I do not say this with any malice towards the good policemen in this country. We must always distinguish the good policemen in this country from the others. There

Bail Bill
[MR. B. PANDAY]

Monday, August 29, 1994

are thousands of good, decent, honest policemen in this country who do a fantastic job who are honourable and honest gentlemen, but there is a small group which has been identified. One cannot put this law into their hands. I agree with the Member entirely.

The article continues—

"Charging that the bill was repressive and totalitarian in intent, Allum said he is still to see statistical evidence to support the claim that persons charged with offences commit even more offences when out on bail."

I go on:

" 'I know people are concerned with the seeming increase in crime,' said Allum, 'but it is my view that there is sufficient power in the judiciary and the magistracy to exercise their discretion in respect to persons being granted bail.'"

I read that because I wanted to compliment the Member. I do not do this tongue in cheek. I do this because it is to the Member's credit that he is not a chameleon, he does not change because there is hysteria. He has demonstrated consistency which is an honourable thing. He has been consistent—I do not know how he will vote—and I commend him on it.

I also commend him on another thing. He disagreed with his party and he said so but he behaved like someone with class and not someone out of the political gutter. He behaved like a gentleman.

I noticed that he disagreed with his party on two things—that is how I thought politics was—the hanging of Mr. Ashby; he felt his Government was wrong and that is an honourable thing. I wish other parliamentarians would be like that.

I just wanted to put that on record because it is extremely important, in my view, that Members should *[Interruption]* I want to read two more articles before my time expires. I am sure my colleagues are going to deal with the rest but there are two that I want to deal with.

In the *Daily Express* of May 26, 1988: "Ellis Clarke strongly against proposed Bail Legislation"—

"Former President Ellis Clarke came out strongly against proposed Bail legislation saying that...care must be taken not to stigmatise anyone as a criminal...because he is charged with an offence."

He said the Bill is not satisfactory and called for guidelines and principles to be established in determining bail. We agree with the former President, entirely! We

agree that the Government should introduce the guidelines and principles which are in this Bill and which we are going to support. What we find hard to support is the automatic denial of bail to innocent people. We find it hard to swallow that innocent people would have no right to go before a magistrate.

The Chamber of Commerce. I cannot understand. On page 31 of the *Trinidad Express* of May 25, 1988, "Chamber Rejects Bail Bills":

"The Trinidad and Tobago Chamber of Industry and Commerce has rejected the majority of proposals for the refusal of a bill now envisaged in the controversial draft bail bills.

The committee expressed concern about the risk of arrest and detention without bail to which innocent citizens may be exposed by the fabrication of 'certain elements' within the Police Service..."

That was not the only page, they went on as well on page 38 "Chamber Team rejects no-bail offences in proposed bills" and there again we have a picture of my distinguished colleague, the Member for Port of Spain North/St. Ann's West side by side with that of Mr. Sebastien Ventour, and he makes the same point again. That is to say, that this is a dangerous piece of legislation.

I must also read the contribution made on May 21, 1988. At that time the hon. Member for San Fernando East was sitting on this side—that is why I say he belongs on this side. When he is on this side he says the right things, but the moment he gets on the other side he says the wrong things.

In the *Daily Express* of May 25, 1988, "Manning calls on AG to quit"—

"Opposition Leader, Patrick Manning has called for the resignation of Attorney General Selwyn Richardson for 'circulating inept legislation' in the controversial draft no Bail Bills."

That Attorney General has been criticized for circulating it—and he did not circulate it! My understanding is that the Law Commission [*Interruption*] He supported the Bill, I know that, but he did not circulate it; but the Member for San Fernando East said for circulating it he should go. He compounded it by going further; he was not satisfied to stay quiet.

"Manning: No red herrings, please.

Opposition Leader Patrick Manning said yesterday that responsibility for the draft bail bill lay solely with Attorney General Selwyn Richardson."

Bail Bill
[MR. B. PANDAY]

Monday, August 29, 1994

Do you see who was putting red herrings?

"In a news release issued yesterday, Manning said 'no attempt at introducing red herrings' of when the bills were actually drafted or what opinions were canvassed and expressed could now relieve Richardson of his responsibility for putting this draft legislation out for public comment."

He was criticized for even putting it out for public comment.

"In a letter to Richardson on Wednesday, chairman of the Law Commission, retired Justice Ulric Cross said Richardson had 'no input in the drafting, preparation or amendment of the two bail bills.'"

"However, Manning said yesterday that unless the Attorney General was prepared to confess to a greater dereliction of duty by confirming that he took before Cabinet documents which he had not read, it is clear that contrary to what he would have the nation believe, he was no stranger to the contents of the...bills."

Madam Speaker: The hon. Member has two more minutes.

Mr. B. Panday: Thank you, Madam Speaker.

I merely want to say that here are two views which the Government has not yet determined.

10.55 a.m.

I have much more to say on this Bill and I believe an opportunity will present itself to me to say it because, if I understand the Standing Orders very well, if an amendment is introduced, I can speak on the amendment.

Madam Speaker, I now end my contribution here for the time. I shall continue when the Government introduces its amendments.

Madam Speaker: Member for St. Joseph.

Dr. Rowley: Let us hear some sense in the Parliament.

The Minister of Education (Hon. Augustus Ramrekersingh): Madam Speaker, I join this debate in order to lend support to the measures introduced by my colleague the Attorney General.

I want to start off by giving a general outline of the way in which I intend to proceed. First of all, I wish to look at the specific objectives of the Bill. Secondly, I wish to deal with that very delicate question of the balancing of the rights of the

individual with the rights of the society as a whole. Thirdly, I wish to look at certain provisions of the Bill and respond to some of the propositions put forward by the Leader of the Opposition.

Perhaps, I should start by saying that there is a fundamental difference between this Bill we are debating today and the one that was put out in 1988.

Miss Nicholson: Show us!

Hon. A. Ramrekersingh: What the 1988 Bill sought to do—in fact, proposed—was several additions to offences that were non-bailable. While this Bill adds two offences, which are non bailable, it raises the question of a record—repeat offenders—and that is a fundamental difference.

Mr. Maharaj: Removal of judicial office.

Hon. A. Ramrekersingh: I have made the point. I do not think I need to—one can look at the 1988 Bill and see it.

Miss Nicholson: Everyone is arguing about his rights.

Hon. A. Ramrekersingh: Madam Speaker, this Bill will not, by itself, solve the problem of crime, nor is it intended to do so. It is specifically aimed at dealing with a situation largely in respect of repeat offenders. It is but one strand in the bow in dealing with crime because we need legislation, in the first place.

The Government has for some time been introducing legislation to deal with crime. There is more to come; legislation by itself will not solve the problem of crime. We have been working on administrative adjustments so that the process of justice could be expedited. We are looking at the reorganization of the police service, especially in terms of the way it is managed, so that we could have more effective law enforcement. Those are the short-term and medium-term measures.

There is a longer view, which I shall simply mention without elaborating. That is, going back to the beginning—going back to our young people and developing in them a sense of values and morality. I make that point deliberately. It is the long haul and yet we must do it. I emphasize that point because we must be concerned when we see the violence of certain crimes that are committed in our country, especially in respect of young people.

Mr. B. Panday: Deal with the point. Crime has nothing to do with it.

Hon. A. Ramrekersingh: It is as though there is no respect either for human life or the human person.

Miss Nicholson: Same arguments.

Hon. A. Ramrekersingh: I am reminded of the quotation—

"O judgment! Thou art fled to brutish beasts,

And men have lost their reason."

I hear the comment on the other side about emotionalism. Let me make it clear. I am at one with the Attorney General when he made the point that in putting forward this legislation and dealing with specific situations which we are seeking to address, we must do it with a sense of calm—clinically. Nevertheless, in the background there is a particular situation. What is important is that we seek to rise above mere emotionalism and hysteria.

Mr. Maharaj: I agree.

Hon. A. Ramrekersingh: Madam Speaker, in any human situation there will always be some emotion. I do not know anyone who considers himself to be completely *sangfroid*—cold blooded.

Mr. Sudama: Keep your emotions in check.

Hon. A. Ramrekersingh: We must seek to subject emotion in order to try to be as objective as possible, but even the concept of objectivity is one that we can argue about philosophically for a long time. I do not want to get into that—what determines whether you are objective, or whether something is objective. There is a very interesting discussion on the concept of objectivity in a book called "What is History?" by E. B. H. Carr. I just mention it—I do not want to go into it, but I am saying that we must rise above emotion and hysteria but, ultimately, we are human beings.

Mr. Sudama: So we think!

Hon. A. Ramrekersingh: Madam Speaker, let us see this piece of legislation as one measure in a wide range of measures needed to deal with crime, in the short, medium and long term.

The Attorney General made the point and gave some statistical data which seem to indicate that many of the serious crimes that have been committed in recent years have been committed by people who are committing offences not for the first time—repeat offenders. But, in fact, it may be reasonable to conclude from the data that there is a relatively small number of persons engaged in certain serious acts of a criminal nature.

In the society, as a whole I think we can safely say that the average citizen has reached the point where he or she is quite concerned about the escalation in crime, and about his or her own security and safety and that of others. The society is really asking that we cry halt to the wave of crime; and is really saying that we must put the leash once more on the dogs of war.

Mr. B. Panday: You mean, release the leash! You are calling those people in Laventille dogs?

Hon. A. Ramrekersingh: The society is saying that we must take stern measures to deal with crime, but those measures must be within the parameters of the democratic society in which we live.

11.05 p.m.

We have to ask ourselves as a people, as a Parliament, as individuals, whether we can continue to allow any small group of persons to terrorize the vast majority of the population; where any small group should behave in such a way that people cannot walk the streets unmolested; where people cannot be in their homes and feel safe.

Mr. Sudama: Would the Minister give way to a question?

Hon. A. Ramrekersingh: Sure.

Mr. Sudama: Could the Minister tell me whether this Bill is intended to suppress the incidence of crime in Trinidad and Tobago?

Hon. A. Ramrekersingh: Madam Speaker, the Member has a problem with comprehension. At the very beginning I said that this Bill we are debating will not, by itself, solve the problem of crime nor is it intended to do so. It is one measure in an overall series of measures. I made the point that it is directed largely at repeat offenders, and the data was given by the Attorney General when he presented the Bill. I agree that we must protect the rights of the innocent. It depends on whom we consider to be the innocent. People who commit offences have rights, and there are courts before which they can go; they are tried, given due process of law; they may be freed or found guilty. Offenders have rights and we recognize that.

I know my Friend the Member for Couva North may not be particularly supportive of the next statement but we must make the point that those who are the victims of offenders also have rights. *[Interruption]* I have not finished. The Member made the point that the state acts in a particular way in dealing with those rights. I suggest that, yes, you do arrest, prosecute, imprison, and so forth, but can

Bail Bill
[HON. A. RAMREKERSINGH]

Monday, August 29, 1994

the damage done by certain crimes be easily repaired, merely in that way? The rest of the society also has rights, and we have to seek to accommodate both the rights of the society and the rights of the person who may have committed the crime, but we must put them in the overall context of the rights of the rest of the society.

What we are really seeking to do in this Bill is in a philosophical sense, nothing new. For almost 400 years political philosophers have been wrestling with this question of individual liberty and the state. And, I deliberately said "400 years". I could have said 2,000 years ago, but that would not be entirely correct because I am dealing with it in the context of western civilization. There was a time when the dominant concern was the nature of the state and that was especially so in Greek civilization and the much touted Athenian democracy.

I simply remind Members that while we may espouse the virtues of Athenian democracy we must also remember that Athenian democracy was built on slavery; that the majority of the people in the *polis* were not citizens. The democracy applied only to citizens. It did not apply to non-citizens or to slaves; and in any case, it was conceived not in terms of individual liberty, democracy at that time was interpreted to mean participation in the affairs of the *polis*.

I wish to go no further, but it would be very clear if you read someone like Pericles defining what Athenian democracy was all about. We moved to the age after that where the concept was essentially the divine right of kings. The king can do no wrong. The king did in fact, not make law; the king declared law, the law of God.

In the 17th century individual rights and individual liberty became paramount, and that is why I said we are looking at about 400 years. If I may, starting to a large extent philosophically with Locke. From that time we have been wrestling with this issue not merely on the question of bail, but the fundamental and general principle of reconciling individual liberty with the well-being of the entire society. It is a very delicate operation, and many well-intentioned persons, even at the philosophical level seeking to reconcile it, have ended up sacrificing unduly the liberty of the subject.

We know we have the presumption of innocence until proven guilty. That freedom is enshrined in the Constitution and, precisely because it is in the Constitution, we have to seek not simply parliamentary approval, but a special majority for infringing the right. Yes, we are really trying to see how we can balance the two because we remain wedded to the principles of democracy.

11.15 a.m.

As I move directly to illustrate through specific provisions of the Bill I go specifically to clause 5.

Mr. Jurai: That is the clause.

Hon. A. Ramrekersingh: I agree that is the clause, but it is not the only one.

It is the critical clause where that challenge, which, as I said, is about 400 years old, that we are attempting to deal with in this Bill. I want to indicate that the Government circulated certain amendments to deal with points raised in clause 5. I would do both.

If I may reply to the Member for St. Augustine, it is not that the Attorney General would do what has not been done. It is a continuous process. At various times in human history, people have been wrestling with that problem. It assumes the dimension of bail in this particular case.

Clause 5 (1) states:

"A Court may grant bail to any person charged with an offence except:

(a) a person listed in Part I of the First Schedule;"

I do not think there is any dispute with that. Murder, treason, the offences of hijacking and piracy have been added.

Clause 5 (b) states:

"a person who is charged with an offence listed in Part II of the First Schedule and—

- (i) has one prior conviction for any offence listed in that Part; or
- (ii) at the time he is charged has more than one prior charge pending for any offence or combination of offences listed in that Part."

I want to look at clause 5 (b) (i) and (ii). Before I do that I want to turn to the First Schedule on page 22 of the printed document. Clause 2 states:

"Where a person has been previously convicted on three occasions—

- (a) of any offence; or
- (b) of any combination of the offences,
listed in Part II."

Part II follows. Let me take that one first.

Bail Bill
[HON. A. RAMREKERSINGH]

Monday, August 29, 1994

A person who has been convicted on three occasions of any of the offences listed in Part II, whether it be trafficking in narcotics, rape or incest—three convictions and bail is denied. Again, I do not think there is very much controversy about those who have had three convictions for the offences listed in Part II of the Schedule. I just wanted to take care of that, so I could come back to the situation where a person has one prior conviction for an offence listed in that Part.

The Bill in its original form states that bail would be denied, but it goes on to say that if that person is not brought to trial within 12 months of being charged, he or she has the right to apply for bail. Some days ago the hon. Attorney General circulated some amendments concerning clause 5.

The point is that—perhaps I should take both. It is a person with one previous conviction, and also a person who has no conviction—because (ii) says "has more than one prior charge pending for any offence..." The question is raised specifically of clause 5(b) (ii) that a person may be on charges but has not been convicted, so there is the presumption of innocence. I must admit that is not an easy matter.

What the Attorney General has done in the circulated amendments is to shorten the period of denial from 12 months to six months.

Mr. S. Panday: He would still spend six months in jail.

Hon. A. Ramrekersingh: For the moment I say, yes. Let me take the rest.

The circulated amendments also go on to say on page 2 that a court may grant bail to a person referred to in subsection (1)(b) where the preliminary inquiry has not commenced within six months of his being charged, or where indicted the trial has not commenced within six months of his committal for the offence in respect of which he is applying for bail. This has already been circulated. It also recognizes certain points that have been raised, not only in this debate, but also in the society as a whole.

Mr. B. Panday: I just want to get a ruling. I heard my Friend read an amendment. I know that it had been circulated. Is the Government now formally introducing an amendment to the Bill before the House? I am not clear. I just want to know so that I would know what is my position.

Hon. A. Ramrekersingh: The answer to that is, yes.

Mr. B. Panday: Thank you very much.

Hon. A. Ramrekersingh: We would not circulate the amendments just for the purpose of circulating them.

Certain comments were made and the proposal by the Crime Commission persuaded the Government to cut back from 12 months to six months. It is not just a question of cutting back from 12 months to six months; it also places the responsibility for expediting the system of dispensing justice. It says that if for that charge for which you were refused bail, your preliminary enquiry has not commenced within six months of your being charged, you may apply for bail, and if your preliminary inquiry is completed and your matter is referred to the higher court, if the trial has not started within six months of that committal, you may apply for bail.

11.25 a.m.

We recognized some merit in the comments made on that 12-month period. We have put on the Table an amendment. The other side may say that is not sufficient. I have no problem with that. I am saying that it is in this particular provision, especially where there have been three charges but the person has not been convicted—it is that delicate balancing act—that we have put forward that proposal as a means of dealing with that problem. We remain open.

If somebody is prepared to give a formulation that might bring us closer to dealing with it, we would look at it, but it demonstrates that while we want to deal with this question of crime and repeat offenders firmly—send a serious message to offenders and would-be offenders in the society—we are not inflexible and cannot be in a matter like this which involves the liberty of the subject and the freedom and security of the society. We have put forward this: we are prepared to listen to comments on it—

Mr. B. Panday: Can the hon. Member state whether this provision he has just made about the preliminary inquiry was not in fact in the 1988 Bill?

Hon. A. Ramrekersingh: I cannot respond. I will have to check it.

Mr. B. Panday: I assure you it was.

Hon. A. Ramrekersingh: The point is that parallel with that desire to be firm is the realization that we are not infallible. We have put forward an amendment. If the other side wish to put forward another formulation, they are free to do so, and it would be looked at. As I said before, it is the most delicate part of the Bill. I understand that informally something has been—

Mr. B. Panday: Yes, that is correct. Laid on the Table, sorry.

Hon. A. Ramrekersingh: I do not know if it has been laid before the Parliament. I had a look at it.

Mr. B. Panday: Yes, it has been laid on the Table.

[Interruption]

Hon. A. Ramrekersingh: I understand that in a short while we shall have that circulated as a formal amendment by the other side, and we will look at it.

I wish to turn to some of the comments of the hon. Member for Couva North. I do not for the moment wish to deal with the question of determination of bail being put in the hands of the Executive and the police as distinct from the Judiciary, because I do not particularly want to prejudice a further discussion on the amendment that will be circulated by the other side.

One of the points that the Member for Couva North made on the last day refers to:

"... a young person, 18 or 20 years of age had committed one incident, and out of it three charges arose—the three charges are those that are listed."

I just quoted from what he said. I think that the Attorney General had indicated that what was really meant was not three charges resulting from the same incident, but three separate incidents. It may not have been drafted as clearly as we would have liked, so as a result, on page three of the amendments which have been circulated, there is a redrafting to make it clear that it refers to a person who has been convicted on three occasions in respect of separate incidents.

I do not have a problem with the Member for Couva North making the point because, as it was drafted, it was liable to that interpretation. We have indicated what it meant and we have sought to clarify it in the amendment.

I go to another point made by the Member for Couva North.

"The law says that a person like that must stay in jail until he is tried even though he has a passport in his hand which says that at the moment he was alleged to have committed that incident, he was out of the country."

I continue:

"... but the Bill says that he must stay in jail even if it takes five years for him to be tried, although he has a passport in his hand that says—this policeman is framing me."

I want to make two points here: one is that on the previous day the Member for Couva North dealt with, in many instances, what we may call worst-case scenario. I do not have a problem with that but I want to suggest that it is not easy to make law

simply by looking at the worst-case scenario. We have to go somewhere down the middle. However, it is important to look at the worst-case scenario because it may indicate to us areas that need tightening. He is quite correct in what he said this morning, that we cannot make any law that would take care of every eventuality, but I am saying that while looking at the worst-case scenario has some validity, I do not think we can simply make law using that.

The second point has to do with a person who has a passport in his hand indicating that he was out of the country at the time the offence is alleged to have been committed. We may argue whether a mere stamp on a passport proves that one was out of the country. I do not want to get into that. I want to get at another point.

The person may genuinely have been out of the country, but there is an investigation, there is an investigating officer, and we must assume that investigating officers are responsible and reasonable people. I, therefore, want to move on to the other aspect of it.

We must assume that the majority of people are reasonable and responsible. You may have a minority that is neither responsible nor reasonable, but I do not think we can take the acts or the proclivities of a few and generalize, Which really brings me to—not that we must ignore it—another reference from the Member for Couva North.

The fourth scenario is a person who has merely been charged twice. He has never been convicted and sent to jail. He is a young person and the policeman, again, wants him to push drugs. We have evidence. The Scotland Yard report states, that there are 100 policemen who are pushing drugs for drug lords who are guilty of murdering people and so forth. But I would think that there is a difference between information in a report and evidence, or as the attorneys would say, justiciable evidence.

The point I want to make is that even if we use the figure of 100, or we multiply it by two, there are several thousand persons in the police service. Let us face it; the world is not perfect and in any profession, one would find persons who behave in a way that makes them unworthy to be members of that profession. The police service is a profession like any other, sometimes the cause is bad selection, sometimes it is human frailty.

In times past, there were popes who lived lives that were less than acceptable, but do we dispense with the papacy or dispense with the Church simply because one or two of its leaders may not have been as worthy as they should have been?

Bail Bill
[HON. A. RAMREKERSINGH]

Monday, August 29, 1994

We read, that individual priests sometimes may not live up to their calling, but we do not condemn the Church simply because of the activities of one or two.

Therefore as regards the police service I want us to be careful; there must be no blanket condemnation of them because of the actions or the alleged actions of a few. If we keep on making blanket charges, valid or invalid, against the police service and just denounce them, we would be creating a real problem in this society. The police are the agents of law enforcement and I want to suggest that we on this side are not prepared to generalize about the police service, merely on the basis of the actions or the alleged actions of a few. I think I would go further to say that inspite of the very difficult conditions under which the police service functions, it is trying.

