HOUSE OF REPRESENTATIVES

Monday, March 18, 1996

The House met at 10.01 a.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to advise that I had communication from the hon. Member for Port of Spain North/St. Ann's West to the effect that he will be out of the country on private business.

He has asked to be excused from the sittings of the House from March 17—21. This leave has been granted to him.

SUSPENSION OF SITTING

Mr. Speaker: Hon. Members, I have looked very closely at several of the things that transpired at the sitting on Friday. As a result, I would like to suspend the sitting of the House for a few minutes so that I could have the benefit of speaking to both the Leader of Government Business and the Opposition Chief Whip at the same time in my Chambers.

10.06 a.m.: *Sitting suspended.*

11.10 a.m.: *Sitting resumed.*

Mr. Speaker: Hon. Members, I apologize for having kept you waiting for such a long time. I did not think that we would have been out for so long. Again, I apologize for that. I was speaking with both leaders. I am much obliged to you.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that Motions Nos. 1—3 under Government Business be deferred to a later stage in the proceedings, and that the House proceed with Bills Second Reading at this time.

Agreed to.

SUPREME COURT OF JUDICATURE (AMDT.) (No. 2) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to amend the Supreme Court of Judicature Act, Chap. 4:0l, be now read a second time.

The Bill before this House is yet another simple Bill. It is really an attempt to amend section 75 of the Judicature Act which deals with special criminal sittings of the High Court. Mr. Speaker, it is to correct a drafting slip which occurred as far back as 1962 and which can give rise to difficulties in the exercise of the power under section 75.

The Act of 1962 was amended by Act No. 21 of 1994. As amended, the section provides that:

> "The President may at any time, by a warrant under his hand and seal, require the Judges of the High Court to appoint special sittings, to be held at such time or times and in such place or places in Trinidad and Tobago as may be directed by the warrant, for the trial of any particular criminal case or cases or class of criminal cases, and the Judges shall appoint and hold sittings accordingly and, in order to comply with the exigencies of the warrant, shall lay aside all other business."

Mr. Speaker, I ask you to note that the law, as it is, can give rise to the imterpretation, that in order to have special sittings in the criminal division, the High Court, in its other criminal jurisdiction, must put aside all other business. So that if a special sitting of the court is now given under the exercise of the power at section 75, one of the issues which can arise is that a special sitting cannot be held unless the High Court, in its criminal jurisdiction, puts aside all other business.

The amendment being sought is the inclusion of the words "as is necessary." Mr. Speaker, in the Judicature Ordinance which was in existence before the Act of 1962, Ch.3. No.1 which was passed in 1880 but which applied to our country and which was part of the Laws of Trinidad and Tobago, it is interesting to note that in relation to special criminal sittings it states:

> "The Governor may at any time, by warrant under his hand and the Public Seal of the colony, require the Judges of the Court to appoint special sittings, to be held at such time or times as may be directed by the warrant, for the trial of any particular criminal case or cases or class of criminal cases, and such Judges shall appoint and hold sittings accordingly and, so far as is necessary

in order to comply with the exigency of the warrant, shall lay all other business aside."

Mr. Speaker, one sees the words "as is necessary", and as you know, sometimes the omission of two or three words in a particular piece of legislation can make all the difference. We want to ensure that if there is the exercise of the power under section 75 of this Act at any time, there can be no argument at all that the special sitting cannot occur without the High Court in its criminal jurisdiction also sitting, and that no point can be taken by any one that a special sitting is conditional upon the High Court in its criminal jurisdiction not sitting. If that is the case then it would mean a shutdown of the criminal courts in the High Court Division in order to have a special sitting of the criminal court.

Mr. Speaker, I have tried to make this as simple as possible. There is a list of amendments to be circulated, even to the Bill; I am not proceeding with the amendments to section 74 because it deals with certain matters. I am dealing with the amendments to section 75—I have circulated a list of amendments to that effect. The only issue which is before the House is an amendment to section 75 of the Supreme Court of Judicature Act to bring it in line with what was before 1962 to include the words, "as is necessary" after the word "business". The purpose is to ensure that whenever there is the exercise of the power by the President under section 75, it would be quite clear that those sittings can occur without the criminal division of the High Court shutting down in the other areas.

I beg to move, Mr. Speaker.

Question proposed.

11.20 a.m.

Mr. Fitzgerald Hinds *(Laventille East/Morvant):* It is in this, that simplicity fades away and we recognize that there are some more complex issues that ought to be considered as the Minister pilots what is perhaps inherently a simple piece of legislation. I would like to say at the outset that we on this side support this Bill, as we have supported all the Bills that have been brought before this honourable House, when we consider that it is designed to make the administration of justice in Trinidad and Tobago more efficient, equitable and better suited to the needs of present day Trinidad and Tobago.

Before I proceed with the particular points that I wish to raise, I must say that this is the second Bill with which we are dealing in quick succession on the same issue, the Supreme Court of Judicature Act. It has already been pointed out by

one of my colleagues, the Member for Diego Martin East in the debate on the same subject that it is not passing strange. The point was made and I reinforce the point that efficiency and a better thought out programme would perhaps have put both these amendments into the same Bill and we could have passed this as of today's date, but here we are. In that debate, we heard useful contributions from Members on this side, not the least from the Member for Diego Martin Central, who being a lay person insofar as the law is concerned, made what is to my mind—and I am sure my colleagues on this side would agree—a very solid contribution indeed. I was very impressed with a near perfect analysis of the law that he espoused in his contribution.