The question of the worst-case scenarios, I do not dismiss it entirely; it does serve some function. The second is the caution that I would prefer us not to just use a few instances to generalize.

Madam Speaker: The hon. Member's speaking time has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. K. Valley*]

Question put and agreed to.

Hon. A. Ramrekersingh: I thank you, Madam Speaker, and all hon. Members.

Mr. Humphrey: Would the hon. Member indicate to this House whether in dealing with a few corrupt officers who have been identified by more than one report—by commissions of enquiry in fact—they should not be dealt with because they are presumed to be innocent until they are proven guilty of any crime or misconduct?

Hon. A. Ramrekersingh: I am not sure I understand the formulation of the hon. Member clearly, but, in the case of Scotland Yard, investigations are going on, and yes, there is the presumption of innocence. But, we must be careful not to speak merely in absolute terms and in a vacuum; I had put the matter in a slightly different context and I said it was a challenge that we needed to confront to see how we could achieve that balance.

I am particularly happy to see that in Part II of the First Schedule certain offences are listed and I simply wish to refer to a few of them.

- (a) trafficking in narcotics or possession of narcotics for the purpose of trafficking;

- (d) rape;
- (e) sexual intercourse with a female under fourteen;
- (f) buggery;
- (g) shooting or wounding with intent to do grievous bodily harm;

I wish to refer to two of them; one is rape. Traditionally, and it is written in Part I, the crime of murder is a non-bailable offence. I am not suggesting that rape should be a non-bailable offence; I simply wish to make the point that rape is a most reprehensible offence. In murder one dies and goes, hopefully, into the bosom of our Father, but in rape, the victim dies many times. The trauma of rape remains and many times during that lifetime, the incident recurs in one's mind, so that in a sense one is murdered many times and I am happy to see that it is put in this Schedule.

11.45 a.m.

In murder, as the attorneys would tell you, there are crimes of passion. But in rape, I really do not know about crime of passion; I think it is a cold, calculated act, an act of violence against women. The society must respect women. I make no bones about it. I believe in the equality of women and that women should occupy any job, any position: no problem. Women may be different in some ways from men, but they are equal.

In spite of that there is still the conventional training that some of us would have had where we would offer our seats on public transport and other courtesies to women. I make the point because I feel strongly about this cold, calculated act of violence against women. I am happy to see it in the Schedule.

I am also happy to see that drug trafficking is in the Schedule because drug trafficking is in a particular sense, an act of murder, an act of violence against many, especially the young. We must show that we consider such behaviour absolutely reprehensible.

There is a school of thought that will argue I am sure, that it should be in Part I of the Schedule. I am happy at the moment to see these offences where they are. That represents to me a certain moral condemnation of those acts.

We in this country are seeking to deal with the problem of crime which has escalated. As I indicated, there is no single measure that will solve the problem of crime. It is a range of measures which we are seeking to put into place. We cannot do it in one day; you would see it being done progressively. The Bail Bill must be

Bail Bill
[HON. A. RAMREKERSINGH]

Monday, August 29, 1994

seen in that context as being one of the measures to deal with crime, and it directs its attention largely to repeat offenders.

I want, in closing, to ask honourable Members to approach the debate with a relatively open mind. Yes, we have tabled a Bill. Yes, we have tabled some amendments, and we are prepared to look at other proposals, because what we want when this debate ends is to emerge with a piece of legislation which satisfies us as individuals, as parliamentarians, which satisfies our aspirations and our commitment to democracy, but which at the same time is effective in achieving the purpose for which it is intended.

It is in that spirit I have made my contribution; it is in that spirit I ask honourable Members to continue so that at the end of the debate, we could say as a Parliament, we have taken a particular step to make this society safer for all the citizens of Trinidad and Tobago.

I thank you, Madam Speaker.

Mr. Trevor Sudama (*Oropouche*): Madam Speaker, let me say in advance that I would be taking up my full time, I do not know if I should seek my extension now or wait until the appropriate time. There has been some objection from the Member for San Fernando East, but I will deal with him as I proceed.

This Bill before us is designed to achieve certain things. What is the real purpose of bringing this measure to this House? That is something I have been trying to get from the Members on the other side. At the moment, there is a procedure for the grant of bail. If that existing mechanism and procedure has to be upgraded, or amended or whatever, then we should have a different measure before this House.

This measure—if I can glean from the Explanatory Note—is partly to do with codification. It says:

"The existing law relating to bail in criminal proceedings is to be found partly in the Common Law and partly in various statutes. There is no single piece of legislation dealing comprehensively with the subject."

Therefore, I would assume that one of the objects is to bring a single piece of legislation dealing with all the aspects of bail. It is a co-codification of existing law.

"...There is a dearth of statutory guidelines governing the exercise of judicial discretion for granting bail in such proceedings..."

With that too, I have no problems. As I will detail later on, I raised in this House on a number of occasions the question of guidelines, criteria and consistency with respect to the grant of bail by judicial officers.

"Whilst it is clear that the bail decision must ultimately be discretionary"

And my question is: Why ultimately? I shall come to that later on.

"...the identification of relevant criteria in legislative form would be of assistance to judicial officers in making an informed and rational decision."

Again, I have absolutely no problem with that. I should have thought that over the years of decision making those criteria would have emerged and would have been codified and would have been accepted practice in the administration of justice in this country.

"The object is to strike the right balance between, on the one hand, the principle that no one should be deprived of his liberty unless and until his guilt is proved..."

we will support that—

"...and, on the other hand, the community interests, that persons accused of criminal offences should not easily avoid trial and that no one is released who cannot be released on bail with comparative safety."

11.55 a.m.

In other words, the second part of this is the protection of society.

"... no one is released who cannot be released on bail with comparative safety."

We have no problem with that. Our concern is that in making that determination in the denial of bail, the determination is made not on the basis of police charges and complaints or even on the basis of one or two convictions, but on the basis of an application to a judicial officer who then has the discretion to grant or deny bail on the basis of the prevailing circumstances in the particular case. That is our contention here.

What is happening in this measure is that we are extending non-entitlement to the application of bail, and I do not think that the other side has come up with any justifiable reasons why that ought to be done on the basis of police charges and reports. That is the critical issue we want to deal with here.

The amendments we have before us, which reduce the automatic denial from 12 months to six months do not address the principle. I would ignore these amendments with which the Member for St. Joseph made so much propaganda.

The real reason for this Bail Bill—*Express* of August 5, 1994 states:

"... Prime Minister Patrick Manning also indicated that his Government was on schedule in bringing legislative packages before Parliament designed to reduce the level of crime in the country."

I am going to deal with that.

Mr. Manning: What is wrong with that?

Mr. T. Sudama: Madam Speaker, was the Prime Minister at Pino's in Marabella last night?

Mr. Manning: Pino's burned down.

Mr. T. Sudama: I mean at Pino's house. Coming from the horse's mouth, this Bill—

Mr. Manning: What kind of horse?

Hon. Member: Is that a Trojan horse or another one?

Mr. T. Sudama: Madam Speaker, as far as I am aware, a Trojan horse is a wooden horse. I do not know if the Member for San Fernando East is made from wood; I cannot go that far.

This measure is designed, according to the Member, to reduce the level of crime in the country. I would argue whether the Bail Bill by itself can reduce the level of crime by dealing with repeat offenders and so forth.

Another reason for this Bill really has nothing to do with crime at all. One reason is to reduce the level of crime. Another reason is to make the Opposition look bad. Political motive!

Madam Speaker, the *Newsday* of August 13, 1994 says:

"PM on Bail Bill

No public comment!"

Hon. Member: My God!

Mr. T. Sudama: I quote again from the horse's mouth:

"Government will not yield to any Opposition demand to put the Bail Bill out for public comment."

Mr. Manning rose—

Madam Speaker: Hon. Member for Oropouche—

Mr. Manning: Madam Speaker, since he is going on, fine.

Mr. T. Sudama: I am going on; I would not leave you like that; I shall deal with you comprehensively.

"Government will not yield to any Opposition demand to put the Bail Bill out for public comment."

I thought it was a democratic procedure in a practising parliamentary democracy that if you want to pass such a far-reaching measure you seek the views of the wider public. But, not for him! No public comment, regardless of what the Opposition may say. If Mouttet and Company had asked that this Bill be put out for public comment, they would have looked at that in a different light. If the people who had bombarded him at his house in St. Ann's had asked, maybe there would have been a different response. But not the Opposition!

The Attorney General is mentioned here, and according to the article:

"He stated that the law enforcement agencies were becoming very frustrated at the situation of having to re-arrest people on criminal charges."

Very frustrated! Because they are frustrated, you bring a law now to put more power in their hands. This article goes on:

"Manning: UNC will pay dearly".

One of the reasons for the Bail Bill coming here is to make the UNC pay dearly for their alleged intransigence on this issue. I continue:

"Reckoning for the UNC was close and predicted that they would pay dearly for their handling of the crime issue.

I proceed:

"He contended that the Bail Bill was an attempt to ensure that people's rights were maintained and to guarantee the security of the society."

I have much to say about how the security of the society was guaranteed. It goes on:

"Manning called on the electorate to give a constitutional majority to the next government to ensure that they could run the country properly."

Mr. Maharaj: When are you calling the election?

Mr. T. Sudama: It goes on:

"Speaking to a small but vociferous crowd, the PNM's political leader said the Opposition had virtual veto power on Bills requiring a special majority which it

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

has used over the last two and a half years to block Government's attempts to arrest the crime situation."

The Opposition, by refusing to support draconian measures is blocking the Government in its attempt to deal with the crime situation he contends. It goes on:

"Manning warned supporters not to be fooled by the UNC's contention that government was in a position to deal with crime without the Opposition's help.

He said it was crucial to have legislation passed which had the effect of re-organizing the administration of justice and the police service.

The Prime Minister promised that the UNC will pay for its recalcitrance."

Madam Speaker, do you understand why the Bail Bill has come here? Nothing to do with crime, security of the society, but to make the UNC pay for its recalcitrance. I put that on the record.

We on this side are concerned about the escalation of crime in the society as much as anybody else or, in fact, more than anybody else. I went through what I said in this House over the last five years. I am not going to read all of that into the records but some of it, showing my position and that of this side of the House.

12.05 p.m.

Madam Speaker, when in this House on May 3, 1991, an escalating uncontrollable crime situation already existed, long before many of the Members of this House were, here, I spoke—

"against the background of an increasing rate of crime in Trinidad and Tobago, which when these crimes are heard and sentences are passed, will result in an increasing population in our prisons".

The question is: How does one prevent that increasing prison population? I said that the country—

"has been subjected to an intense crime rate, particularly crimes of violence in this country against person and property."

So they are going about the country propagandizing that we are not concerned with the increasing crime in this country, and that has to be regarded as the kind of propaganda in which the Member for San Fernando East is constantly engaged.

Bail Bill

Monday, August 29, 1994

"The average citizen is such that people feel that they are not free and safe in their homes even when those homes are fully burglar-proofed and all sorts of security devices are placed in their homes. They are not safe on the streets and in their work places....People are very concerned, as they have been concerned, about the rate at which people have been granted bail and while they have been on bail they go on, on their path of violence and commit crimes."

Nowhere have I said that one must bring a Bill to automatically deny people bail. I further went on to say—

"the question of security and crime commission is one of the most significant and important questions that the average man in this country is facing...You have...to tackle this problem at the root. How do you put in place measures to prevent an increase in the commission of crimes...?"

I mentioned the question of bail, but I said that that had to be tackled at the root. I did not ask for a Bill to have automatic denial of bail.

Then when I spoke on the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill on October 1, 1993—you see, they are going to quote this and say "well, look, he talked about bail and people being out on bail and committing repeated offences"—I just want to put this in context, I said then:

"I just want to advise this Government that if it wants to deal with the crime situation in Trinidad and Tobago, it has to deal with that situation at its very source and take pre-emptive measures to reduce the number of cases coming to the court."

And I also said, Madam Speaker:

"people are being terrorized or traumatized by the escalating crime on an hourly basis."

This matter did not start yesterday.

"It seems to me that they (the Government) do not understand the insecurity which people on the outside feel, not being able to come out of their homes at night, not being able to move about freely, even in the daytime, constantly

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

looking over their shoulders to see whether they are about to be robbed, beaten up or raped."

In order to deal with this we have to reduce the workload of the judicial administration. I also said:

"We all subscribe to the view that you are presumed innocent until you are convicted. So that at the level of the preliminary enquiry there is the general presumption of innocence, and we accept that. At the same time we have to look at what is happening in the society and balance the two objectives."

So if they come here to balance objectives today, I have told them since 1993 that that is what we have to do.

"We have a situation today where it appears to me that there are no rules with regard to the granting of bail. There seem to be no criteria as to how you grant bail and under what condition and circumstances.

You cannot treat each case on the same basis.

"The public are clamouring—but we ought not to just follow the clamour of people on the outside, but they have genuine concerns—about the facility with which repeat offenders are getting bail and then they go and commit further crimes."

The case I was making here is the measure, means and mechanisms by which people who apply for bail, in fact, are granted bail. We are not saying that people ought not to be granted bail, but that the criteria should be set down and applied to determine in each individual case whether a person should be granted bail, or not.

Our position is very clear, and I am glad that, at least, in a clause of this Bill some criteria have been laid down: we, in our amendment, will amplify that. We have come to the conclusion that the Government cannot put a blanket measure in place to put into the hands of the police authority the power to deny bail, merely by laying charges or additional charges. This is, in fact, what you are doing. That right must be subject to a review by judicial officers.

Why are we skeptical about putting more and more power into the hands of the Executive of this country, or into the hands of the police part of the Executive? I will tell you why we have very strong reasons to be skeptical.

Madam Speaker, I read from a report in the *Guardian* of August 22, 1994 headlined "AG wrong to order execution." This is the Executive of this country ordering an execution. According to the defence lawyer, Reginald Armour:

"As I understand the procedure,
with respect to the execution of a person

"two warrants are issued: one is to the Death Row prisoner saying that he will be executed at such and such a time, the other warrant is directed to the marshal of the court and commands the marshal to have responsibility for the carrying out of the execution."

Mr. Sobion rose—

Madam Speaker: The Attorney General would like to say something.

Mr. Sobion: Madam Speaker, thank you very much. For the benefit of the House and the Member for Oropouche, I want to put on the record that I have already refuted the allegations in that article; I have ordered no execution of any person, and I have no authority so to do.

Mr. T. Sudama: I am not sure that I read that recitation at all about the Attorney General but Armour said that the Attorney General—

"had no jurisdiction to instruct the registrar and moreso when the Attorney General was a co-respondent, with the very marshal, in proceedings before the court."

The question we have to ask ourselves is: How did Glen Ashby get executed? Was it an act emanating from the Judiciary, or from the Executive of Trinidad and Tobago?

Mr. Maharaj: Or was there a conspiracy?

Mr. T. Sudama: If it was an act emanating from the Executive, I am very skeptical of giving this Executive further powers to have automatic denial of bail.

12.15 p.m.

With respect to the police, let me say at the outset that the police are one of the most critical institutions in any democratic society. We have only one police service. Our duty is to ensure that it operates in the most efficient, competent and honest manner, and that it is a police service of the highest integrity. At the same time we cannot blind ourselves to the fact that in the police service, there are totally corrupt elements that ought not to be there. In fact, in that police service there are

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

elements that are more criminal than the criminals on the outside. The question is: How do we deal with those elements? Weed them out rather than have them existing in a police service to which the Government wants to grant the power of automatic denial of bail merely on the basis of charges being laid?

I want to refer to a case which involves my own constituency, Oropouche. The case of Selwyn Andrews who lived at Ethel Street, La Romaine.

"Selwyn Andrews refused to push coke for police"

I read this and was concerned. In a previous article of August 12, 1994 in the Trinidad Guardian it says "Prisoner commits suicide," and I want to go into the circumstances of this. Today, I am asking the Member for San Fernando East, the true Minister of National Security, to have an independent enquiry into the death of Selwyn Andrews. I thought I would do some investigation myself, so I went down and spoke to the mother and sister of Selwyn Andrews at Ethel Street, La Romaine.

What are the circumstances of this case? Selwyn Andrews was held by police on August 5, 1994 on a number of charges. When he was held, he was beaten at his home, according to Mrs. Pearl Andrews and her daughter. He was taken to the police station, and when I spoke to them Mrs. Andrews said that a senior officer of the CID in San Fernando went on a previous occasion, looked for Selwyn Andrews and asked him to be a distributor of coke. This is what I was told.

He refused and some of the charges which were pending against him ranged from possession of marijuana, malicious damage to property, possession of firearms, two counts of armed robbery and so forth. Now, here is a vulnerable man—the same thing about which the Member for Couva North spoke. We are told that a senior police officer of the CID in San Fernando went to the home of Selwyn Andrews and asked him to push drugs on his behalf. Selwyn Andrews refused and a few days after he was held at his home, beaten, taken to the CID of the San Fernando Police Station.

When he was taken there, according to the police report, he was handcuffed to a ring on a wall—so he did not have the facility of his hands—and the police are claiming that Selwyn Andrews kicked open a cabinet where there was a bottle of gramoxone, took the gramoxone with his feet to his mouth and swallowed IT because he wanted to die. Just imagine that scenario!

First of all, what is a bottle of gramoxone doing in a police station? Is that a place of safekeeping for gramoxone? Do they do agriculture in the police station in San Fernando? What was that doing there? We are told in a report that a police officer had placed it there for safekeeping. In a police station cabinet?

When Selwyn Andrews ingested the gramoxone and was taken to the hospital, they refused to permit lawyers to speak with him. Even his relatives had limited access to him. A few days after, he died. But before he died he spoke with his mother and sister and said that the police pushed gramoxone down his throat. I want the Member for San Fernando East to institute an independent enquiry. More than one officers was involved; names were called of officers attached to the CID in San Fernando

I quote from this report in the Trinidad Guardian:

"According to a report, Andrews was arrested by Corporal Dyette and PC Tambie on August 13 on five charges..."

He was arrested, taken to the station, forced to drink gramoxone and died. I want to ask this House: can we tolerate a situation in Trinidad and Tobago where elements of the police act as judge, jury and executioner?

The Government comes here today with a Bill, the effect of which is to put further powers into the hands of certain members of the police service to be used and abused in this way. I say no. I say I cannot go along with this and, as I said, I did my own investigation and Mrs. Pearl Andrews told me that she spoke to her son before he died and he cried and said he did not want to die and that they forced him to drink gramoxone because he would not submit to the wishes of a senior officer of the CID in San Fernando to push coke.

As I said, given my own investigation, I should like to have an independent enquiry. This corroborates my argument that if the Government is going to give additional powers to elements in the police service, I am not going to be a party to that, and knowing their attitudes and inclination—I think the Member for St. Augustine would have more to say about these undesirable elements in the police service.

I am just trying to bring this particular case to the attention of the House. This is why we are asking that when the issue comes up and a man is charged three times, as the case may be, on three different occasions, or if he has had prior convictions and is being charged with another offence which will make bail, automatically denied, we cannot support that.

If there is going to be a denial of bail let that application go in front of a judicial officer—whether a magistrate or a judge—lay down the criteria, let a judge or magistrate make a decision, and then that decision having been made, there is an appeal procedure within the Judiciary as to whether that would be upheld. If for

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

very good reasons bail is denied then so be it. Or, rather, I was going to say 'sobeon', but so be it will do.

12.25 p.m.

The argument raised by the Member for St. Joseph is that one cannot legislate to cover all circumstances and there are elements in the police service—I think he admitted—which ought not to be there.

That is a minority. Yes, but it is possible that that minority would utilize its power to be vicious and vindictive against innocent citizens of Trinidad and Tobago.

Against that background, this Government is saying that it does not trust the exercise of discretion by magistrates and judges. This is why it has to take away that discretion, put it in the form of legislation so that they would not be able to exercise it. If they are not happy with the way magistrates and judges exercise a discretion with respect to something like bail, are they happy with the way judgment is exercised and passed in Trinidad and Tobago on critical issues?

If that argument is taken a little further, in what way does the Government trust the magistracy and judicial officers? If they cannot trust them with the exercise of the judicial power and discretion, the next question one has to ask is: Who is responsible for their appointment? On what basis are they appointed? If it is an independent commission appointing magistrates and judges, what inference is made with respect to the work of an independent commission?

Whom does the Government trust in this country?

Of course, there will be judicial officers who will not exercise their discretion in the best possible way; the Member for St. Joseph made the point, that we do not live in a perfect world; therefore, people are prone to error. If we are going to have the alternative of putting more power in the hands of the police as against allowing judicial officers to exercise their discretion and not having their power curtailed, I say that choice has to rest with the judicial officers. That is the alternative.

Therefore, the purpose of this Bill is countermanded if we accept that argument. Yes, we have no problems with the right guidelines. Later on I shall quote what our submissions are in this regard. But, you cannot fail to see the implications of what is being done in this Bill.

This Bill will not do much at all to prevent crime. We are talking about repeat offenders. I shall tell you what happens when people are put on remand—juveniles

particularly—and that is one of the critical problems we are addressing. I want to quote from the final report of the commission of enquiry appointed to enquire into existing conditions at the prisons and to make recommendations for reform in the light of modern concepts of penal practice and rehabilitative measures. This was issued in 1980.

It is the conditions in the prison which are to a large extent responsible for the hardening of young people into criminals and for their recourse to being repeat offenders. That is where they want to put them when they are denied bail. I shall tell you where you want to put them.

"The prevalence of overcrowding, the incidence of corruption and mismanagement, the paramilitary atmosphere in the administration of the system, the general low priority given to Prisons and the complete neglect of the rehabilitation of the inmate conspire to ensure that the prison population is always too large."

No measures to deal with this critical issue. They want to add to it, of course.

It says:

"...places at which juvenile offenders are detained, pending trial..."

It then goes on to give an indication of one of the remand institutions, the St. Michael Home for Boys and the prevailing conditions and their relationship to repeat offences and the continuation of crime. It says:

"It has come to the attention of the Commission that some magistrates on finding a child/young person guilty, before passing sentences remand such child/young person to a place of detention and in so doing, express the view that this will give him a 'taste of prison life', which will have the effect of deterring him from committing offences in the future.

It is the Commission's view that such remand does serious damage to the child/young person. Such confinement does not operate as a deterrent, but has the effect of removing the fear of imprisonment from the child/young person, thereby making him more susceptible to committing crimes in the future."

That is what is done when you are denying bail and putting people under prison conditions. *[Interruption]* No, tell me what the alternatives are. The objective is to prevent crime and if that is the objective detain them permanently. The negative effect of such conditions could, in fact, contribute to their choosing later a life of crime.

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

With respect to discipline and punishment, the 1980 Commission noted that there was no strict adherence to the rules for these, and in particular the rules for corporal punishment.

In the words of the Commissioner:

“There was evidence to support the fact that public canings had taken place on several occasions. The rod had been used too freely and on occasions excessively. The conditions were appalling and, in fact, comparable to anything found in the worst of our prisons. At the time of the Commission's visit beds were non-existent. Two or three mattresses served the needs of sixteen (16) boys. The only source of water was the open tank of the only lavatory contained therein...Further the Commission was satisfied that the period of detention depended on the ‘whims and fancies’ of the particular officer.

The conditions, therefore, in the remand centre for juvenile offenders constitute an indictment against the authorities. It is therefore hardly surprising that many criminals today are ‘repeat offenders’ in the 15 to 25 age group.”

This is what this Bill is about—trying to prevent people from becoming repeat offenders.

"In this regard, we must carefully address the whole question of rehabilitation in order to sever the criminal traits in young offenders."

Madam Speaker, I put to rest the case that when young people are arrested, and there is not this discretion, and there are conditions in which their arrest will lead to their becoming hardened criminals in the future, we are doing nothing to deal with the crime situation.

Madam Speaker: The speaking time of the Member has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [Mr. K. Jurai]

12.35 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

Madam Speaker: The Member for Oropouche may continue.

Mr. T. Sudama: Madam Speaker, when we took the adjournment for lunch, I was commenting on the conditions which exist in our prisons where the germs of criminality are incubated. My point was that if one is going to deal with this problem in any fundamental way, one must tackle the basic conditions in the

society to prevent crimes from being committed, rather than trying to deal with the problem at the punitive end, where one is trying to apprehend people and deny them bail.

The Attorney General may ask: What do you do with people who are denied bail and have to be on remand in the prisons? I am saying that rehabilitation measured should start immediately and create conditions which would not create repeat offenders out of juveniles who have been charged with crimes. It is a necessary approach to take. I think that is the whole thrust that we must take, as a country and Parliament, towards dealing with the crime situation.

I think it is the easy and populist option to talk about legislative measures, rather than dealing with the problems of the prison conditions and the problems which relate to the functioning of the police service—quite apart from the larger problems of unemployment and the other economic and social conditions which, in fact, are the true generators of criminal activity.

I want to inform this House that this high level of crime has not appeared overnight. This has been with us for a very long time. I recall that in May 1988 because of the public concern about crime and criminal activity, the Trinidad and Tobago Chamber of Commerce appointed a 13-member committee to make recommendations on the crime situation. Guess who was the Chairman of that Committee? It was Mr. Frank Mouttet.

That Committee met and made certain recommendations about the high level of crime. Some of the recommendations were:

Confiscating all property owned by convicted drug dealers in addition to whatever prison sentence is imposed;

Making prison sentences mandatory for those convicted of drug dealing;

Increasing prison sentences for those convicted of drug dealing;

Effective system for witness protection;

Reducing the delays in judicial hearings as a matter of urgency;

Plea bargaining be introduced in the legal system;

The number of policemen and police women to be released for active law enforcement by hiring civilians;

Employing traffic wardens;

Reinstating the rural constabulary;

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

The public image of the police service could be immeasurably enhanced;

The reactivation of the crime prevention unit and neighbourhood protection in the organization of block watch.

Of all these recommendations, there is nothing here that says that a Bail Bill should be introduced to deal with the problem of escalating crime.

It further went on to say that to deal with minor and non-violent crimes, the committee recommended that rehabilitation programmes be devised to include community service and educational programmes to redirect particularly the youth and first offenders; and that urgent review of the prison system be undertaken to determine reforms required, particularly with reference to overcrowding and recommendations for relief.

It further went on to say that the major impediments to optimum law enforcement were excessive delays in judicial hearings; limitations on the police service by inadequate facilities for speedy response: frustration and waste of time because of this; and poor deployment of available resources.

I tell the country that the UNC is not responsible for the excessive delays in judicial hearings, or the limitations on the police service by inadequate facilities for speedy response, or the poor deployment of available resources. These were recommendations by the Chamber, in 1988, addressed to a reform of the system of judicial administration and police functioning. No mention was made that what was needed was more legislative powers and more laws to deal with the escalation of crime in the country. The Committee, headed by Mr. Mouttet did not specifically advocate a new Bail Bill. Today, I want to know what is the difference that has made the Chamber of Commerce so very enthusiastic about a Bail Bill.

As I said, the escalation of crime is not something of recent vintage. The *Sunday Express* dated November 20, 1988 said that Trinidad and Tobago was moving inexorably towards a complete breakdown of society. Every day a new horrible crime that was committed is learnt about.

On December 2, 1988 the then Minister of National Security stated that within recent times—and Members would know—the incidence of violent crimes in the country has risen sharply.

In response to this there was an attack on crime and there were police and army squads in areas throughout the country. It was seen then to tackle crime effectively one had to deal with the performance, effectiveness and functioning of the police service and the security services; therefore these police/army squads were put into

Bail Bill

Monday, August 29, 1994

place. There was no talk about more legislative measures because it was felt that once the existing machinery was there and functioning, we would make a dent in the problem.

2.10 p.m.

Sunday Guardian, December 11, 1988:

"Crime battle must be won.

Extraordinary measures have to be used against an unprecedented upsurge by criminals...

Community support is the key to wiping out the drug menace, and the Police must encourage the formation of village and town 'watch' groups...

In short, the law must be one step ahead of the lawbreaker. Once the Police had the superiority and the criminals were uneasy and on the run. Now the criminals seem to be comfortable and confident, and the Police worried and afraid."

That was 1988. The point is, this problem has not been with us only over the last few months, but the hysteria that has blown up and the attack on the Opposition were not there in 1988.

Trinidad Guardian, December 20, 1988, "Brutal Killings" and it goes on to talk about citizens meeting their death while going about their business.

"Yet they both died so brutally, the victims of armed and dangerous bandits who have become a plague on the society."

This is a similar scenario today. February 20, 1991, page 1, "Marabella under seige by criminals." Of course, you know that Marabella is a constituency represented by my good Friend the member for San Fernando East. In those days, he was a Member of the Opposition, but he was not blaming the Opposition, you know, for the upsurge in criminal activity.

Trinidad Guardian, "Marabella crime wave", then there was the response, "Strike squad to combat Port of Spain crime," and we were told that the squad would be under the direct control of Deputy Police Commissioner Lennard Taylor and emphasis would be on mobile and foot patrols on a 24-hour basis. At least in those days something was being done with respect to upgrading, improving and making the police service more effective.

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

As we go on we see that the escalation in crime is something of long standing. Why the hysteria today? It is not that people ought not to be concerned, but why the urgent need to take measures to implement a Bill which has not seen the light of day in any other country of the world. In the past we had criminal activity of the same or perhaps greater intensity. The *Guardian* dated March 19, 1991:

"Crime nearly closed us down says Rahael."

Rahael, as you know, is the President of the Downtown Owners and Merchants Association. *[Interruption]* That is what it says here. I am only reading what I see here. That same Rahael, in 1991, crime almost closed down his business, he said. It was such a widespread activity. In 1994, I am not hearing Rahael saying anything, maybe it is because in between he has become a PNM Senator.

Guardian dated March 21, 1991:

"Crime wave swamps South"

Crime Scoreboard

(Southern Division)

Criminal (offences) 618

Cops (convictions) 15"

The point I am making is that there is a degree of hysteria which has been whipped up by certain elements in the society—not that people ought not to be concerned and take some effective action—they have an agenda and have targeted the Opposition.

March 22, 1991, "Back to Banditry", Our Opinion of the *Express*.

April 10, 1991,

"One crime every half hour

One 'serious' crime is committed in this country every 32.4 minutes and one 'violent' crime takes place every 46 minutes."

So, you understand what has been going on in the past and what is the intensity of crime. Even the Mayor of San Fernando, Dr. Ramesh Mootoo, got into the act in 1991.

"Crime in San Fernando intolerable, he says."

As we go along and look at all the headlines and what people were experiencing in 1991 and before, a PNM Government gets into power in 1991, and by 1993

drastically cut the provision for the police. The headline of the *Express* dated February 3, 1993 was "Dollar cuts defeat war on crime."

I should like the Member for San Fernando East to understand clearly that all his attempts to hoodwink the population and throw blame on the Opposition will not get him any mileage. The Opposition did not cut the provision for the police service in 1993, it is a PNM Government. "Dollar cuts defeat war on crime". "Police goods and services budget cut by more than 50 per cent". So you understand who is encouraging criminal activity in Trinidad and Tobago. Was it deliberate or accidental to cut the police goods and services budget by more than 50 per cent in 1993?

And today, in 1994, the Government is claiming an upsurge in crime, hence the need for more and stronger legislative measures, and it says that it is the recalcitrance of the Opposition that is causing the situation to get out of hand. It is not fooling anybody with that and we shall make these matters public. It says here that the Government cuts goods and services spending by Police, Prisons, Fire Services, Coast Guard and Regiment by \$13 million in 1993. Cutting everything from uniforms and telephones to repairs and maintenance of vehicles and buildings. Perhaps the Chamber would wish to know this, perhaps its research does not go that far back into the measures taken by this PNM Government in order to hamstring and cripple the activities of the police service in dealing with crime.

The Government talks about who is responsible. Not only the Government, we are told here that

"... one criminologist and the police argued that the media were in part responsible for the heightened criminal activity. A top policeman who preferred to remain anonymous, accused the media of glorifying crime and of revealing the security vulnerability of some residents in Central Trinidad."

Of course, you know the UNC does not control the media in Trinidad and Tobago. If any one does, it is the other side.

"As fast-moving bandits strike Police car crisis worsens.

Just under 50 per cent of the 526 vehicles owned by the Police Service are in working order...

Assistant Commissioner (Traffic) Norton Regis said ...

The problem, he said, was money. There is no money. Every minute the vehicles are falling down."

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

2.20 p.m.

"It is weeks now that I am waiting for tyres for some cars. When they can't go no more, we put them up for auction. Last month we auctioned off two cars."

They knew that money was the problem. We have been telling them that part of the problem was money with respect to the proper functioning of the police service and with respect to the police service doing its duty to curtail, restrain and prevent crime. After two murders were committed in Westmoorings in 1994, suddenly the Government finds \$5 million to refurbish the fleet and to do other things for the police service.

Madam Speaker, let me give the House and the country some idea of what is happening in this police service. On August 3, 1994 we got some information and if one looks at the areas:

<u>Division/Station</u>	<u>Complement</u>	<u>Number functional</u>
Port of Spain	21	4
Western Division	13	8
Northern Division	40	17
Eastern Division	17	3
Central Division	28	14

The areas surrounding my constituency in Oropouche—and one will see why crime has to flourish and what has been the attitude of this Government.

<u>Division/Station</u>	<u>Complement</u>	<u>Number functional</u>
Siparia	1	0
Santa Flora	1	0
Erin	1	0
Oropouche	1	0
Fyzabad	2	1
Penal	2	0
Guapo	1	0
Point Fortin	2	1
La Brea	2	0
Cedros	1	1

And when we look at the complement we see here 21 vehicles are supposed to be assigned to the South-Western Division but out of that 21, there are about 10 functioning. Yet, it has the audacity to come here to talk about who is responsible for the escalation in crime, to bring this Bail Bill to deal with crime, and to say it is the Opposition that is obstructing the government in its functioning.

I believe that I have said enough to indicate to this country who is responsible for the escalation of crime. It is the PNM Government through its inactivity; its deliberate suppression of expenditure for the police service; its deliberate inactivity implementing existing laws with respect to the drug trade; its deliberate inactivity with respect to cleaning-up the police service so that those elements in it which are corrupt and which are giving the police a bad name, and who are vindictive and vicious in their approach to citizens of this country could be suppressed. It is this Government which is the culprit when it comes to the escalation in crime in Trinidad and Tobago.

If one looks at the news bulletin issued by the police service called the *Silver Star*—and this issue is very recent, July 1994—they are crying out today for vehicles; for arms and ammunition; for communication equipment; for training and contingencies and so forth. They are not supplied, and the Government sits back and tries to make politics out of the crime situation, as though it is the UNC which is responsible for police administration in this country.

In dealing with bail and all the problems affecting it, have we addressed the Justices of the peace and their role in the system of administration of bail? Here we have a problem with respect to the recruitment of people who are nominated to be Justices of the Peace. What investigations are done to assure ourselves that the right kind of people get the title and duties? And, having gotten into those offices, what system is there to monitor that these people are in fact, performing their duties according to the law and the guidelines which have been laid down?

We asked a question in this House about the names and addresses of persons who have been appointed Justices of the Peace during the period 1976 to 1992. The Attorney General provided a long list of people who were appointed. My question to him is: What system is in place to monitor the activities of these Justices of the Peace when they are in the process of giving the surety—or whatever they are required to do—with respect to the grant of bail to those who are charged with certain offences?

As we look at this problem and this issue with which we are confronted today in this House, we cannot avoid the conclusion that this Bail Bill has been put before

Bail Bill
[MR. SUDAMA]

Monday, August 29, 1994

this House, not for the purpose of dealing with criminal activity. I have argued that even if someone is denied bail for six months that it would not affect the incidence of repeat offences, particularly, among juvenile delinquents. I have further argued that if one is telling this House that the judicial officers can exercise a discretion six months after somebody has been charged, why can they not be allowed to exercise that discretion when the person was charged? What will the difference of six months do in tempering the discretion of judicial officers? They have not answered that question.

2.30 p.m.

I also asked the Attorney General another question when he was making his presentation: Is he satisfied that the judicial officers in Trinidad and Tobago are carrying out their functions according to the criteria laid down in this Bill? Up to today he has not responded to my question.

If he is satisfied that they are not exercising their discretion properly with respect to the grant of bail then why is he not satisfied? What would he do to enable judicial officers to exercise their discretion in a proper manner? To date, I have had no answer to those questions. That is the crux of the debate that we are engaged in here today.

As I said, the Government has not, to date, given any real justification for bringing this Bill, and for making automatic denial of bail on the charges after conviction, on three separate charges for three separate offences. It has not argued nor has it addressed that question at all. Since it has not done so, I get the feeling that there is a hidden motive for bringing this Bill to this House. And, if that is so, this Opposition cannot support Government in its pursuit of hidden agendas, and hidden objectives.

I urge the Government not to blame the Opposition for the Government's indiscretions, for its inaction and for its incapacity to govern to the benefit and in the interest of the people of our country. Since it is incapable of doing it, I humbly suggest that its best course of action is to resign, call another election and let the population decide, who should run Trinidad and Tobago.

Thank you very much.

Mr. Hedwige Bereaux (*La Brea*): Madam Speaker, I did not intend to participate in this debate having regard to the knowledge of all of us in this legislature, and the consensus in the country that criminal activity has, for sometime now reached an unacceptable level.

Moreover, there is an overwhelming preponderance of evidence presented by the learned Attorney General in this Chamber, today, and at several fora, on various occasions within the recent and not so recent times, pointing to the unmistakable fact that the vast majority of serious crimes committed daily in Trinidad and Tobago are being committed by persons who are repeat offenders, usually on bail and awaiting trial for one or more equally serious breaches of the law.

We have several examples of it—the most notable being those persons who were responsible for the death of the late Michael Hercules. I firmly believe that but for a few drafting amendments, this Bill would have received the unanimous and unqualified support of this august assembly. What I have heard so far, up to this time, even from the last speaker—although I am going to ignore the last statement—show me that I was expecting too altruistic a position.

Be that as it may, I am an eternal optimist, Madam Speaker because of previous positions taken by Members on the opposite side, I was not taken completely by surprise. The Member for Oropouche said that he has made much comment in this House on crime—and I recall at least two of them, one on a motion on the adjournment—and in respect of the ravages of crime, I am aware that even constituents represented by some of the Members opposite are not immune.

Further, I take this opportunity to call on them to review their position and not permit, even if they believe it, politics to come into their consideration of what I believe is a genuine attempt to address this particular element of criminal activity; namely, the ability of persons who have been charged with serious crimes to come out on bail and to commit further crimes.

I have listened with interest and attention to the comments advanced by the Member for Couva North, and other arguments made opposite. In particular, I just want to take the opportunity to make quick reference to a few of his scenarios. Scenario one: If a policeman does not like him and wants to set him up, for whatever reason, and the policeman arrests him for any one of the offences, let us say, it is larceny of a vehicle, the Bill says that he cannot get bail. The other scenarios: what difference would it make if five years ago someone committed an offence and was imprisoned. The policeman knows that, and wants him to push drugs and he refuses. And he goes on, Madam Speaker; a person who has been merely charged twice, and he has never been convicted and sent to jail, and a policeman wants him to push drugs. The attempted larceny of a motor car on the first offence; attempting to pervert the course of justice—he gets bail on his second offence.

Bail Bill
[MR. BÉREAUX]

Monday, August 29, 1994

The hon. Member for Couva North was talking about hysteria and emotion. I agree that when you speak about crime, emotion must come into the discussion, but I am certain he would be the first to admit—I think he admitted it here—that the statements made, or the scenarios envisaged were worst-case scenarios.

Admittedly, these scenarios can exist. There are police officers whom we know are not the type of persons who we would want in that service. We are aware that there have been reports that have identified some policemen as being persons who have not behaved always as we would like them to behave. But, no legislation can deal with all areas or with every scenario that can be put forward, particularly, if those scenarios are thought up by a man with as wide an imagination and is as clever as the Member for Couva North.

These are reasoned arguments, erudite and purporting to be jurisprudentially sound, which I, myself would have made; were I in the sterile and cloistered hall of a university writing a discourse on this Bill. Unfortunately, I am living in Trinidad and Tobago today, and I am in the heat, and facing the heat of a country in which gang murders, multiple rapes, invasion of the sanctity of the home, transformation of our young people zombies into by the drug culture; killing of witnesses.
[Interruption]

Please, Member for Couva South, I am not dealing with you at all. ‘Fatigue’ is not part of this Bill we are dealing with here.

2.40 p.m.

Madam Speaker, whenever we talk on any piece of legislation to deal with crime, it is quite acceptable to speak about human rights, constitutional rights and all other rights, but these rights do not exist in a vacuum. When a Government has to consider rights it must do so by considering the rights of all persons to ensure that the unbridled consideration of the rights of one group does not affect, adversely, the rights of others.

Indeed, the history of jurisprudential development is replete with instances where any deprivation or abridgement of the rights or threat of such abridgement or curtailment has always been with the express purpose of achieving the greatest good for the greatest number, within the principle of the rights of the few being curtailed in order to achieve a greater benefit for society.

Lawyers—all of us who are trained and schooled in the law—when we speak of rights, we make it appear as though the law is inviolate, sacrosanct and that the society must conform to the law; and where the society, does not do this, the society

and the human being must be contorted in order to fit the narrow bounds of the law. That is not it. Man was not made for law; law was made for man.

Mr. Sudama: He should not tie up himself. He does not argue in court so he should just say things simply.

Mr. H. Bereaux: Madam Speaker, I am aware that I am travelling above the Member for Oropouche's sphere but I did not intend to do it wilfully.

Mr. Sudama: Madam Speaker, I am trying to protect him from himself.

Mr. H. Bereaux: Madam Speaker, man was not made for the law; the law was made to order man in society. *[Interruption]*. The Member has got it!

Mr. Palackdharrysingh: It is a theological point the Member is making.

Mr. H. Bereaux: Quite correct! Man and the society, as I said, were not made for the law; rather, the law was made for man and to order society. And when any law proves incapable of fully satisfying these ends, then it is the responsibility of the legislators to change, or amend such law in order to ensure that it fulfils its purpose in society.

Based on the existing circumstances, based on statistics revealed by the Attorney General and our own knowledge, we are satisfied that the vast majority of the heinous crimes committed are being committed by repeat offenders, that is, persons convicted of crimes or who have been on several charges. It is, therefore, quite clear that what this Bill seeks to do is to ensure that these repeat offenders stay where they should be—in prison.

In talking about rights, the learned Attorney General read from a memorandum from the Coalition for Social Justice and Human Rights. We are usually bombarded incessantly with comments and representations. Every time this Government seeks to pass some form of legislation to deal with these criminals, there is a group somewhere called Amnesty International—they do not interfere with the United States where the death penalty is carried out. When I say this Government I mean the Government of Trinidad and Tobago. I receive those letters too so I know that people from Austria are writing on behalf of Amnesty International and interfering with what we have to do. They go even further and seek to hold inquiries. People are being killed all over the world and they do nothing about it; and when there is a situation in this country where criminals break down the doors and go into houses and rape women and children, we do not hear them coming and holding any inquiry to find out why this happens.

Bail Bill
[MR. BEREAX]

Monday, August 29, 1994

I agree with the Member for Couva North when he said that the state looks after the rights of the victim. As a Government, we have to look after the rights of the victim. No consideration whatsoever is given to the inhuman wrongs perpetrated by those who, in all politeness, I can only term in this forum, beasts in human form, who continue to perpetrate acts of violence on a docile, and defenceless citizenry.

I am sorry if I appear to be beating a dead horse, but every time I come into this Parliament and I speak on crime I am forced to comment on the invasion of this Parliament by people who are walking up and down today; not that the law did not let them go but I have to speak about it. I am concerned about that, and I heard no cry from Amnesty International or anybody else about that.

2.50 p.m.

Madam Speaker, we are talking about rights in the Constitution. I want to deal with a few of them. Part I, 4 (c), "the right of the individual to respect for his private and family life".

Mr. Palackdharrysingh: Due process of law.

Mr. H. Bereaux: I want to read some of these crimes in Part II of the First Schedule—rape, burglary and house-breaking, arson, possession of firearms in pursuance of any criminal offence. Those are some of the crimes that are committed by repeat offenders, who are charged with crimes, and are put back on the street, bail.

"Freedom of movement"—that is in the Constitution too. But we have to think about the way people are living with burglar bars all around their houses and how they are afraid to go out at night and to travel in their cars because of the risk of being attacked. They do not have any freedom of movement, Madam Speaker.

Section 5(2) of the Constitution states that Parliament may not—

- (a) authorise or effect the arbitrary detention, imprisonment or exile of any person;"

What about these abductions and kidnappings that keep going on? We are seeking to prevent the perpetrators of these offences from being let out on the street.

Further, Madam Speaker, Parliament may not—

- "(b) impose or authorise the imposition of cruel and unusual treatment or punishment;"

How much more cruel could you be to any woman or child than to rape her. I am sorry if they tell me I am being emotional; I cannot deal with this in any other way. It is an emotional matter, and unless something is done about it now, you will find that people will begin taking the law into their own hands. I have sat down with supposedly very reasonable people and have heard men saying, "If anybody does that to my daughter I would kill them!." This comes from people from whom one would not expect this kind of reaction normally. I am concerned and we must be concerned about the rights of law-abiding citizens who make up the vast majority of the population.

Mr. B. Panday: And of the innocent.

Mr. H. Breaux: I agree with you—and of the innocent. I should like the Member to use his fertile and imaginative mind—we on this side have said it—to come up with a formula which would permit us to keep the criminals inside and yet not compromise the innocent of the nation.

Mr. S. Panday: We agree with that. Discretion of the Judiciary.

Mr. H. Breaux: That is what we have to do. Whatever formula it may be, we have to seek to do that and yet put in protection so that the innocent would not be compromised or prejudiced.

Miss Nicholson: They would have to apologize.

Mr. Eckstein: Pam, this is your Bill, you know.

Mr. H. Breaux: Madam Speaker, there is the repeat offender. I am reminded of the statistics of the Attorney General when he pointed out that of 273 applications for bail in 1990, 39 per cent were repeat offenders; of 680 in 1991, 46.4 per cent were repeat offenders; of 439 in 1992, 51 per cent were repeat offenders; and of 207 in 1993, 43 per cent were repeat offenders.

We have always complained that the police have been getting a lot of "licks" and, maybe, to some extent, one might say "police bashing" is something that people do normally. The first thing they say is the police are doing something wrong; they have framed somebody. They are expected to protect and serve; a high standard is put on their performance and it is always a let down when we find that they do not perform to the fullest, but unfair and unreasonable attacks cannot be the way to go. If there is a police officer, or officers, moving and 50 per cent of the persons they put in jail for serious crimes are back out on the street, it would frustrate them to start.

Bail Bill
[MR. BÉREAUX]

Monday, August 29, 1994

In addition, remember, we are not talking about people who are charged with petty crimes, we are talking about vicious criminals—persons who have access to weapons, in some instances, more sophisticated than those of the police themselves. The police are not only concerned about the fact that they have to do over their work every so often, but they are also concerned about their own safety.

I have had, at least, five requests from members of the police service living in my constituency to ensure that they get street lights next to their homes because they are afraid. Since most of them are men, they are telling me they are not afraid for themselves but for their families. But they are afraid! One particular policeman told me, "Every night I hear a car drive by my house, because of the kind of work I am doing, I am concerned that somebody has come to deal with me." Now he is afraid because he is aware that as soon as you put these serious criminals inside, they are back out.

Let us face the facts, those "gentlemen" have to get money to fight their cases—and please do not say I am dealing with you, Sir, because you have to—

Mr. Maharaj:— make some too!

Mr. H. Béréaux: The day may come when I may have to go and fight cases too! I may not be able to do it well, but—

Mr. S. Panday: Not on your salary; you will starve.

Mr. H. Béréaux: I am not going to answer you. They have to find money to pay for their defence. I hear the statement made from time to time: "Kill once, kill twice, it is only one time they could kill you." Those who have robbed or killed before, find it much easier to repeat those offences. That is why one of the steps to stem the tide is to put the criminal element in jail.

We talk about the overload of the courts; the question of witness protection. If the criminal is in jail the witness does not have to be protected from him, but if he is outside, the witness would be afraid to come forward to testify; and furthermore, the length of time they take for the preliminary inquiry clogs up the system.

Miss Nicholson: Well, address that!

Mr. H. Béréaux: We are going to address that, too, Madam Speaker. There is a Bill before this House in committee to deal with the preliminary investigation.

3.00 p.m.

Heavy weather has been made in respect of judicial discretion. Discretion is just what it means, discretion. Although there is law, and there is substantial case law to

direct and inform the judicial officer, of the manner in which that discretion should be exercised, we know if it is left only to discretion, it would be as equity used to be—as long as the Chancellor's foot. Discretion could vary from judicial officer to judicial officer, because that is what it is. It is a discretion.

Mr. S. Panday: Well, we are getting the guidance now. We agree with the guidelines.

Mr. H. Breaux: You are getting to be a better lawyer by degrees.

That is the other element in this. There was case law which determined how the discretion should have been held, but that discretion was sometimes handled in different ways. There were several occasions when a man would be seen out on bail and it would be wondered, "How on earth could such a man be out on bail?" It is either that the judge or magistrate did not exercise the discretion in the particular way in which we would have liked, or the police officers, or the prosecutors, maybe, did not bring to the attention of the court or the judicial officer certain elements which would have prevented him from granting bail to the particular person.

Mr. Sudama: Why?

Mr. H. Breaux: Either through negligence or for whatever reason. I am just saying that.

Mr. Sudama: Instead of making them dysfunctional, they are locked up and denied bail.

Mr. H. Breaux: Now that there is a codified form and the discretion is made permanent, we would be able to tell, to a large extent, how the discretion should be exercised.

Mr. B. Panday: That is right.

Mr. H. Breaux: Moreover, Madam Speaker, we also have a situation because judges and magistrates are not immune to terror. Terror is common to all. Also, fear. There comes a time when one gets too stupid to be afraid, but, in most cases, terror is common to all. In several instances, I believe that some judicial officers, because of fear of reprisals from the criminals, exercise discretion in favour.

Mr. S. Panday: No! No!

Mr. H. Breaux: I just believe it is fear. I do not know. Nobody has told me that.

Mr. Sudama: Would the Member give way to a question? If it applies to the judicial officers, would it not apply to the police as well, and for fear police officers would not want to charge people?

Mr. H. Bereaux: The Member for Oropouche apparently was not following me. I say they have not been doing it because of fear.

When the criteria are clearly set down, lawyers and judicial officers would say, having regard to these things, they have no alternative but to deny bail. I have heard that said. Many persons have sought to hide behind criteria when they may not feel strong enough to do it themselves. Therefore, setting the criteria is good.

In addition, what we find at present is that the police or the prosecution can only object to bail and if bail is granted, there is no right of appeal. This law gives the state the right to appeal, so if there is an error, something can be done. Also, there is the provision where the magistrate or anybody denying bail is required to state the reasons why it was granted or why not. These are elements which would tend to keep the granting of bail on rails as it were—clear lines.

Miss Nicholson: The Member is tying up himself.

Mr. H. Bereaux: Madam Speaker, I am on the side of the victims and the people of Trinidad and Tobago.

Miss Nicholson: Nice!

Mr. H. Bereaux: We are dealing with this matter. The learned Attorney General said that because of the nature of this measure, this side would be prepared to listen and to receive opinions and formulations to see how we could get where we want to go. Because this nation is crying out for getting this job done.

Miss Nicholson: They are now crying out!

Mr. H. Bereaux: I have found that out a long time. If you found it out earlier when you were in power, you might still be somewhere in front there.

Miss Nicholson: I found that out a long time ago. You are just resisting.

Mr. Casimire: No. You are resisting!

Mr. H. Bereaux: Madam Speaker, I just want to touch on a few other matters. Much attention has been paid to—and I agree; I am not trying to deny it—the importance of this particular provision, clause 5, where a person who is charged, because of having several charges pending, could be denied bail. I am not denying the importance of that, but I also believe there are several elements in this Bill which should commend themselves.

Take for instance at present a person charged is unable to get legal aid in respect of bail matters. We have gone ahead and we are dealing with bail but most seem to forget the other element of this Bill, which is to make provision for legal aid for persons kept in custody and for connected purposes. Today when a person is granted bail and that person absconds and it takes the state a long time to catch the person, all the person does when he or she is caught is to give up himself or herself. There is no penalty for that. This Bill creates a penalty for doing that. It removes the incentive for people to abscond from bail.

The question of sureties: People who have one piece of property and keep using it time after time in collusion with corrupt Justices of the Peace to conduct bail businesses. There is a provision in this Bill to deal with that, so—

Mr. Sudama: Who is responsible for that? Why did the Government not do something about that before? It knew about it.

Mr. H. Bereaux: I want to ignore the hon. Member, but—

What I was saying is there are cases where Justices of the Peace are in collusion with persons who are using one piece of property as surety. There is a bail business going on. And the whole principle and the philosophy behind the institution of bail which is to ensure that the accused person is present for his trial and the bailer would have—not only a legal position but also a moral position on the accused person—is removed. Because all he does is pay \$5,000, \$6,000 or whatever and somebody is approached to stand bail. It is now an offence to do such a thing.

3.10 p.m.

In addition, it is known that a number of relatives who, for one reason or another, may want to stand bail for one of their relatives always find—again with some collusion—that the Justice of the Peace is not ready to accept the security put forward by the father, cousin or whoever, but sends him to an entrepreneur. Again, the ability to appeal when he is refused of the surety is also enshrined in this Bill.

As I said before, anybody trained in our jurisprudence will have some problem in denying people their right to presumption of innocence. It is something that I have had to struggle with substantially, but, again, we all have to get back to the principle that we need to look for the greatest good and the greatest number.

Before I close, I want to make an appeal in this House for the police. I seriously want to do that. I am saying this because every time we come here, we are railed with the "hundred policemen" who are taking bribes, but there are at least 4,700 of them who are making a serious effort to provide some security for the people of this

Bail Bill
[MR. BÉREAU]

Monday, August 29, 1994

country. It is time that we gave them a little more consideration. I appeal to hon. Members of this House.

Madam Speaker, I believe that we should not leave this House today without passing this Bill. It is incumbent upon us as Members of this honourable House to get together and do what has to be done, to ensure that the business of the people of Trinidad and Tobago is conducted with dignity and to their benefit.

Thank you, Madam Speaker.

Miss Hulsie Bhaggan (*Chaguanas*): Madam Speaker, as I rise to make a contribution in this debate, my views are not to be considered those of any political party in this House. Today, I feel confident that my conscience and the voice of my constituents, and perhaps the majority of citizens, will be reflected in what I have to say.

The Bill before the House today is a critical test of this Parliament. I sense that our nation has reached an important juncture in our political history. Clearly, there is a shift in our political consciousness.

There is a saying that things do not happen before their time. It is very interesting that on the eve of 32 years of political independence, our citizens are now demanding real independence. Perhaps, for the first time, this Parliament is under serious scrutiny. Some will survive that scrutiny, others may not.

Our citizens expect that this Parliament would evolve to the stage where all Members are able to shed their party symbol when they enter this august Chamber, and be true to the oath they took upon their decision to serve this nation. That oath must be served with dignity, honour, integrity and without fear or favour.

As this Bill is being debated, we would hear from both sides of the House. We would have amendments and contributions, and in the final analysis, the question we would all be faced with is whether we are able to put aside our partisan interests to help our besieged nation. The question is, therefore: Are we prepared to sacrifice scoring cheap political points for the sake of our nation?

Our people are crying out in our country today. They are saying that the crime situation is out of control and enough is enough. This Bill is good in principle; I have looked at it and received support in examining it, and I can assure this House that with amendments, this Bill can be supported.

If the Government is prepared to accept reasonable amendments which would safeguard our fundamental rights and freedoms, while at the same time ensuring that a dent is put in the crime situation, then we have to support it.

I wish to make it clear that when we support legislation in this House, we are not supporting any political party. We are merely supporting legislation because it will benefit the people of this country. So, my conscience and my guide will be my support.

Before I go on to the Bill itself, I wish to examine some of the fundamental issues facing our country, which may have led to the present situation. We have debated many pieces of legislation in this House which have been placed on our books, but unless we address the fundamental issues we will not be able to deal with the crime situation and put it under control. Some Members who have spoken before have alluded to this, and I am merely going to summarize some of those points.

The first point is that when we look at the offenders we realize a couple of things. Firstly, those offenders are mainly males and secondly, they fall into an age category of about 16 to 35 years. The question is, therefore: What has happened to our young males in Trinidad and Tobago? What accounts for that? Is there a crisis in masculinity? What is the situation now?

I believe much of it has to do with the fact that many young people in particular have energies, talents and creative abilities which they cannot put to use, simply because they do not have the opportunities to do so. When we examine the drug culture, for example, a young person has no alternative. Just for the sake of survival he may decide to involve himself in drug trafficking, pushing and other related activities.

It is not that all of them are bad; it is simply that many of them do not see opportunities for advancement. Sometimes I believe when they commit crimes and there is so much aggravated violence, much of it has to do with the fact that some of them feel that society is against them and somehow responsible for where they are today. As such, they attack us with more violence than necessary.

I recall the days when somebody who wanted to break into your home would wait until you were not there, and a person would merely have to put on the television or the radio to give the impression that somebody was at home, and the criminal would not break into the house; things have become so terrible now that they wait until you are home to attack and humiliate you.

The question therefore is: What has happened to the very psyche of our nation? Why have we reached to a stage where citizens are confronting each other in such a violent manner? It means that we need some form of therapy, perhaps. I believe that much of it has to do with the fact that our value system has broken down.

Bail Bill
[MISS BHAGGAN]

Monday, August 29, 1994

Therefore, I believe that the Church—here, when I speak of the church I do not mean only the Christian Church; I am speaking in a generic sense—has to play a more critical role in building the nation. We can no longer have our church leaders sitting in the mosques, temples and churches expecting people to come to them. The time has come when we must move into the community to conduct our religious activities, to reach out to those persons who are suffering and are hurt.

I have found, therefore, that we tend to look at crime from a legalistic standpoint in terms of bringing legislation to the House and looking at the protective services and all things to do with controlling criminals, but we are not looking at what is happening that is breeding certain kinds of individuals in our society.

3.20 p.m.

I have seen, for instance, certain research which was done and where persons who have committed very heinous crimes will tell you that as a child they were male prostitutes or worked alongside their mother who was a prostitute. There is a long history of that kind of situation. The case of serial husbands, the case of poverty, all of these things are interrelated. If we want to deal with crime we have to deal with the more fundamental issues of, what I would call, the root causes of crime. I also sense in this society that we have reached a stage where we are no longer as sensitive as before. We have become numbed by the violence, and, when we read of more and more cases that are taking place we are no longer shocked.

For instance, we heard about the Westmoorings murders but somehow it does not shock us that two young women were brutally murdered in the most vicious manner. Regardless of who they were, the point is that they were brutally murdered. Then in Laventille there was a killing of a young girl, murdered in her home, her bedroom; that was a most vicious murder. In Mayaro there was a similar situation. We must be sensitive. We have to have feelings. I understand the point that we ought not to be emotional about these things, but when you are speaking about people, after all, you are speaking about human beings with feelings and with emotions. I believe that when you are a victim of crime you cannot afford not to be emotional. I make no apology for the fact that I tend to be emotional when I am dealing with crime.

The other issue we have to look at is rehabilitation. Today we are looking at a Bail Bill. The point is, people are going to spend six months in prison before they can have some kind of determination of their matter, or consideration for bail. We have to ask ourselves: what are we going to do with those people within those six

months? Are we going to have some special programme to help some of them in the interim? I am no lawyer. I do not know what the rules and regulations are with respect to that kind of situation. I do not believe we ought to wait until the person is convicted and in prison for a couple of years, if we could do something at the point when they are there awaiting trial. Maybe that will help us prevent the repeat offences which are being committed.

There is one other issue I want to raise. It has to do with community involvement in crime prevention. We have had many debates and discussions about this. In fact, one year ago there was quite a furore about the role of community groups in the crime prevention programme. I am seeing now that the Government is moving to do that. I want to suggest to this Government that it should not politicize neighbourhood and community groups; any community activity to do with the prevention of crime must be done in a non-partisan manner, and should involve all citizens. I also believe that Members of Parliament, regardless of what party they belong to, should have some input into that kind of programme.

Usually the Members of Parliament will be aware of the areas within their constituencies where there are people in danger; there will be local government authorities, there will be the village councils. There are several networks within constituencies which could be harnessed to deal with this situation. Although there were some incidents at times. I can assure you that when we dealt with the issue of neighbourhood watches in Central Trinidad, from then until now we have not had the kind of heinous crimes that we had been having before. A lot had to do with the fact that the community had come together to actually work as a community, regardless of religious persuasions and political affiliations.

The hon. Prime Minister spoke recently about community policing and the SRPs. I want to suggest to this Government that it move very speedily in integrating the SRPs into the police service, and in particular to providing them with the necessary resources to do their jobs effectively. I also want to suggest that their terms and conditions of service, and all those matters—which are important—be looked at very carefully. Sometimes people's commitment in conducting their duties has to do with whether they are motivated. Motivation has much to do with how happy they are with what they are doing and doing their jobs properly. Of course, this also applies to the police service. I shall not go into that because many of the Members would have spoken about those details.

In this whole system of criminal justice, as the Member for La Brea and others have said, there is the presumption of innocence. This is why, for instance, the right

Bail Bill
[MISS BHAGGAN]

Monday, August 29, 1994

to bail is something which is enjoyed by persons who are charged with certain crimes. But actually looking at this right, as I said before, we have to balance the situation. The way I understand it, the law is not cast in concrete. It is something which has to be looked at from time to time so it remains relevant to the situation and the needs of society. Therefore, I believe the Bail Bill may be a response to part of what is happening in our society.

My analysis of this Bill is that it sets out principles which generally apply in the courts and in effect it codifies these principles, and provides the Judiciary with some kind of guideline so that we do not have them roaming at large, so to speak. Like the police service and in the legal profession, there are allegations of certain small areas of irregularities. By having this kind of codification, we may be able to bring to achieve regularization of the procedure. I hope that this is not really intended to undermine the Judiciary but, rather, to ensure that we reduce any irregularities that may exist within the system.

In terms of my amendments they are very simple. Firstly, what I am recommending is that to clause 6(3)(a) add the following:

"together with the evidence presented by the prosecution;"

Secondly, I suggested that trafficking in narcotics should be a non-bailable offence. Presently that exists in the Co-operative Republic of Guyana. From the impression I get it works very well. I would recommend that trafficking in narcotics be a non-bailable offence.

I am also suggesting that where crimes are committed by a group of individuals or by a gang, we ought not to grant those persons bail. There are too many incidents of sexual offences being committed by gangs or groups of people. Also, where there is robbery with extreme violence. Again I believe we ought to remove people from the streets for those types of crimes. I am not looking at the individual. I suspect when crimes are committed in organized groups it is a planned operation. I believe it is almost a professionalization of criminal activity.

Another issue which is not related here has to do with the possession of firearms. This is not an amendment but I want to make a suggestion, that we look at the question of firearms. When we look at this country today there are firearms by the hundreds of thousands. Whether we want to accept that or not the point is, guns are entering this country by all means. Whether it is containers, through the "back door" as we call it, there are ways in which these guns are being brought into the country.

If we begin to look at crimes committed with firearms in general we may have to build more prisons for these people. I suggest that we probably qualify that and look at the type of firearms, and in particular, the superior weapons—weapons such as the Uzis and M-16s. The very sophisticated weapons are the ones I believe we ought to consider as being of more serious concern.

I am not saying that the possession of firearms is something which should be overlooked. I am saying, because of the prevalence of firearms in the country, with this amendment and this measure in the Bill, thousands of people may end up behind bars, because they have these types of weapons. Quite often you would find that persons in rural areas or certain areas where they are not feeling protected enough, may have in their possession these kinds of simple weapons for their self-defence.

3.30 p.m.

I believe we ought to consider in the future, whether to give or allow a more liberal approach towards the issue of firearms for citizens of this country who have their property to protect and those, particularly in the rural areas, who do not have access to telephones or the police.

There is another issue which the Member for La Brea raised. I just want to support that position. It has to do with the professional bailors; that is persons who have been using properties over and over to bail out individuals. As a matter of fact, in speaking to some individuals over the weekend, they told me that at present there is an industry of professional bailers, and that industry has to shut down. I fully support the view, that we cannot have a situation where professional bailors continue to flout the law by being accomplices with individuals who would put a spoke in the wheel of law enforcement. For future consideration or maybe today, we ought to look at the whole question of cash bail for certain listed offences.

I should like to ask the Attorney General in how many instances we have forfeited property under the existing legislation. For certain types of crime we may consider asking for cash bail so that we can avoid having a situation where properties which cannot be forfeited because of loopholes in the system are being put up for bail.

I know in the Bill some attempt has been made to rectify the situation, but we must appreciate that in Trinidad and Tobago we always find ways to beat the system. There is that possibility that even these provisions within the Bill may not necessarily protect us the way we want to be protected.

Bail Bill
[MISS BHAGGAN]

Monday, August 29, 1994

I also call for the introduction of sexual harrassment legislation. There are sexual predators who harass women, especially prominent men in public life. I believe that persons who harass women ought to feel the weight of the law. These sexual predators, as I would call them, are like wolves in sheep's clothing. They pounce upon young unsuspecting women even in offices during office hours. I believe that legislation has to be introduced in this House to ensure that persons who commit the offence of sexual harassment feel the weight of the law. I hope that in future, Parliament would consider legislation with regard to that.

Finally, there have been many concerns about the provisions of this Bill; they do have some validity, especially those expressed by the Member for Couva North. All I can say is that we ought to strengthen the office of the Ombudsman with the proper resources, even if we have to decentralize the office and put things in place to ensure that the provisions of this Bill are not abused. I believe that if we cannot put it within the Bill, there ought to be mechanisms within the country, as provided by our Constitution, which would allow persons who may have complaints of abuses to have some kind of recourse.

Within the existing laws or the Constitution we do have the office of the Ombudsman and many recommendations have been made in the past with respect to strengthening his role. If we are going to introduce laws which are considered draconian, then we ought to have the checks and balances in place. I believe that the office of the Ombudsman is one of those institutions which ought to be strengthened to provide a balance against this particular Bill.

I know other Members of Parliament would raise other issues. My own feeling is that the Bill, is good in principle. I have looked at the amendments proposed by the Member for Couva South. I found them to be quite reasonable. I have also proposed some amendments and in looking at the provisions of the Bill, I believe that if we can strike a compromise in this House we would be able to have a Bill which would benefit our population and which would ensure that Trinidad and Tobago would at least have made a dent in the crime situation in our country.

Thank you.

Madam Speaker: The Member for Tobago West caught my eye before the Member for St. Augustine.

Miss Pamela Nicholson (*Tobago West*): Madam Speaker,

"God moves in a mysterious way,

His wonders to perform,

Bail Bill

Monday, August 29, 1994

He plants his footsteps in the sea
And rides upon the storm.
Deep in unfathomable mines,
Of never failing skill,
He treasures up his bright designs
And works his sovereign will."

This is Hymn 503 in the Methodist Hymn Book by William Cooper.

I could not get up in this House without quoting that hymn because when I look at the Bill that has been produced by the People's National Movement Government under Prime Minister Patrick Manning the Member for San Fernando East, I cannot believe my eyes, especially when I see the same philosophy and principle that was highly criticized by the Member for San Fernando East and the People's National Movement, appearing here again. I am alarmed.

I cannot support this Bill because I was won over by the arguments which were postulated after the NAR Government had put out the Bail Bill dated June 24, 1988, for public comment. What was the problem at that time? It was that you cannot interfere with the rights of the people; their basic liberties and freedoms. You cannot do that whether they were convicted three times or they were charged once. The argument made was that we would be interfering with the rights of the people; taking away the judicial rights and putting them into the hands of the police thus creating a police state in Trinidad and Tobago.

I am going to quote several people. I hope that when I quote a particular person this afternoon, he would have the gumption and the guts to rise and make his views known to the people without fear of anyone. The people that we emulate in this society came out bashing the Bill; the Attorney General at the time and the NAR Government.

There was an article in the *Express* dated May 26, 1988 with the headline: "Ellis Clarke strongly against proposed Bail Legislation." Today, the same individual is saying that you can support the taking away of people's rights. For me to support this Bill, the People's National Movement Government, Mr. Ellis Clarke and a number of people must come out and tell me why they have changed their minds and they must apologize to the people of Trinidad and Tobago.

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

3.40 p.m.

I have to be emotional. The weaknesses of Trinidad—note I say Trinidad—are its lack of consistency, contradiction and unfairness. This is the problem that they have and when they do all these things, when people should be opening their mouths on the Bail Bill, 1994, there is stony silence. I am sure you have heard me use those terms very often, Madam Speaker.

"Ellis Clarke strongly against proposed Bail legislation.

Former President Ellis Clarke came out strongly against the proposed bail legislation, saying that while nobody wanted to be soft on criminals, care must be taken not to stigmatize anyone as a criminal merely because he is charged with an offence."

Today he is supporting stigmatization in this country. That was what he agreed:

"Clarke agreed that there should be guidelines and principles in determining bail."

He was saying that there should be principles and guidelines for the judicial system to function effectively with bail; and if that was done there would be no need to interfere with the rights of the people, if they were charged three times or convicted three times. Therefore, what is needed is to have the judicial system functioning effectively and quickly. That is a summary of what he said.

"Essentially Parliament is there to pass legislation for peace, order and good government. We have to ensure that there is peace, order and good government. And this, without unduly infringing the rights of the individual."

Clarke is now saying that instead of the one-year period, cut it down to six months. The same principle and philosophy of interfering with rights and stigmatizing is in clause 5(i) and (ii), even with the amendments. These are the people whose arguments won me over. I said that, indeed, one should not interfere with the rights. When one looked at the arguments, one saw the weaknesses—that if one allowed certain things to happen, even though one did not set out to have a police state or an authoritarian system—We were bashed all over the place. A number of lawyers came out. Again, in the *Trinidad Express* of 18th and 19th of the same month:

"Danger lies in power to imprison without a trial

... Solomon, Allum, Armour, and Kangaloo—is a plaster solution only that attempts to treat the effect of the problem and not the cause.

‘It is a monstrous piece of legislation’, says Solomon. ‘It takes away the judicial power of judges and magistrates and puts it in the hands of the police.’ ”

Madam Speaker, the same philosophy is in this Bill. He goes on:

"The whole Bill is ill-conceived'. ... "

Charging that the bill was unconstitutional, Solomon said, ‘It hands over to the police, which is an agency of the Executive, the power to deprive a citizen of his liberty for periods of up to one year without trial.’”

They have now cut it down to six months.

“The real danger of the legislation, according to Allum, was the power given to the police to imprison without trial.”

I continue to quote Allum:

"A citizen has the right to reasonable bail', said Allum, ‘and to take that power away from the judiciary and to hand it over to the police at a time when public confidence in the police is at its lowest ebb, is certainly a very retrograde step. Clearly, the wider the powers you give to the police, the greater there is the possibility of abuse and certainly there can be all kinds of ulterior motives’.

Charging that the bill was repressive and totalitarian in intent, Allum said he is still to see statistical evidence to support the claim that persons charged with offences commit even more offences when out on bail."

One has to congratulate the Member for Port of Spain North/St. Ann's West. When you look at the quality of his intellect and you see that he is being wasted, it is really pathetic.

Allum comes out on the *Sunday Guardian* dated August 14, 1994:

"Allum knocks Bail Bill"

There is a legal mind in their system and they are allowing legal non-entities to guide:

"PNM MP says too early to abandon Privy Council"

Well, that is just the headline:

"Desmond Allum, Member of Parliament for Port of Spain North/St. Ann's West is not happy with some of the provisions contained in the Bail Bill introduced by the Government. ...

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

Allum, a Senior Counsel, says, the section of the Bill which proposes to deny bail to a person charged with more than one offence, is potentially unjust because it shoves the arrested person into the penal system before a trial can prove innocence or guilt."

This is Allum speaking, and he is making the same argument the PNM Government under the Member of Parliament for San Fernando East was making. I am not a legal mind. Desmond Allum, the Member for Port of Spain North/St. Ann's West is a legal mind and he was commenting on the Bill brought here by the People's National Movement. He even went on to criticize the action they took with the "murdering" of Glen Ashby. One would like to know how these people ignore Desmond Allum.

I am concerned about the rights of the individual. I was won over by that argument and I am very concerned when I look at these young arrogant people. You listen to their statements as you watch them on television. You look at their operations—the Prime Minister taking over the Ministry of National Security. The same things that the former Minister of National Security was asking for and which the police service could not get, before you look around, \$5 million is provided.

He is also in charge of the Ministry of Public Utilities, the other man just has the name—and one has to look at those tendencies; those are authoritarian tendencies.

3.50 p.m.

Kangaloo said it is a horrendous piece of legislation, and I think the protection benefits or advantages that are being sought would not be achieved. One has to listen to the people. But who are the people? Today they are talking about the people. The people who really commented were not really the rank and file. One had the intellectual minds or legal brains commenting. One had the Law Association—this Member for Ortoire/Mayaro was his secretary—commenting. Mr. de la Bastide [*Interruption*]. Not "comess", I am here for serious business, to remind you—

Mr. Sobion: I did not say "comess", I said "comment."

Miss P. Nicholson: Oh, because I am a serious person, I am not dealing with that. I am just reminding the population. It is very, very important to remind our population, because to me the memory of the citizens of Trinidad and Tobago is very short. Many people criticized Dr. Morgan Job, but he was playing a very critical role on the radio, because he was reminding the people of Trinidad and

Tobago of what was taking place. But when certain people recognized that they were now in control of the PNM Government, they said to get Dr. Morgan Job off the radio station.

On May 6, 1988, Mr. de la Bastide brands the no-bail draft obnoxious, grave threat to individual freedoms. When Mr. de la Bastide commented, he did so as President of the Bar Association, Madam Speaker, I believe at that time you were a party to the thing, I am not trying to tie you up but I know that you were functioning and you must have been in the association. Mr. de la Bastide said, while they endorsed the particular section that he described as obnoxious, the proposals making several offences non-bailable—

"He has faith that the Attorney General and the Government will withdraw the totally obnoxious proposals."

He then went on to comment and so forth. He said he was speaking on behalf of the Bar Association. I believe all the lawyers are members of that Association.

Mr. de la Bastide on Issues and Ideas on television one night said:

"As President of the Law Association of Trinidad and Tobago I have during the last two weeks been pressed from more that one quarter to make a public statement with regard to the two Bills to amend the law relating to bail. After consultation has now taken place, those who participated in it, unanimously support, in substance, the statement which follows."

I should like to quote a little of it:

"The most outstanding feature of both Bills is that they create a long list of offences for which no bail will be granted, except in cases in which a preliminary inquiry does not commence within six months of the charge, or a trial does not take place within 12 months of the committal. We are irrevocable opposed to such a provision."

I am a bit surprised, Madam Speaker, that I am not hearing Mr. de la Bastide. I do not know if he is not in the Bar Association again, but I believe that if he looked at clause 5, he must have had some comment. Somebody told me that he was not well, so perhaps that is why we are not hearing him, because he is one of our eminent lawyers, who when he gives his views one is supposed to consider them, but we are not hearing them. [*Interruption*] I am going to analyze that for you now.

One of the fundamental differences between what is taking place today and the Bill in 1988 is there was a draft bill, which was published in the two daily

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

newspapers so that every single individual in Trinidad and Tobago could have read that Bill and made his comments. Today there is a new Bill—because changes have been made—I heard the Member for Ortoire/Mayaro present a historical argument, yes, there is that historical trend, but since certain changes have been made, it is a new Bill and the people in this Government criticized that fundamental part but the principle is still here, in this Bill so the Government should put it out for the people to read.

Mr. de la Bastide said:

"Our opposition is rooted firstly in principle, the principle that a person's liberty is too precious and fundamental a right to be taken from him automatically as a result of his being charged with an offence, and without any opportunity being given to the judicial officer."

The six-month stipulation is still here. The right is still taken away from the individual and I am not hearing them objecting. Where is de la Bastide? The only person who is strong and holding his grounds is the Member for Port of Spain North, St. Ann's East and he has to be congratulated, although I am waiting to hear him use his conscience here in the House. I am saying to him that he should not be afraid; his business is representing the people. Members like to pound the table when they hear the Member for Chaguanas. Yes, I like what she is doing and I only hope that the Member for Port of Spain North/St. Ann's East would have the salt to do the same thing that she is doing.

I am very concerned for this country because the media were highly excited when Mr. Ellis Clarke and company made their comments—sometimes I think that was organized by the media in South. But where are they? We are not hearing them and one wonders if someone is suppressing action in the *Trinidad Guardian* and the *Trinidad Express*. I learnt that very firm instructions were issued to the *Trinidad Express* that if they did A, B and C, they would not have any advertisements and so forth and therefore they had to bow.

Madam Speaker, when one talks about an authoritarian society the tendencies are there. When one talks about a dictatorial system, the tendencies are there, and there is a group that is bending towards that.

The *Trinidad Guardian*; 'two sides of Bail Bill'. They attacked the Chief Justice, Mr. Clinton Bernard and others. However, a *Trinidad Guardian* of last week published an article which, when summarized said that they have to apologise to Mr. Bernard because what he did many years ago was the correct thing. But they could not say that they apologize to the NAR Government and the former Attorney

Bail Bill

Monday, August 29, 1994

General, Mr. Selwyn Richardson because what they were doing was the correct thing. The PNM members are not apologizing.

4.00 p.m.

Nobody is getting my vote, unless they can state why the change of mind; why the change of the PNM philosophy of 1988 to a philosophy similar to the NAR's in 1994. When they tell me why *[Interruption]* Of course, they have to satisfy me, and they have to tell me why I must take away the rights of the accused.

I was won over by the arguments that were made. I said that we must not do anything that would leave an opening, where you would have a police state developing, or an authoritarian state. Therefore, I am not going to support them in any police state business, or any authoritarian state business, especially when I see so many other little tendencies in them. I am very, very strong on that. They are not getting my support at all. I will go on the streets and educate and counter-educate as is necessary.

I only hope that the UNC know that they have a big role to play. They must not sit down and be accused of obstructing; and the Member for Oropouche taking his time to argue. Go on the road and educate the people!

Mr. Sudama: I just want to let the Member know that I do that daily.

Miss Nicholson: Madam Speaker, this is serious business. They argued that you cannot take away the rights of the people.

Mr. Sudama: Speak about Tobago.

Miss Nicholson: I am coming to that just now, do not be afraid. I must make mention of Tobago because I am a representative of Tobago, but I am talking here for Trinidad and Tobago today. I have to help the Opposition, it needs help. It needs a sense of direction. You had better be careful that I do not join with the Member for Chaguanas.

Mr. Sudama: Then you will lose your whole constituency.

Miss Nicholson: I cannot lose my seat for that. I am losing that only when I do not want it.

Madam Speaker, I am very, very concerned, because one wants to know how everybody is so silent, not concerned about their rights any more.

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

An article in the *Trinidad Guardian* of May 25, 1988, headlined: "Chamber hits at Bail Bills—Business group concerned at comments by C. J. Bernard" stated:

"The Chamber of Industry and Commerce is 'deeply concerned' that the Chief Justice Clinton Bernard has already taken a stand in favour of bail law amendments whose constitutionality he may some time be called upon to judge."

They attacked him heavily, and it continued. I would not go into all of it. Madam Speaker, they peppered him.

The *Trinidad Express* of Tuesday, May 17, 1988, in an article entitled: "Speak out about bail", stated:

"The Attorney General condemned by rights body."

I do not know if that is Couva South's organization.

Another article written by Morgan Job in the *Trinidad Guardian* was headlined: "Inane propaganda about crime."

In the *Express* of Wednesday, May 25, 1988, an article entitled "Chamber Rejects Bail Bills" stated:

"...refusal of bail was rejected for these offences on the ground that charges could be fabricated against an individual or laid on the basis of circumstantial evidence. 'It was felt that consideration must be given to the presumption of innocence until proven guilty'..."

And that same scenario is here. Therefore, the person must be able to get bail.

Another article in the *Trinidad Guardian* of Monday, May 16, 1988 by Sydney MacDonald Joseph was entitled: "Use and abuse of bail."

Yet another article—"Increase in a number of non-bailable offences."

Another article in the *Trinidad Guardian* of May 11, 1988 states: "Will the judges now say something?"

The *Trinidad Express* of May 22, 1988 also carried an article headlined: "Courts too liberal in granting bail."

There is an editorial by Wesley Gibbings entitled: "A direct result of the crime wave." In it he spoke about how the policemen were very happy with the Bail Bill and the advantages, and so forth, and how the people felt. This was probably one of the few articles that said something favourable at the particular point. Today, you

are not hearing a word from the *Trinidad Express*. Neal and Massy advise and give strong directions—the same Sydney Knox who was pounded by the Member for San Fernando East is in total control today.

The *Express* of Sunday, April 24, 1988: "Law Association hits Bail Bills "

The *Express* of Thursday May 26, 1988: "Withdraw those Bail Bills..."

The *Express* of May 1, 1988: "Liberty at stake with new Bail Bill."

This was David Renwick's article. He is no longer there, but I am wondering if he is with the *Newsday*. He is arguing here that his liberty is at stake. I am very concerned about my liberty, and my rights. I am also very concerned about the rights of the people. I do not want any opening for the emergence of a police state. I do not want the opening to be there for an authoritarian government, especially when I note certain tendencies.

I cannot come here this afternoon and say that I am going to support because of A, B or C. The crime level was very high at that particular point. A certain suggestion was made that one of the things that should be done, is to come up with regulations. This is what Mr. Ellis Clarke said. I want to know if they are implementing that. The Attorney General, in his arguments behaved as if we just came and dropped the Bail Bill on the country. That did not happen.

Over \$300 million was given to buy vehicles and a number of other items for the police service. New police stations, the measures that they are now implementing, all of those were addressed. It was not the Bail Bill alone. He is trying to argue in his debate as if it were that. Actions were taken to try to improve the police service. A headline in a newspaper of May 1, 1988 was: "7,000 warrants for bail jumpers in one year." It states:

"This country had better wake up and make a serious attack against criminal elements now creating havoc in the place. The figures are alarming, not only for Port-of-Spain, but from those coming in from other districts. We need urgent legislation as well as a continuous and long-term studied approach to this matter."

4.10 p.m.

It was being addressed. The draft Bill came and went out to the nation for comments; not hide and seek, coming to force its passage in the House and trying to tell the people that if it is not passed it is because of the Opposition. It is not that at all! The argument that was being postulated by Mr. Ellis Clarke and other legal

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

minds was that it was interfering with the rights of the people. Therefore, if we are to support the new Bill, the rights of the people must not be interfered with. Clause 5 must be taken out totally. No amendments! The argument was that the policemen who are problematic can use it and attack innocent minds.

As I said, I feel very strongly, that this Government has an authoritarian approach, and I stated why. The Prime Minister is taking over every ministry. When one looks at him one sees a real Duvalier and those types of people in Haiti. The similarity is there. Madam Speaker, be very, very careful on that side.

Hon. Member: Papa Doc.

Mr. Sudama: Trinidad Doc.

Miss P. Nicholson: Madam Speaker, this is a very, very serious matter. Special Intelligence Agency: similar to what in the Caribbean? The same argument that I am making. Is it similar to the Ton Ton Macoute, Duvalier, Mongoose Gang? I do not know. I feel that it is similar.

The Minister of Public Utilities knows nothing about what is happening in that ministry. The ministry is run by the Prime Minister.

The Minister of National Security, the Prime Minister, is not saying anything new to what the former Minister of National Security was saying. No matter how he begged, no money came from the Member for St. Ann's East. That is why the Member for Port of Spain North has to be congratulated on holding his ground. I am waiting to see if he would get up here this afternoon. I want to see him get up here and condemn this Bill. Imagine there is a legal mind—the Member for Port of Spain North/St. Ann's East—and he is not being used in a Government that needs his expertise. He can guide. Sir Ellis Clarke will now guide, and there is a President. They do not even see the contradiction in that.

It is really with grief and pain that I rise here this afternoon. Since one recognizes the kind of behaviour by the Government—they attack, they said that we are taking away the rights of the people. Chief Justice Bernard was attacked.

I am very concerned. The Government is talking about making several changes, like being able to appeal to the High Court and so forth. There is a situation in Tobago where there is High Court for a few months. If the Government is introducing a system like this, it has to set up a system where a High Court judge would be functioning in Tobago every day. So that when the magistrate says that no bail is granted, the people, having their right to appeal, would not have to come to Trinidad and spend 300 or 400 per cent times what the individual in Trinidad would

spend. That is something for the Government to look at. It is very important. That kind of situation must be addressed.

In Tobago there were more than 250 policemen. Now, it is only 160 policemen, and there is now crime in Tobago more than we ever had before. Recently, I learned about guns in Tobago. Because the place is so small and everybody knows one another, we were able to nab them, but they are making guns now. The Government cannot reduce the number of policemen in Tobago, it has to be kept at a certain level, especially when tourism is being developed in the country. It is very critical that there is a good service.

You cannot have youngsters because of unemployment—and these are the arguments. I cannot forget the Member for San Fernando East, you know. He could say that I am bitter but I would remain so because those were the kinds of arguments that they used to bring down a Government. They said that we were wicked, we wanted to take away the rights of the people, which they fought for so many centuries.

Mr. Manning: Vindictive!

Miss P. Nicholson: The same Member is coming to do that same wickedness. He said that the Prime Minister at the time was wicked, vindictive, callous. Today, when I look at the wicked, vindictive, callous man, I want to know how the people of Laventille still vote for him.

When one looks at our situation in Trinidad and Tobago one sees that there is need for proper leadership in this country. We do not have that. When one compares the level of Government that we had from 1986 to 1991 with the level now, it is frightening.

I was reading, I think, the *Trinidad Guardian* or one of those newspapers, yesterday, and I saw where a certain grouping—I think it was Dunlop—was closing down the company and going into an Export Processing Zone (EPZ). I said, Trinidad is great. Prime Minister Manning is great. The EPZ that he criticized and said that they would never allow that to be established in Trinidad and Tobago he is now embracing. Trinidadians are sitting down here with OWTU and allowing them to close down Dunlop and go into the EPZ. The same EPZ that they battered.

I am very concerned with the media. I do not believe that it is the reporters. I believe somebody is trying to crush what the reporters are doing, because those people should be able to go to Hansard and see, investigate, do their research, come out with their stories. I am sure that somebody is suppressing. For example, the

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

Chief Editor of the *Trinidad Guardian* is one of the hard men of the People's National Movement. That is the danger in a country. That is why we have to see to it that this Bill does not pass, that they do not take away the rights of the people. When they are in control of the press, everything would fall down.

Madam Speaker, the unions. Listen to TTUTA at the time.

"The most dangerous pieces of legislation with which a citizen could be threatened. Unless better judgement prevails the country could well be on its way to a police state."

Listen to TIWU:

"Bill wide open to abuse for personal or political reasons; pose a threat to the fundamental rights and freedom guaranteed under the Constitution, and infringe on the presumption of innocence until proven guilty.

I want to know if TIWU is still alive.

Listen to CPTU:

"If enacted, we place in the hands of the state the power to persecute and victimize innocent citizens regardless of whether these persons are criminals or not."

4.20 p.m.

OWTU—they are so silent. Ah boy, I am sorry for Trinidad people! Listen to McLeod:

"AG wants us to believe that the escalating violent crime situation can be solved by filling up jails with the criminals".

I want to know if McLeod read this Bill and if he does not know that the jails will be filled up.

Mr. Manning: Mr. McLeod!

Miss P. Nicholson: The Attorney General says not a word about the economic, political, social and ideological crisis in the country. Political repression, but no bail legislation comes to grips with the crime situation. One wants to know: do we have a trade union movement any longer in Trinidad and Tobago seeking the interest of the worker? Do they look at important legislation like the Bail Bill, 1994?

Madam Speaker: The speaking time of the hon. Member has expired.

Bail Bill

Monday, August 29, 1994

Motion made, That the hon. Member's speaking time be extended by 30 minutes
[*Hon. K. Valley*]

Question put and agreed to.

Miss P. Nicholson: Thanks very much, Member for Diego Martin Central.

Mr. Maharaj: The Member rushed me to make the application.

Miss P. Nicholson: Do not be afraid, do not worry with that.

The object is to strike the right balance between the principle that no one should be deprived of his liberty unless and until his guilt is proved.

Hon. Member: They want to get you in the PNM.

Miss P. Nicholson: You know they cannot shift me.

As the Member for St. Joseph conceded, there is a problem in subclause 5(2). It is interfering with rights and he spoke about the amendments—instead of people waiting for a year before trial they are reducing the time to six months, but it does not take care of the rights for which you fought—the basic rights and liberties.

Mr. B. Panday: The Magna Carta.

Miss P. Nicholson: I was reading an article in which a United States Senator said—I cannot remember his name—you must never give away your rights. One of the articles that were attacking.

Hon. Member: Dymally!

Miss P. Nicholson: It is Dymally? I did not know he was so good!

Madam Speaker, I looked very hard to find one by Mr. Padmore, but I did not cut out his.

Mr. B. Panday: Old PNM and old clothes!

Miss P. Nicholson: I was disappointed when I rushed to read him in the Sunday newspaper because I thought he would have been dealing with this Bill before us as it interferes with the rights of the people. But I cannot take him on now, because I did not find anything. "Sobion knocks enquiry."

“Attorney General, Keith Sobion on Saturday made an impassioned plea for public support of Government's attempt to curb the rise in violent crimes here dismissing as a 'weekend job" the Commission of Enquiry by a regional human rights group into the hangings...”

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

and so forth. I do not want that section. I want the section which said something about the Bill. Yes.

“In his 45-minute address Sobion was unapologetic about the Government's introduction of the Bail Bill which he said was aimed at protecting law-abiding citizens of the country.”

One asks oneself if he was the same individual who was Secretary to the Law Association when Mr. de la Bastide did his story. If he was unapologetic at that time, why the contradictory views today.

“Do not expect any criminal to support the Bail Bill legislation.”

I am not a criminal!—whether in or out of Parliament.

“...and do not expect any person engaged in criminal activity to support the Government measures. Sobion noted that while the Constitution of Trinidad and Tobago provided for fundamental rights and freedoms for individuals, there are those who would read the Constitution as that alone which exists and give the impression that these rights are absolute in their terms.”

In 1988 Sobion thought they were absolute in their terms, and I am stressing it time and time again—I am not going to support this Bill unless the People's National Movement tell me why they have changed their thinking from 1988 to 1994. What motivated them to that change? What are the reasons? If they can convince me that with the interference with the rights, the openings of a police or authoritarian state are not there, that is the only time I would support this Bill. They must apologize to the nation of Trinidad and Tobago. These people are wicked and vindictive! All of them, callous and vindictive.

I feel sorry for the people of Trinidad and Tobago because the former Commissioner of Prisons would have been alive today if it were not for the People's National Movement. Those people who committed—how many crimes Madam Speaker?—were convicted. When I heard my hon. Friend the Member for La Brea I wondered if he did not remember that. They said you cannot use that even though some of us might be exposed to that kind of crime. All of us are exposed to crime, but they say we have to be very careful, we cannot give away the rights that we battled for—our basic liberties and freedoms. The attack was headed by Ellis Clarke.

Mr. Maharaj: You could have got the vote. You could have passed it.

Miss P. Nicholson: Of course we could have passed it, but we listened. These were the intellectuals speaking; the legal minds, the business sector, the unions—

everybody spoke out. The unions represented the workers, Chamber of Commerce represented the business people—some of them are in the biggest positions in the country today.

The Chamber of Commerce man, Quentrall-Thomas, was one making comments—not even coming from Trinidad and Tobago—these were the people. The human rights man, Couva South the Member for—he is one of the consistent ones. Port of Spain North, very consistent in his thinking—but I want him to get up in this House and open his mouth and condemn! He must do that; he must talk on behalf of the people. He must have the mind and the will to do it.

Clause 5 is really the problematic clause of the Bill. It interferes with rights and basic freedoms, because when one is charged, one must be seen as innocent until proved guilty. Therefore one must be able to get bail. That is the issue. If that is not addressed in totality, I would not support this Bill at all.

We had a very good memorandum on the Bail Bill, 1994 coming from a group, the Coalition for Social Justice and Human Rights. I do not know who they are. They must be brave enough to open up and put their names, but it seems that everybody is afraid of the PNM now. Prime Minister Robinson was said to be vindictive and vicious, but they were not even afraid to storm the House. So that should tell you the level of wickedness, vindictiveness and callousness of the Prime Minister today and the People's National Movement.

The Coalition people cannot even put their names. I do not know who they are, but the document is very good. It is something that I think the Government should look at because they are making some very salient and pertinent points.

4.30 p.m.

I support many of the other areas on the Bill and I say they must give the Judiciary a chance to function—give them their regulations. Have a system whereby depending on whatever matter it is, all the magistrates will take a position of unanimity. When the matter should go up to the High Court, the same thing. They must act swiftly. They must give Tobago a High Court throughout the year. Give us our policemen.

The whole judicial system must be addressed throughout the various regions of Trinidad—getting their people and so forth. Then they must be moving very swiftly to give the policemen what they need. Tobago must not have one and a half cars for the whole of Tobago. Many times only one is functional. Last week I visited, so I know what I am saying.

Bail Bill
[MISS NICHOLSON]

Monday, August 29, 1994

We are having many problems in Tobago with crime with regard to the tourist system that we are trying to develop from an economic perspective, and if tourism is to be developed, there cannot be a development in crime.

After what I learnt in 1988, I was really convinced that there was an opening and I looked specifically at this same section, the thinking and philosophy behind it, and it is still there in section 5. And if there is that opening for the police state, the authoritarian state, I cannot support the Bill.

They have to apologize. They have to tell the nation that they were wrong. They must have the guts to do that and apologize to the NAR Government.

Thank you very much, Madam Speaker.

4.31 p.m.: *Sitting suspended.*

5.17 p.m.: *Sitting resumed.*

The Minister of Agriculture, Land and Marine Resources (Dr. The Hon. Keith Rowley): Madam Speaker, I do not propose to be very long because it is clear to me that we, as a House, have ventilated this matter considerably, and we are in a position now, after many hours of debate, to have identified very clearly the various points of view.

I intervene just to deal with the matter in the context of what we are trying to do. I would not profess to be a legal mind—I would not address it from the point of view of the lawyers; I want to address it from the point of view of the man in the street. What are we trying to deal with?

I think it is clear that what we are trying to deal with is a problem that exists in Trinidad and Tobago today. Two Members who spoke earlier gave an overview—by way of reports in the newspapers—which indicates that over a period matters concerning the behaviour of persons in the national community, and their liberties attracted the attention of the national community. The national community thought that something had to be done to address the problem.

Other Members spoke about the law and its sanctity, and what we should or should not do; what tinkering with it would do, and, in fact, the Government was accused rhetorically of being dictatorial and so forth. I simply want to make the point that time changes things or things change with time.

There was a time in our society—by our society I am going to make the widest possible comment because we were part of the British Empire—when the laws of

the British Empire applied to Trinidad and Tobago equally as it applied to the United Kingdom.

In that time it was acceptable to carry on the slave trade. Many an English gentleman made his fortune by kidnapping people and taking them halfway around the world to sell them in a legal auction, and there was nothing in the law which prevented that. In fact, there were laws facilitating it.

Then, by the turn of the 19th century, the society had seen the evils of those actions—both from a humanitarian and economic point of view—and entered into the great William Wilberforce debate as to how the society should behave with respect to the movement and acquisition of labour. In short, the whole question of man's inhumanity to man was challenged.

The debate went on for a number of years with several parliamentary sittings and attempts to bring legislation to put an end to that heinous operation. Eventually, one day the majority point of view prevailed and a decision was taken that by 1807 in the British Empire the slave trade must come to an end. No person in the British Empire could then continue to trade in slaves without breaking the law. Slavery continued but by 1938 the society thought that this thing called slavery—this action that we are involved in—must now stop because we have come to the conclusion that this was not what we want to be. Therefore, a decision was taken to put an end to slavery.

I say this to demonstrate how one needs to adjust with time, and how the human conscience impacts upon the laws that we provide ourselves with to govern our conduct. So, when the Member for Tobago West mentioned that some time in the past somebody had opposed a Bill, I take that in the context that my colleague is still suffering from her traumatic defeat and has difficulty in supporting a measure brought by a Government which inflicted such a convincing defeat on the party she represents in the political arena; but I do not think that should distract us from the substance before us.

The substance is that there is a problem in Trinidad and Tobago today. In fact, what I found to be very strange was that my colleague the Member for Tobago West could have found that there was a deafening silence coming from a number of persons and organizations who she claims were not supporting an outcry against this measure. It crossed my mind in the context of the calypso that maybe she should have thought that 50 million Frenchmen cannot be wrong.

The reason all these people are now not coming out in the way they did in 1988 may very well be that the Bill before the House today is substantially different from

Bail Bill

[DR. THE HON. K. ROWLEY]

Monday, August 29, 1994

the Bill we all opposed in 1988. That is the fact. There is a fundamental difference, in that the previous government said that if one is charged for this, that or the other offence, which were all listed, one could have been denied bail. I would object to that even now. I objected then and I would object now.

This Bill is saying that we are identifying a group of professional criminals who are preying on our society, whom we call repeat offenders. We are seeking to deal with that problem insofar as it applies to those persons who have taken a decision to lead a life of crime. In the previous bill if one was in a bar having a drink and got into a fight, or one was mistaken for another person and was arrested for an offence, immediately one was denied bail.

In this Bill we are admitting that it seeks to take away liberty from persons. But who are those persons? Those persons who, by their own action, would have identified themselves to the national community as professional criminals.

5.25 p.m.

I need not go into the gory details, the day in and day out, every newsreel, at the night time or in the morning pointing out what havoc is wreaked on the society by the so-called repeat offenders. I think we are all familiar with that, whether they are repeat drug traffickers, rapists, robbers, we are very familiar with their actions.

In 1994, we are doing something we had not done in Trinidad and Tobago before. We are identifying a small percentage of the national community, and we are saying that in the interest of the vast majority by virtue of actions which they have taken against the society, we are seeking to pass laws which say, if you find yourself so categorized you are in line to lose your liberty by virtue of not being granted bail when you are arrested for an offence on the fourth occasion.

The Bill says a person who has three previous convictions—it means that if he has two and is on a third one, it does not apply. If he has one and is charged for a second one, it does not apply. But if he appears and has three previous convictions, he is denied bail on the fourth occasion. As a society we are seeking to get consensus in the House to put a limit on how much the society can tolerate. We are saying if you appear on the fourth occasion, enough is enough and on that occasion you shall be denied bail. To the extent that the difference [*Interruptions*] of this Bill came out in the debate, I am confident that the Attorney General, following the commitment given by the Government, will take into account and will treat with all the positions coming from the other side.

I am sure that the Attorney General would be in a position to so amend whatever is there with respect to that particular position, so that we can find

common ground on which we are all agreed this afternoon. I am confident we can do that. We are clear as to what we are trying to do.

The Member for Chaguanas made the point that if we analyze who are doing what and what they are doing, we would see that a large proportion of the offences are committed by young people, and they commit what you would call senseless offences because, you wonder what goes through the mind of a person to make him or her want to do what they do. And, those are the things that are now more the mores than the exception.

I am quoting here from a book entitled *A Society under Siege* by Ramesh Deosaran Ph.D., who is quoting one of our learned judges, Justice Lennox Deyalsingh.

"Times have changed and so too, must there be a change in the law. We must not make the mistake of deifying the Constitution. We would then be serving a false god and imperilling society. I must not be understood to be saying that the Constitution should be lightly tampered with; but change there must be if the public good requires it."

This is coming from a judge, Justice Deyalsingh who has put it in that context.

It would be quite wrong if we take the position that the changes we are advocating—and being in the Government we are in the forefront of advocating those changes—are being done flippantly, that we are seeking to tamper lightly and willy-nilly with our Constitution or with people's liberties. We are not doing that at all. We are seeking to deal with a kind of behaviour which is relatively recent phenomenon. There are experiences I have had which I do not think I could ever forget. They date back to when I was a child, heinous crimes, make no mistake about it. We would be fooling ourselves by believing that we can create or eventually exist in a crime-free society. We have had heinous crimes over the years.

When I was a child I can remember experiencing a situation where someone in my neighbourhood had a domestic problem. The female was at home ironing, a gentleman came with a shotgun and shot her in the stomach because they had some falling out—a domestic matter. I do not know that governmental action could have prevented that, but the fact that the incident took place. I remember as a small child being traumatized that one person could have killed another and, especially in that way.

There was another situation in my neighbourhood where—this may seem like a violent neighbourhood, but it was not—a fellow had his sister looking after his

Bail Bill

[DR. THE HON. K. ROWLEY]

Monday, August 29, 1994

infirm father and he thought that his sister was overly influencing the father to transfer the property to the sister, and he intervened and beheaded his sister.

These are crimes committed by people, who, otherwise in the community, were deemed to be one of us—no record of violence. There was another situation of a gentleman working on a road project; he had a falling out with the foreman. He left the project, went home and came back, killed the guy on the job, had a gallon of gasoline with him—that was done in my time, yes, in Tobago in my time. If any of those crimes happened today they would be reported in the most comprehensive way and added to the picture that we have before us.

Many of the differences between then and now were that those persons, who committed those three crimes which I just outlined, were people who in the community, one would have had difficulty in accusing persons of potential for violence or being abnormal in the community. And, they met their just deserts. They would not have been categorized as repeat offenders, as we are seeing today who, with a kind of brazenness, in the precinct of the court, in your homes, especially when you are present would do things telling themselves that they cannot be touched.

Therefore, we have to react when we reach that point. Unfortunately that attitude comes from some young people who have chosen a life of crime. One can pontificate as to what is the cause, who is to be blamed, but it does not change the fact that in 1994 that is what we are living with.

We talk very glibly in this House about paranoia and hysteria. I take it we are saying that we here are not paranoia and we are not hysterical, and it is they out there who are paranoid and hysterical. Some of us have had the experience of coming face to face with that criminal element, and we know that experience of moments or minutes when our life flashes before our eyes.

If Members never had that experience they should not talk loosely about paranoia and hysteria. I know because I have had it—I have had the experience of a “gentleman” unknown to me entering my bedroom 14 feet above the ground at 1.00 o'clock in the morning. Fortunately for me, when I confronted him, in the heat of the moment he chose to run. And when I put the lights on I saw a dagger 8 inches long on the ledge. Instead of running he could easily have come forward and I might not have been here today to take part in this debate, much to the pleasure of my Friend the Member for Oropouche.

I am sure even my Friend the Member for Caroni Central would have mourned my as I would have mourned his passing if they had poured the concrete on him on the URP project.

5.35 p.m.

Let us not lose sight of what we are trying to deal with. It would also be quite wrong to give the impression that the Government has ulterior motives in bringing this Bill. My colleague the Member for Oropouche sought to provide proof of that, but I could give him the assurance that that is not so. The Government has no ulterior motive in bringing this Bill. In fact, I would have preferred if we did not have a crime crisis which is sapping a significant amount of our energy, both as a Government and Parliament, so that we could have diverted our energy to other matters.

We have many issues in the pipeline in this Parliament, which are of infinite importance to the national community and which we have had to postpone so as to bring forward this legislation to deal with the pressing crime situation. We have the Companies Bill and the Central Bank Bill. These are major developments which would impact favourably on the economic well-being of the country. They have had to take second place because we believe that if we do our duty and pass this legislation, in its amended form, albeit, and it has the effect of taking one person off the street who otherwise would have been out there to maim and kill one person it would have been worth it.

We are saying that this Bill is not a panacea for crime. The advantage that the criminal has—which the Government or the victim would never be able to eliminate—is the fact that he is the only person who knows where and when he would strike, and who would be his next victim. Therefore, when a person has labelled himself as being anti-society by his behaviour, as we are trying to label such a person with this legislation because of this heinous anti-social behaviour, and that person comes up for bail, the present situation—I am not going to get into a debate as to whether the judges or the magistrates are doing their job; I do not believe that would serve any useful purpose. When that person gets bail; goes out there while on bail and commits an offence similar to the one for which he was previously convicted or equally serious, I am saying that that person is getting more than his share of consideration.

We hope that our Friends on the other side would join us in saying that seeing what we are experiencing—and it is likely to get worse—we are forced to change the rules so as to deprive the criminal of his immediate liberty. If that happens to an

Bail Bill

[DR. THE HON. K. ROWLEY]

Monday, August 29, 1994

individual, I think that person would have earned it. I have no qualms in supporting legislation that deprives such a person of his or her immediate liberty. Rights and responsibility go together. One has the right to live in peace; to enjoy the free air and the space of this country, but one also has a responsibility not to come into my bedroom at 1.00 a.m. and try to kill me. If a person chooses not to discharge his responsibility I have no difficulty in passing legislation to deny him additional opportunities to do that.

I am of the view that notwithstanding the shortcomings of the judicial system and the comments made of the quality of our personnel, when all is said and done, Trinidad and Tobago is a free and fair society with a free and fair Judiciary; it is no kangaroo court. If a person is identified in our courts as having committed certain crimes, I am satisfied that evidence as presented was overwhelming and therefore I have no difficulty in labelling that person as the court has so labelled.

There are a number of things that impinge on this question of liberty. My colleague the Member for La Brea raised the point about bailors. I strongly support the position taken by him. Insofar as we are seeking to change the legislation to deny people liberty, let us not stop here. Many of those persons access that liberty and get more chances because of the involvement of those professional bailors. The time has come to look at that matter very seriously.

The way I see it, when one puts up a property to allow a person to access bail, it is collateral to the state and that should be treated like any other collateral. If it is tied up with this item—then to use the word from my Friend the Member for Caroni Central—it is encumbered and ought not to be available for any other use until released. We must now administratively take that in hand.

Mr. Sudama: If the property is valued at \$1 million and the bail is \$20,000, does that mean that property cannot be used again?

Dr. The Hon. K. Rowley: You are right. That is a consideration because one does not want to take \$1 million collateral for a 10 cents loan. That is a detail which one can find a mechanism to say if a property is worth \$1 million—the principle is basically that the collateral value ought not to be a rollover, if it is encumbered, and therefore, it means that those persons who are using a quarter acre of land to bail out an acre of criminals, their action should be circumscribed. If we do that we would be treating with one of the facilitating items which get criminals on the streets.

I do not want to prolong the debate. I think enough has been said to signal to the national community that this Parliament is not treating with this very important matter in a cavalier fashion.

5.45 p.m.

Enough has been said by the Attorney General. I want to commend him on his excellent presentation of this Bill. Enough has been said for any fair-minded person to have come to the conclusion that we have brought this Bill after due consideration and extensive process. I know there was a call for public comment, but there is no need to paint the lily. This particular item I would say has been more fully ventilated in this country than most others.

I do not believe that as we pass this Bill here tonight there are those in the community who would be aggrieved at not having the opportunity to put their two cents in. In fact, I think it will be the other way around. The wider national community is out there waiting for us to take this one step in the long journey towards dealing with those criminal elements, that minority of nationals who seek to make a life of crime, and make our lives hell in Trinidad and Tobago.

I commend the amended version of the Bill to the Members on the other side. Let us pass this Bill tonight and put a stop to the excess opportunities that are given to persons trying to kill us all in this country.

Mr. Sahid Hosein (*Siparia*): Madam Speaker, when a person commits a crime, as in the case of a man who picks up a gun and kills someone, he sets in train a series of motions which have the effect of improving the GNP, which is one of the economic indicators of a country's growth. The gunsmith would have benefited, the manufacturer of the bullets, the florist, the undertaker, the casket maker, the gravedigger, the policeman, the lawyer, the judge, the support staff of the courts, the prison officer, the priest, the hangman and so forth.

Imagine therefore a society without crime—which is an impossibility—and the effects of such a situation on that country's GNP. In fact, the more crime there is, the greater the potential to enhance your GNP. I am sure the Member for St. Ann's East will agree with me.

The other position I want to place before this House, is the situation where illegal drugs, especially cocaine, are completely eradicated from our society and we are no longer used as a trans-shipment point. In such a situation, I want the Minister of Finance to tell this House honestly how the economy of the Trinidad and Tobago would be affected.

Bail Bill
[DR. THE HON. K. ROWLEY]

Monday, August 29, 1994

I make this point because crime has much to do with the economic circumstances of a country. Therein lies the dilemma of a number of governments, especially those in developing countries, where in keeping with the new world order, we have become absolute slaves to the GNP, where our concept of development is dictated by how much the GNP moves. Development is now being used interchangeably with growth. But that is not what I want to speak about today. I have just thrown that out to the House as food for thought.

Today there is a frenetic gnashing of teeth and a loud wailing by our society in response to the crime situation. You will see, during the course of my contribution that we are a nation populated by hypocrites of stupendous dimension. You will see how each and every one of us—the Executive, Members of Parliament, captains of industry, priests, citizens—is responsible for what is taking place today.

The hysteria today reminds me of a story I once heard about the very first elephant, in that a man, having obtained the first elephant, placed it in an enclosed room and the room being dark, sent in people to identify what it was. The first person who entered the room felt the side of the elephant and on emerging said that it was like a table; the second entered the room, felt the trunk and said it was like a hose; the third entered the room felt the leg and came out and said it was like a tree; the fourth touched the tusks and said it was like a spear. It was only when the elephant was brought into the sunlight that they could see it for what it was.

With the action of deviants today, which we call crime, the very same thing is happening. We are looking at the individual act without realizing that we are not seeing the whole picture. The priest would say that crime is caused by a lack of spiritual direction and moral values. The sociologist says that it is caused by a lack of social conditions. The economist, depending on which side of the fence he sits, might be tempted to say that it is a necessary evil. The Police Commissioner feels breaking a few necks is the solution. The Executive feels that this Bail Bill is the panacea. But, as in the case of the elephant, no one is seeing or willing to acknowledge crime for what it is—a symptom of sickness, of a deeper malaise within our society.

What we are seeking to do with this Bill is to perpetuate what we have done throughout the ages—impose harsher and harsher measures. I want to make the point again: we are treating the symptoms and not the disease. It is a case of more and more of the same. That is not to say that I am against punishment. I want to venture today that the measure we adopt today, if we have consensus would not prevent crime in a manner which would make us complacent. So that it is critically

important to identify the malaise in the society. In such a scenario, the penalty becomes a secondary factor.

In dealing with this problem, every citizen has a part to play, but none more so than those elected to run the state—the Government. The one thing that this Government has demonstrated is that in dealing with crime it is more at sea than the rest of us. That has become most apparent in the Prime Minister's decision to take over the Ministry of National Security. That action demonstrated two things: that his administration does not know how to deal with crime, among other issues, and secondly and more critically, that he is definitely not a manager. As I understand it, the success of any good manager hinges on several factors, among them knowing how to delegate responsibility, how to communicate with his subordinates, how to motivate them and so forth.

In the event that one of his subordinates fails, his job is to replace him with a more competent one—if he can find one. What he has signalled to this country and to this House is that in his own ranks, in his estimation, there is no one competent to handle that area. The last thing the Prime Minister should have done was to get intricately involved and bogged down in a particular ministry, unless he is Superman.

5.55 p.m.

In fact there are areas of the economy that are in as much trouble as the Ministry of National Security. By the same yardstick the Prime Minister should take over those ministries. The moment he does that, given the gravity of the situation; given the time and measures needed to deal with problems of this magnitude; and given the problems in other areas; he loses sight of the bigger picture and everything is sure to go down-hill, or as he says, "down the road."

We said so to the population in 1991 and they did not listen. But we will continue to say so until they understand that what we have been saying is true.

Mr. Valley: Madam Speaker, on a point of information. I wonder whether the hon. Member is aware that every Prime Minister in Trinidad and Tobago and in the Caribbean, held a portfolio other than that of Prime Minister.

Mr. S. Hosein: The point I am making is that the situation was not as grave; the economy was not as affected as it is; crime was not as it is today. The parallel does not hold! In short, this administration simply does not have a clue as to how to deal with the problems of this country.

Bail Bill
[MR. HOSEIN]

Monday, August 29, 1994

The Member for St. Joseph made the point, that this legislation is but one strand in the bow. We on this side desperately want to believe and support the Government in its quest to deal with the crime situation, but given its track record—this is where the difficulty comes in—desperate as we are to want to get this measure through, we have to be extremely skeptical and fearful that if these draconian powers are put in its hands we can head the way of a police state.

As I said, the Member for St. Joseph made the point that this is but one strand. The Member for Diego Martin West also made the point, because he said that in addition to this Bill we had another problem, that is in relation to bailors. So in order to deal with this crime problem there is need for much more legislation than merely this simple piece before us. What this Government ought to have done, because, it did not recognize that crime was a problem today, you know! In fact, I have a copy of the *Share* magazine which is an ethnic magazine printed in Canada dated August 29, 1991 before the PNM came back into office and this is what it said:

"Manning criticised the NAR government's handling of the economy, and blamed the administration for an increase in crime in the country."

So when he was in the Opposition he knew that we had a crime problem. Preparing himself for government obviously, he would have wanted to take into consideration steps he would have to take to arrest the situation after getting into office. I continue to quote:

"He said the government, in what it called its "dollars and cents" approach, had reduced spending on law and order."

Well, if that is so, why did he not, on acceding to office, take immediate steps as a matter of priority? The Member for Oropouche stated that in 1993 the Government reduced its allocation under "Goods and Services" to the Ministry of National Security by 50 per cent. He went on to say:

"The explosion of crime that we are seeing in the country now was entirely foreseen,..."

It was foreseen then!

"and—to a very large extent—we place it at the doorstep of the Government."

Well, now it is no longer the responsibility of the last administration. It is this Government's responsibility, and it has failed miserably. [*Desk Thumping*] It has failed miserably, recognizing the problem to deal with it. That is why we are fearful; that is why we have to be septical and concerned. The Government continues to demonstrate that it is prepared to play games with people's lives.

Recognizing the gravity of the problem, what the Government should have done—because it was alluded to by the Member for St. Joseph who said that this is only one strand, but that one strand, I want to submit here today is not going to make much of a difference unless we look at the problem in a comprehensive manner as the Americans have recently done. They have a worse situation than we have and they sought to address it in a certain way: They built more prisons; they hired more policemen; but more importantly, they put \$6.7 billion in resources to address the causes of crime. And this is what we should have sought to do.

I foresee one thing coming out of this Bill, if it continues along the course that it is going. The taxpayers of Trinidad and Tobago are going to have to pay tremendous amounts of money in terms of lawsuits, because there is always the risk—given what is taking place in our society—and we must be cognizant of the fact that how our society operates there is going to be a great number of lawsuits for false arrest and false imprisonment. Who is going to benefit? Lawyers hired by the Government.

The Member for St. Joseph made the point, that there is a problem in the police service which we all recognize, but that we should not make a blanket condemnation of the police and take action on that basis—if I understand the hon. Member's words correctly. He said we should not generalize on the police service because of the actions of a few.

I want to extend that argument to say, that what the Government is going to do by adopting this measure, it to take away a fundamental right of the innocent citizens of this country—the right to be considered innocent until proven guilty. One can use the very same argument.

As I said, crime did not escalate overnight. This administration came into office in 1991, and to blame the NAR administration, or indeed to blame the Opposition, is to expose the Government's own incompetence and myopic thinking.

I want to point out that one does not have to come to Parliament to pass legislation to acquire vehicles for the police service; or to appoint more judges; and magistrates; or to build more courts; or to hire more support staff at the DPP's office and the Solicitor General's Office. These are important matters which have to be addressed and the Government has the responsibility.

How come the Government is charging the Member for Couva North, and the UNC in general, with being responsible for the crime situation in the country? One would think that a basic requirement is to have the police personnel mobile. Why then has the Government now decided, in response to the hysteria out there, to

Bail Bill
[MR. HOSEIN]

Monday, August 29, 1994

release money to buy the cars? Did it not recognize in 1991 that there was a serious problem with crime? Why now? Why only now?

My argument is that simply pouring money is not going to deal with the problem unless we are going to take other measures.

6.05 p.m.

What I now propose to do is to identify some of the causes of crime. I warn that some of what I propose to say will call for a revolution in the way in which we see society, and more importantly, on how we define progress. Is it the well-being of a society? Or, is it in the well-being of the economy, as defined by the GNP and other economic indicators.

We would have learnt that one of the causes of crime is genetic predisposition. I will give an example. You would notice in families where the parents are teachers their children become teachers, where parents are doctors, you have children following in their footsteps; where parents are lawyers, children tend to be lawyers. According to research, there is a modest connection. The major factor has to do with how the mind operates.

According to the book *Personalities, Theories and Assessments* based on theories of Sigmund Freud the mind is divided into three different, but related parts: the id, the ego, and the superego. Very briefly, in layman's terms, I would seek to identify what these are, and I read from the book:

"Freud also divided the mind into three parts in a different, but related, way. The best-known aspect of Freud's theory of personality is his view that the mind is composed of three parts, each with a very different function: the id, the ego, and the superego..."

The author goes on to say:

"Freud tells us that there lives within each of us, a selfish, cruel beast. The beast, the id, operates according to the pleasure principle. The id wants to obtain immediate pleasure, and avoids paying regardless of how harmful it might be to others. But the id's selfishness is not its most alien characteristic to most of us. According to Freud, the id seeks to satisfy its desires in ways that are totally out-of-touch with reality. The id, in fact, has no conception whatsoever about reality.

He then defines the ego:

"The ego is formed because the id has to develop realistic ways of meeting its needs and avoiding trouble caused by selfish and aggressive behaviour. The

ego operates according to the reality principle. This means that it holds the id in check until a safe and realistic way has been found to satisfy its motives. The id would be happy to form a mental image of a sex object, and when that was not wholly satisfying it would want to immediately rape the object. The ego, on the other hand, holds the id in check long enough to charm and seduce the sex object. The ego's goal is to help the id fulfill its needs. It only opposes the id's wishes long enough to find a realistic way to satisfy them."

Madam Speaker, this is the more important one of all, because it determines how people operate in society—the superego.

"The id and ego have no morals. They seek to satisfy the id's selfish motives without regard for the good of others. The ego tries to be realistic about how those motives are satisfied. But as long as the needs are safely met, it does not care if rules are broken, lies are told, or other people are wronged. While each of us wants our desires to be satisfied immediately, if everyone acted in this manner simultaneously, chaos would probably be created in society.

Society must place restrictions on the actions of the id and ego by creating the superego, the part of the mind that opposes the desires of the id by enforcing moral restrictions and by striving to attain a goal of 'ideal' perfection. Parents are the main agents of society in creating the superego. They teach moral principles to their children by punishing transgressions... As the superego develops strength, children are able to control themselves and behave in ways that allow society to function smoothly. According to Freud's view, most of us do not steal, murder, and rape not because we do not want to, or because our egos could not find relatively safe ways to do so, but because our superegos hold these desires in check."

We have heard, therefore, to put it in simple terms, that the superego is likened to the conscience. More importantly it is programmable and it is formed in the early years of childhood. That is the crux of my argument: that you will have a society on the basis of how you programme the conscience or the superego of your children. That is how moral values are inculcated in them.

One of the most effective and insidious agents of this programming is television, and to a lesser event, radio and the print media. I do not have to tell you that parents will complain that they cannot get their children away from the television. From an early age children are taught that violence is an integral part of life; that it is okay for a woman to move from man to man, and vice versa; it is okay to lie and cheat. In fact, Bart Simpson sets the standards of obnoxiousness for our

Bail Bill
[MR. HOSEIN]

Monday, August 29, 1994

children. We may argue that children should be monitored. I agree, is it necessary to show trash like the "The Young and the Restless" during school holidays? Or at all? We programme our society to believe that we cannot be happy if we do not smoke; or if we drink a particular brand of whisky we would get the girl. We have been programmed to understand that we cannot be happy if we get the advertised products; life would be incomplete without them.

If we look back we would see a change in attitudes; the destruction of thousands of years of cultural and social development coinciding with the introduction of television, which has brought foreign values, mainly western, to us. To me, that is our major problem. Television has taught our children forcibly that Christmas and Easter, are not about Christ; they are about new toys, new stoves, gifts and so forth.

Then there is the signal which we as a society are sending to our children. Tobacco is okay to use, but not marijuana! Both have devastating effects on humans but the tobacco lobby is too powerful to dismantle. Both create untold misery, both affect the minds, but one is legal, the other is not.

We also have to ask the question whether the law applies to everyone in society. There is abundant evidence to show that that is not so. In fact, only those who can afford proper representation can fully benefit; there are those who can literally get away with murder. What message then does this send to the young man or woman in our society? What about the priest who preaches about morality and then ravishes his parishioners?

6.15 p.m.

In our society if you steal a small object, you are a thief, but if you take over a man's assets, as some individuals and banks are doing, then it is good business acumen. The chairman of the People's National Movement can get away with debt forgiveness, yet the small man must lose his house, car and furniture. What signals are we sending? These are the same hypocrites who wonder what is wrong with today's youths.

The Prime Minister, addressed to the Confederation of African Associations of Trinidad and Tobago (COATT) and the nation, by extension, at the Emancipation Day celebrations, and this is what the *Guardian* of August 01, 1994 had to say:

“Prime Minister, Patrick Manning has urged the nation to ‘ensure that discrimination in all its forms is severely condemned and eradicated from our lives.’”

Mr. Manning: What is wrong with that?

Mr. S. Hosein: When the Prime Minister can say that we must fight against discrimination in all forms, but he does not call on the Minister of Works, the Member for Diego Martin East, and the Member for Arouca North, to ensure that this principle applies to the Unemployment Relief Programme, what signals are we sending outside there? We must really be hypocrites.

As a new Member of this House, I was amazed reading *Hansard* and listening to Members on this side quote *Hansard* with regard to the PNM's tenure in Opposition. When I listened to some of the contributions of the Members on the other side, and I hear them today, I wonder if that is the role of politicians. We tell people one thing on the hustings, then go into Government and do exactly the opposite. What message are we sending? No wonder citizens regard politicians as the supreme bandits in this country.

When we facilitate contracts and plums for our friends while we offer jobs to incompetent party hacks who make a mess of state enterprises and waste and fritter away taxpayers' money, what signals are we sending? When a man can sell paper bags and buy hotels and another can sell cloth and gobble up big businesses, what signals do we send to society? Why the hue and cry? Criminals are merely mimicking their exemplars.

I said that what I was going to say this evening would cause some concern and I am not going to disappoint. We must understand, this mindless rage fuelled by drugs usage among our young people.

Another important factor that has to be considered and addressed is the scourge of the single parent family which is tied totally into our culture of machismo. Justice Deyalsingh in drawing up a profile on today's criminal identifies him as someone between the ages of 18 and 25, coming from a single parent home, based largely in certain urban areas. To understand how this has come about we have to understand that today children are having children. It is not unique to our society. There are women, 20 years of age, having five children for five different men, none of whom supports her or her children.

All evidence has indicated that the single parent family is not a viable economic unit, especially in today's world. In fact, it has been defined as the royal road to poverty and other social ills. In such a situation—and this is where the superego comes in—there is no strong guiding figure to instil spiritual or moral values in these children. There is no role model after whom their super ego can be patterned and from an early age these children have to fend for themselves and survive by their wits even if it means stealing, or selling their bodies. We must understand how

Bail Bill
[MR. HOSEIN]

Monday, August 29, 1994

we have arrived at where we are today. It did not come about accidentally. While we all wined and dined and shut our eyes, this was taking place in our society. It is most hypocritical at this point to moan and wonder why we have come to this sorry pass.

The poor mother moves from man to man in the elusive quest for economic security, because few men are willing to "mind another man's child". In such a situation, the child's super ego is programmed to react in an anti-social manner. Today is not the day to deal with the strains that these ever-increasing cases place on health, educational and other services.

I state categorically for those apologists who are saying that poverty is the cause of crime: there could never be any correlation. It might be a factor, there might be a connection but when one looks at the viciousness of some of these crimes, they, obviously, have nothing to do with poverty.

Of course, we cannot leave out the drug trade which contributes in no small way to crime because of the money involved and because of the fact that the trade in arms and ammunition goes hand in hand with that trade. It must also be pointed out—and the point was alluded to earlier in this House—that the chief culprits in this respect are the owners of capital, not the little pusher because of the enormous sums of money involved in these transactions.

I agree with the Member for St. Joseph that something has to be done with those who deal in drugs; I agree with him that they deal in misery and death.

Finally, there is vibration. It has been scientifically proved that sounds can either soothe or incite. We just have to listen to the sounds and lyrics of dance hall music as played by some of the radio stations and at fetes to understand why our children are resentful and restless—music which says it is okay to be a rude boy, to pick up a gun and shoot somebody, to rape women. So long as there is a system that indicates that you must have free trade in order to stimulate growth without paying attention to development—as we are on the present course—we must be prepared to have increasing crime. No number of amendments to the Bail Bill or enactment of new laws would change that fact.

The evidence has shown that growth and development do not go hand, in hand more so because free trade is premised on a blatant falsehood. According to the book *How Much is Enough*, put out by the World Watch Institute after the Second World War, the American Government, concerned about its manufacturing sector fuelled by the war, appointed the Council of Economic Advisors to the President whose responsibility it was to come up with a plan to deal with that idle capacity

after the war. It came up with a brilliant strategy. That was, to start an intensive propaganda campaign preaching the gospel of consumerism and—we would have guessed it by now—the main tool that they used was TV.

Additionally, they hit upon a concept whereby they would manufacture products that could be used once and thrown away and that a propaganda offensive would begin to convince people that they could not live without these items, that their lives would be unfulfilled, unhappy and incomplete without them. So that at Christmas time, Easter, on Father's Day and so forth people have been convinced that they need gifts for their loved ones even if it means having to maim or kill to obtain them.

Madam Speaker, in one fell swoop this new direction had the effect of rapidly eroding rich diverse cultures which contain irrepressible insights that have been painstakingly accumulated over thousands of years, for example, the extended family, the panchayat and others.

6.25 p.m.

Under this new propaganda thrust, everybody now needs his or her own house, own pots and pans, and furniture, whereas, under the extended family system, there was communal use of all material. What I am suggesting, is that the very same ones who are crying the loudest today—the captains of industry—are the ones who are telling us buy, buy, buy, get more, get more. In their quest for greater profits they are also responsible for contributing to crime; we must understand that, if we are really going to deal with crime.

Of course, I do not have to talk about the environmental factor. For example, the one million children of Rio who, if they have to survive must steal, are being killed like rabbits in the process. All the while, Brazil is experiencing unprecedented growth. God forbid, that we should ever reach that stage! *[Interruption]* I thought you understood the argument. If you do not understand now, heaven help us.

Mr. Sudama: Repeat it for him.

Mr. S. Hosein: Both the Member for Diego Martin West and the Member for St. Joseph alluded to the fact that, in trying to deal with crime, using this one plan is not going to work. To show the insincerity or incompetence of the Government we have been hearing in this House about one-way mirrors for about a year now. Can you tell me why, in the 21st century, it takes a government one year to put in place one-way mirrors, recognizing we have a serious problem on our hands?

Mr. Manning: I have been listening to the Member. I think it would help us if he relates to the Bill before us.

Hon. Member: Suppression of crime.

Mr. S. Hosein: Madam Speaker, I really would have wasted my effort this afternoon because I rarely speak in Parliament, partly by choice and partly the exigencies of circumstances. When I do speak—

Mr. Sudama: It is too high for the Member for San Fernando East.

Mr. S. Hosein: Madam Speaker, I shall now try to deal with some of the issues and how we should address them. My argument is that if we are to survive, we have to fall back on some of our cultural traditions. We really seem to have forgotten that those values and traditions are far superior—it has been proved time and time again—to western values, such as has been the propaganda onslaught.

Madam Speaker: The Member has gone around and spoken about Freud and I think what he can do now is get down to the meat and substance of the Bill.

Mr. S. Hosein: Madam Speaker, one of the matters I want to look at is the re-introduction of the extended family, so that children who are growing up especially in single-parent homes, would have the benefit of grandparents, aunts uncles and so forth, and this in itself would have a beneficial effect on the programming of these children's superego, which would be programmed with moral values and so forth.

In addition to that, having the extended family would have the effect of easing the pressures on the housing problem that we have at this time. What the Government needs to do, therefore, in order to deal with this problem, is to put in place a system of incentives, perhaps tax breaks for those people.

Madam Speaker: Are we on the Bail Bill?

Mr. S. Hosein: Yes, Madam Speaker.

Madam Speaker: You are getting carried away here.

Mr. S. Hosein: Madam Speaker, if we really want to deal with crime, and not have to come here and talk about a Bail Bill, we need to look at the role of the society. What I am trying to do is look at some of the solutions to would avoid some of these crimes—deal with the causes of crime. I have a couple of solutions which I propose to this House. As a society, collectively, we really need to look at the re-introduction of religion in schools. Williams J. Bennet had this to say about religion in the book *"The Devaluing of America"*—

"Religion is a well-spring of civic virtues that democracy requires in order to flourish. It promotes hard work and responsibility. It lifts each citizen outside himself and inspires concern for community and country. It is a call to kindness, decency and forgiveness."

Madam Speaker: The speaking time of the hon. Member has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. P. Manning*]

Mr. S. Hosein: Madam Speaker, I thank you and, indeed, all Members of the House for allowing me to continue.

I was disappointed in looking, briefly, at the White Paper issued by the Ministry of Education. What we need is a comprehensive sports programme. Children and young people have very limited means by which they can expend physical energy. I was expecting to see much more in that document, recognizing the connection between physical activity and education. We want to see a comprehensive sports programme developed, so that children, more likely than not, would be in a position to bring glory not only to themselves and their parents but, indeed, also to their country.

We have to consider, seriously, the implementation of a code of conduct, censorship, standards—whatever you want to call it—for public viewing and listening, through public consensus, which will deal with the excessive violence and outright immorality of film, TV, and radio. We should be using the media to propagate values like morality, decency, public-spiritedness and nation building, instead of using it to propagate and propagandize a certain vested position. If one feels that censorship is an anathema, consider that the great bastion of human rights, America, now sees it fit to impose a nightly curfew on its young people, in certain states.

We should use idle resources like the army engineering corps for community service; use retired persons to impart their experiences and skill to their respective communities. We must stop talking. The time has come, if there is going to be a country and society that we want for our children and a future generation, to act now and not bring piecemeal legislation. We have to look at matters in a comprehensive way and bring them to this House, instead of bringing one piece today and another piece two years from now.

We seem to operate on the basis of current crises. If there is a crisis today, the Government devises a plaster to deal with that sore, and does not look at things in a

holistic way. For example, we need to teach, CPR, proper parenting; and again, through talking to parents through national consensus, one might want to consider whether we should introduce the teaching of sex education at the appropriate level in schools.

Mr. Manning: What level is that?

Mr. S. Hosein: Again, as I said, through consultation with all the interest groups, the appropriate level would be determined.

6.35 p.m.

Implement a proper programme of family planning and counselling at health centres by going out to communities. Increase assistance to the NGOs in these areas. It is extremely important.

Let society understand that the single-parent family is a disaster and is the main force that drives crime, drugs, poverty, illiteracy, welfare and homelessness. We have to force that point home to our society. It is a dead end. I want to implore the Government to act now if we are serious about a better society.

For example, we need to take the YTEP Programme—which has so much potential—and cause it to realize that potential. It is all good and well to teach young people a skill but what we need to do is to help them to further develop and market that skill. I have been to several YTEPP graduations and when I looked at what these young people have done, it is fantastic. What they need is a little additional help to organize themselves into co-operatives, small businesses and additional help to market these goods, whether locally or abroad. A special unit needs to be set up within the programme to deal with that.

Madam Speaker: When we are debating the education plan, the Member's contribution might have been a little more fitting. Could we get down to the substance of this Bill.

Mr. S. Hosein: Madam Speaker, I am almost through if you will permit me.

I made the point that we have to look at what causes crime and it does not make sense simply talking about a Bail Bill. More importantly, because of the negative image we as leaders in this country and as politicians have, there is need to get that national debate into people's homes—that is crucial; it is most important—so that they may see the issues for what they are, not sensational snippets which have the effect of further fuelling the hysteria propagated by vested interests. It is important to get that debate into people's houses. If we are serious, this is a must, unless we

believe that the population is too stupid to understand the real issues and that their only role is to vote at election time.

Additionally, if we have nothing to hide, if we want transparency in our actions, if we want to create effective governance so that the young people in our society can have faith in us, then we have absolutely no reason not to have parliamentary committees for the oversight of critical areas of our society. If we want the young people to look up to us and really admire us as role models, not to implement these committees is to say that we have something to hide, or that we are against good governance. Are we, therefore, going to wait for events to overtake us? Or is it too late and the horses have already left the stables? I want to submit that we no longer have the luxury of time. If this Bill is to be implemented, several things have to be done.

I want to take the opportunity at this point to state that it is our view that the public interest would not be served if we were to take away the right of a person to apply to a judge for bail after the executive locks him up. We feel that even in the case of the person who has had three convictions, the right must be retained for him to appear before a judge to plead his case to be granted bail, and the judge in his discretion ought to be the final determiner of that. That is our position.

In addition we also feel that in order to get rid of the backlog in court and overcrowding in prisons, a carefully thought out amnesty is needed. Because we have this problem if this Bill is going to be implemented—the prisons are already crowded—unless there is a system in place to deal with that crowding, we would have serious problems in our prisons. Therefore, a carefully thought out programme of amnesty has to be granted for minor crimes.

In fact, we should be looking, as a Parliament, at plea bargaining so as not to waste the time of the court. Emphasis, as other speakers have indicated, has to be placed on rehabilitation. And as part of this rehabilitation, community service, in order to wean people back into the community, has to be part of this process. For example, why should we be paying groundsmen to maintain the Mount Hope Hospital when we could have a system in place where we use a certain type of prisoner to maintain the grounds there? All these things have to be put in place.

Another thing is that we have to look at the practice of placing first-time offenders with hardened criminals. We heard today the effect that has on innocent first-time offenders. We have always said that prisons should become self-sufficient and should be encouraged to earn revenue so that when prisoners leave, they re-enter society with something. What is therefore needed instead of this Bill alone, is a complete review of our criminal justice system.

Bail Bill
[MR. HOSEIN]

Monday, August 29, 1994

It is my view that crime will continue to increase worldwide in step with this widespread notion of free trade, so long as the gap between the “haves” and the “have nots” increases, because under this free trade system, growth and development are not synonymous and therein lies the difficulty.

Finally, I think much to the relief of a number of Members—

Mr. Manning: No, I was enjoying it.

Mr. S. Hosein: —especially those on the other side, I want to end by commending to my colleagues in this House, the words of George Washington in his farewell address:

"Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. And let us with caution indulge the supposition that morality can be maintained without religion."

I thank you.

6.44 p.m.: *Sitting suspended.*

7.32 p.m.: *Sitting resumed.*

Mr. Maharaj: Madam Speaker, may I announce that we have arrived at some consensus on the Bill. Basically, the Government has responded in respect of the discretion being retained by the judicial officers. The amendments are there and probably the best person to deal with that is the hon. Attorney General.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Madam Speaker, this is the second day of the debate on this Bill and since it was laid several weeks ago there has been much comment on it.

The real issue which has always challenged this Parliament is balancing the rights of individuals as against the rights of the community at large to live in a safe and secure environment. I think that arising out of the debate, and indeed from discussions taking place outside the Parliament Chamber, we have arrived at a form of words which, in our view, adequately deals with the provisions of clause 5.

We have maintained the real underlying element of the Bill in that we have dealt adequately with the concept of repeat offenders, and Members will recall that in introducing this Bill, I indicated to the Parliament the nature of the statistics over the last four years, which demonstrates that the problem of repeat offenders is a very real one. In our view the amendments which will be dealt with at the

committee stage will adequately meet with that concern of repeat offenders and, at the same time, provide a degree of balance insofar as the individual may have a right to a judicial determination in specified circumstances.

Before we move to the committee stage, however, there are, perhaps, two or three matters I wish to address rather briefly. In the course of the debate, reference was made to the operations of bailors, as well as the operations of Justices of the Peace who have a role to play in relation to the grant of bail.

I want to assure this House that those two matters were given active consideration by the committee of Cabinet which looked at this Bill. The officers of the drafting department have been asked to consider, among a number of other measures relating to bail, institutional bailors and regulating the use of security documents in the registry of the courts, keeping some kind of record and so forth. That kind of matter requires much more investigation and planning, but certainly in respect of bailors, a new system is being considered at this stage.

I think I had indicated in my opening remarks that we have rationalized the operations of Justices of the Peace, particularly in getting a proper ratio between numbers of population and numbers of operating justices of the peace. Through my Ministry, we have also encouraged the Justices of the Peace to form an association, which they have done, in order to establish the machinery and framework for regulating themselves. In fact, a few months ago they provided me with a draft of a constitution and code of ethics which would regulate their operations.

We project that if Justices of the Peace are properly regulated, one could seriously consider expanding their role and function in dealing with delays in the administration of justice. Particularly, it has been mooted with respect to traffic offences that if we can relieve the burden of magistrates by way of using Justices of the Peace who are properly trained, qualified and regulated, we would have again added another bit to the armory in dealing with law, order and justice.

Some questions were raised by, I think, the Member for Siparia concerning the withdrawal of financial resources from the Ministry of National Security, and linked with that was the non-provision of motor vehicles to that ministry. For the record, I want to indicate the actual figures over the last three years. In 1992 the amount allocated to the Ministry of National Security was \$63.4 million for goods and services. In 1993 there was a drop to \$44.9 million. In 1994 the goods and services figure went back up to \$67.8 million.

May I indicate that in 1992 there was an extraordinary item budgeted for consulting and contracting services, which is why there appears to be a drop in

Bail Bill
[HON. K. SOBION]

Monday, August 29, 1994

1993. Again, having regard to the review that was taking place in that ministry in 1994, there has been an increase over and above the extraordinary figure of 1992.

Insofar as replacement of police vehicles is concerned, in 1992, no money was expended on police vehicle replacements. In 1993, the figure was \$265,000 and in 1994, it stands, to date, at \$2,848,000.

Madam Speaker, you will recall that in 1992 and into 1993, the review of the police service was taking place and with the appointment of the Civilian Fleet Manager it is now possible, having rationalized the operations of the that ministry insofar as vehicles are concerned, to have the kind of expenditure that we see in 1994.

Again, let me congratulate Members of this House on the approach they have taken in dealing with this Bail Bill of 1994. I think there was a clear recognition of the need to strike that vital blow which we said was necessary in ensuring that the actual perpetrators of crime are now dealt with in a way which will ensure that the citizens of this country can enjoy the kind of safety and security they deserve.

Madam Speaker, in the circumstances, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

7.40 p.m.

Bill committed to a committee of the whole House.

House in Committee.

Clauses 1 to 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Sobion: Madam Chairman, there is a new clause 5 circulated to which reference was made when I closed the debate.

The existing clause 5 will be deleted and be replaced by a new clause 5.

Question put and agreed to, That clause 5 be deleted.

"Eligibility

for Bail

New clause 5.

5.(1) Subject to subsection (2), a Court may grant bail to any person charged with any offence other than an offence listed in Part 1 of the First Schedule.

(2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions -

(a) of any offence; or

(b) of any combination of offences

listed in that Part, unless on application to a Judge he can show sufficient cause why his remand in custody is not justified.

(3) In calculating the three prior convictions referred to in subsection (2), only those convictions recorded within the last ten years shall be taken into account." [Hon. K. Sobion]

Read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.

New clause 5 added to the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Mr. S. Panday: Madam Chairman, I beg to move that clause 6 be amended as follows:

In this and subsequent clauses, wherever the word "defendant" appears, the words, "person charged" be substituted therefore.

The word "defendant" in legal language is a specialized word. For example, if somebody is charged with an indictable offence, he is called an accused. If he is charged with a summary offence he is called a defendant. In order to prevent confusion and problems later on, if wherever the word "defendant" appears we say "the person so charged", that would deal with that problem.

Madam Chairman: Would you reply to that, Mr. Attorney General?

Mr. Sobion: I have no objection to the use of the words "person so charged" but I am looking at some of the subclauses where there may be a bit of confusion. For example, subclause (4), "Where any offence of which the defendant is accused," in other words, the substitute of which "the person so charged" is accused, I am not too sure whether—

Madam Chairman: What is the clause?

Mr. Maharaj: Normally in indictable matters, "an accused person"—some may say—referred to defendant.

Mr. S. Panday: Except in the interpretation section.

Mr. Sudama: Could we add it to clause 3?

Madam Speaker: If we look at what is happening, the defendant must be the accused. It is all-embracing.

Mr. B. Panday: The defendant is referred to as an accused. It embraces that term that we use in court. Unless we say at the interpretation section the defendant is termed the accused.

Mr. S. Panday: Madam Chairman, the word "defendant" is a technical word.

Madam Chairman: I think 'defendant' would, of necessity, include the two.

Mr. B. Panday: I took my cue from the English Bail Act from which most of the sections—

Mr. Maharaj: Could we leave it as it is—the defendant be an accused person or person charged.

Mr. Sobion: I would check the Indictable Offences Act. I think the heading of the Indictment says complainant and defendant.

Madam Chairman: Yes, that is what I recall. We will proceed while research is being done. The Member for Chaguanas has an amendment to clause 6. Is the Member pursuing her amendment?

Miss Bhaggan: Yes, Madam Chairman. I beg to move that at clause 6(3)(a) we add the words "together with the evidence presented by the prosecution." I do not know what is the opinion of the Attorney General on this.

Mr. Sobion: Madam Chairman, save and except that at (d) of that clause, the court also has to consider the "strength of the evidence of his having committed the offence or having failed to surrender to custody" I think that will cover the

amendment proposed by the Member for Chaguanas. Paragraph (d), covers the hon. Member's concern.

Mr. S. Panday: Madam Chairman, before you move on in the exercise of discretion under subclause (2)(a), I think it should be added as a consideration that the person so charged may not dispose of the proceeds of his crime.

Madam Chairman: That will be?

Mr. S. Panday: Clause 6.

Madam Chairman: Do you mean clause 6(2)?

Mr. S. Panday: Yes, Madam Chairman, as an additional consideration that the court should have when dealing with bail.

7.50 p.m.

The point I was making is a case where the accused had taken the jewelery and hid it somewhere and then disposed of it before the matter came up for hearing.

Madam Chairman: Any other factor which appears here would be something that is relevant to the circumstance under consideration.

Shall we consider clause 7 and leave clause 6 for a while, Mr. Attorney General? We would defer consideration of clause 6 until some research is done on the word "defendant".

Clause 6, by leave, deferred.

Clauses 7 to 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Mr. Sobion: There is a minor amendment to clause 10.

I beg to move that this clause be amended by inserting the word "magistrates" between "a" and "Court".

Madam Chairman: Any objection to that?

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill

Clauses 11 to 18 ordered to stand part of the Bill.

Bail Bill

Monday, August 29, 1994

Clause 19.

Question proposed, That clause 19 stand part of the Bill.

Mr. Sobion: I am sorry that I did not bring this to the attention of Members opposite before.

I beg to move that this clause be amended by inserting the words "unless the approval of the court is first obtained" at the end of clause 19 (1).

I think it would meet a problem which I believe was raised by the Member for Oropouche.

Clause 19(1) makes it an offence for a person to stand security on the consideration of property which is already used as security, but there may be a circumstance where a property valued at \$1 million may be used for \$20,000 bail. To deal with that situation a person can apply to the court to have that property used again. It would be an offence if he does not get the approval of the court.

Question put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clauses 20 and 21 ordered to stand part of the Bill.

First Schedule.

Question proposed, That the First Schedule stand part of the Bill.

Mr. Sobion: Consequent upon the amendment of clause 5 there would be no need in the Schedule for two separate sections so that section 2 goes altogether.

Question put and agreed to.

Mr. Sudama: The question was raised as to whether kidnapping would be added as an offence.

Madam Chairman: Maybe with the seriousness you have in mind, hijacking would embrace kidnapping. Are you thinking of ordinary kidnapping?

8.00 p.m.

Mr. Sobion: The suggestion has been made that perhaps what we can do is have a clause 22 which may say:

"The Minister may by order, subject to negative resolution, amend the First Schedule".

Madam Chairman: I think the Member for Oropouche was trying to make a point on hijacking and we did not hear him out.

Mr. Sudama: Is there a definition and could that subsume the incidence of kidnapping—

Madam Chairman: Is there a legal definition of kidnapping?

Mr. Sobion: Hijacking is an act.

Mr. Maharaj: I think we should specify hijacking as defined by the Act.

Mr. Sobion: The offence of hijacking is only known to the law of Trinidad and Tobago as defined in the Act. It could not be anything else. This is the offence that we are talking about.

Mr. Sudama: One cannot hijack a person.

Madam Chairman: The Member for Chaguanas had a proposal.

Miss Bhaggan: I had proposed two additions to Part I of the First Schedule. I felt that trafficking in or possession of narcotics ought to be added and offences committed by more than one person ought to be included in that section.

Madam Chairman: We have not yet reached to Part II. We are still considering Part I. The hon. Member is suggesting that we add:

- (e) to those offences for which bail will not be granted—trafficking in narcotics or possession of narcotics for the purpose of trafficking;
- (f) offences listed in Part II which are committed by more than one person.

Mr. Panday: It is one of those offences where it is so easy—

Mr. Sobion: We are of the view that there is merit in including trafficking in narcotics, but I do take the point that under the existing legislation the quantity specified could lead to some hardships in the circumstances. As you are aware, we are reviewing the dangerous drugs legislation and perhaps in doing that exercise the category of drug traffickers, which is really the category of drug trafficker we want to deny bail, is not the man on the street necessarily. Perhaps this could be a matter of reviewing the Dangerous Drugs Act.

Miss Bhaggan: I did not specify but I really thought in excess of one kilogram or some other specification. I did not mean the little drug trafficker, but the big time trafficker. That was the impression I wanted to convey.

Madam Chairman: The Member has suggested that she did not have in mind one kilogram, so what is your—

Mr. Sobion: I anticipated that that was the direction in which the Member for Chaguanas was going, but as the Act now stands, we will be targetting even below the one kilogram person. That is where the difficulty is. Until the dangerous drugs legislation is revised so that we can deal seriously with drug trafficking in large quantities, then I would hesitate to include it in this Schedule.

Mr. Manning: We have a problem putting it in this Bill.

Miss Bhaggan: I also have a second amendment where the offences listed in Part II would have been committed by more than one person. Here I am referring particularly to gang rape and violence by gangs of persons where it is an organized crime.

Mr. Sobion: On the group issue, the proposed amendment deals with any offence in Part II committed by a group. It is an amendment which I saw only this afternoon and have not really had time to focus on it properly. I can see the merit in relation to some of the offences—rape and sexual intercourse with a female under 14—but I would have a difficulty in dealing with others, for example, the larceny of a motor car. I can undertake to do a review of it between now and when the matter is taken to the Senate. There is merit, particularly in relation to those offences of rape and sexual intercourse with a female under 14.

Mr. Maharaj: There is one difficulty: if you charge three persons the man standing there—

Mr. Sobion: There is the question of accomplices. That will have to be taken into account.

Madam Chairman: That will be given consideration before—

Mr. B. Panday: The definition of certain offences in the Second Schedule include situations where a number of persons commit the act. For example, robbery with violence.

Mr. Sobion: Before we move on to Part II, kidnapping may not be defined in the statute, but certainly there is a common-law definition of kidnapping which deals with the taking away of a person without their consent. It does seem a little odd that we have hijacking, which is the taking away of a vehicle or aeroplane or some such thing, and we do not cater for the taking away of a person. I do not know whether there is some consensus that kidnapping could become one of the Part I offences.

Mr. B. Panday: I have difficulty in that in cases of custody—

Mr. Sobion: We will look at it again as we go to the next place.

Madam Chairman: Have we thrashed out Part I?

Question put and agreed to.

Mr. Sobion: Madam Chairman, I beg to move that the present heading be deleted completely and replaced by the heading "Specified Offences".

8.10 p.m.

Madam Chairman: So we are just deleting the heading and putting "Specified Offences".

Mr. Sobion: And for the consideration of the committee, I am proposing that we add an (n), "receiving stolen goods," because very often many people receiving stolen goods in these organized rings, what happens, is that there is a main person behind those persons who actually carry out the robbery and the receiver should fall within the net. He is normally the mastermind behind the whole arrangement.

Madam Chairman: There were two amendments to Part II of the Schedule. That the heading of the Schedule be completely deleted and replaced by the words "Specified Offences".

Question, put and agreed to.

Madam Chairman: The second amendment is that we add a subclause (n) "receiving stolen goods".

Question, put and agreed to.

First Schedule, as amended, ordered to stand part of the Bill.

Second Schedule ordered to stand part of the Bill

Third Schedule ordered to stand part of the Bill.

Clause 6 recommitted.

Mr. Sobion: Madam Chairman, the preliminary inquiries in the indictable offences legislation do not really talk about the defenderant, neither does the form of the indictment, but it seems to me, Madam Chairman, that the term defendant is broad enough to cover any individual who is called upon to advance a defence. I think it is sufficiently well known in those circumstances. There is no need to amend.

Bail Bill

Monday, August 29, 1994

Madam Chairman: That is my view also.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendments.

Question put, That the Bill be now read a third time.

The House voted: Ayes 33

AYES

Valley, Hon. K.

Manning, Hon. P.

Sobion, Hon. K.

Mottley, Hon. W.

Ramrekersingh, Hon. A.

Rowley, Dr. The Hon. K.

Eckstien, Hon. J.

Baboolal, Dr. The Hon. L.

Collis, Hon. K.

Griffith, Dr. R.

Imbert, Hon. C.

Lasse, Dr. The Hon. V.

Pierre, Hon. J.

Casimire, Mr. A.

Narine, Mr. J.

Hart, Mr. E.

Bail Bill

Monday, August 29, 1994

James, Mrs. E.
Allum, Mr. D.
Bereaux, Mr. H.
Maharaj, Mr. R. L.
Panday, Mr. B.
Humphrey, Mr. J.
Sudama, Mr. T.
Sagewan, Miss I.
Palackdharrysingh, Mr. R.
Singh, Dr. C.
Hanoomansingh, Mr. G.
Panday, Mr. S.
Jurai, Mr. K.
Haniff, Mr. M.
Hosein, Mr. S.
Sharma, Mr. C.
Bhaggan, Miss H.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Local Government and Minister in the Ministry of Finance (Hon. Kenneth Valley): Madam Speaker, I want to thank all Members, especially the Members on the opposite side, for the maturity demonstrated on this Bill.

I beg to move that the House do now adjourn to Friday, September 02, 1994 at 1.30 p.m.

I want to indicate to Members that we hope that that would be the last day we would be sitting for some time, but we are unable to state whether that is a fact, just in case there are amendments from the other place.

Adjournment
[HON. K. VALLEY]

Monday, August 29, 1994

As a result, on Friday next we shall have to adjourn to a date to be fixed.

Mr. Maharaj: Madam Speaker, could the hon. Member give us an indication when the House will be adjourned or at least for how long? Parliamentarians are human beings— *[Interruption]*

Hon. K. Valley: Madam Speaker, we shall inform the Member on Friday. On Friday we shall be doing the Motion relating to the Maxi-Taxi (Amdt.) Regulations 1994 on the Order Paper as well as completing the Children (Amdt.) Bill. I understand the committee's report is ready, as well as the Indictable Offences (Preliminary Inquiry) Bill and matters on the adjournment.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 8.19 p.m.