When we look at past debates in this House regarding similar measures, and we consider that the present Attorney General and Member for Couva South and others would have expressed a certain line of thought, today we are hearing another line of thought. I consider very highly the expressions of the Member for Diego Martin Central when he made the point that while it is perhaps ethical and understandable to the general public that a lawyer can speak for the prosecution and the defence almost in the same breath—it is how we have been trained—it is quite a separate matter when we consider that the Member for Couva South does not speak in this House as a lawyer. He speaks as a Member of this House, and to say one thing in 1993 and then make a complete turnaround in 1996 begs a number of questions. The point was made by the Member for Diego Martin Central that it is a question of a Member speaking as a parliamentarian and it is not easy to digest such drifts in the line of thought. Reference was made to the question of an amendment to section 75 of the Bill before us. As I have said, we on this side will support this measure.

Mr. Speaker, the question is, and I paraphrase the Member for Couva South who pointed out in a discussion in the administration of justice previously, that no courts, no increase in the number of judges or courts would regularize the problems that beset us in Trinidad and Tobago, and here we are with a Bill that will empower the President by a warrant under his hand to permit or require special sittings of the High Court. I wonder whether the Attorney General and Member for Couva South is of the view that this will improve the administration of justice in Trinidad and Tobago? Obviously he is, Mr. Speaker. I am inclined again to agree with him, because I am of the view that what really makes the administration of justice operate smoothly in any jurisdiction cannot only be a question of logistics of courts, judges and magistrates. It has to do with trust and confidence by practitioners, judges, all the people who work within the system of

justice and, of course the public at large. What we see in Trinidad and Tobago is probably a question of the lack of trust and confidence.

Mr. Speaker, the previous administration as is quite well-known, established a committee that was known as the Gurley Committee to look at some aspects of the administration of justice and on this occasion, I wish to quote from the *Hansard* of March 25, 1994, when the Member for Couva South said:

> "All this committee did was to look at existing reports and talk about delay. It did not have a judge, an ex-judge, someone who was experienced at the criminal bar and prosecutors who were experienced. When one looks at the names of the members of this committee—with the greatest respect to them they did a very good job but, can you really say as a Government, that you are serious about the administration of justice and this is the committee you appoint?"

He goes on:

> "Mr. Dennis Gurley, Attorney-at-Law, member of the Council of Law Association. I am saying Mr. Gurley is a solicitor attached to a corporate firm limited to a certain kind of work, appears for a certain category of clients;..."

Mr. Speaker, I will not continue with the quote but the Member was rather scathing in his criticism of each of the members of that committee. He was rather scathing and I can continue the quote but I would prefer not to do so. He was very critical of the structure of the committee. He expressed the view and the paraphrasing that they were without relevant knowledge and experience and, as such, they could never have been a solid committee for the purpose of the inquiry that they undertook.

11.30 a.m.

Mr. Speaker: I am hearing what the hon. Member is saying and referring to that which went before and utterances of a Member as it related to the committee. Would I be correct in saying that there is relevance with respect to the actual clauses of this Bill, that aspect of it?

Hon. Member: —move a motion of no confidence.

Mr. F. Hinds: Much obliged, Mr. Speaker. I thank you sincerely.

Hon. Member: They are just attacking the Attorney General, they are not dealing with the Bill.

Mr. Speaker: Please, Gentlemen.

Mr. F. Hinds: Mr. Speaker, I express the view supported by my colleagues that the measure is a solid one and, as I have indicated, we are quite prepared to support it. All of this has to do with trust and confidence in the system of justice. I have made the point—and it must be made—that improved logistics will not resolve the problems; other matters must be addressed.

If the President, as one would expect, on the advice of the appropriate authority should permit court sittings other than those which the law provides for at the moment, one still would find that the problem of crime, which is what the system of justice is all designed to deal with, would continue if ever matters are not addressed. It is for these reasons that one would want to put these issues on record.

Mr. Speaker, for my part, it would be very helpful if in addition to the measure that is being put before this House, serious consideration be given to a review of the offences that are written into the Laws of Trinidad and Tobago. This, of course, is a very major and detailed exercise but today there is a situation where, on the face of it, persons find themselves before the courts for certain offences, and if a second look is taken, it may be that a number of those persons would no longer face the courts.

In addition, it is my view that the question of backlog that clogs up the system of justice could be addressed, apart from having more sittings of courts in different places, if the prosecuting authorities, including the police service, would in many cases exercise a better discretion as to whether or not to prosecute. I am just outlining certain measures, I would not get into the details.

Many of our young citizens find themselves often on first offences before the courts.

Mr. Speaker: I assure the Member that I will be as patient as is humanly possible and give as much latitude as possible to all Members to continue. It would be in exceptional circumstances that I would rise to bring one back on track, but I honestly do think that in terms of the three clauses of the Bill the aspect of the administration of justice the Member is dealing with now is too far off to be considered germane to what we are discussing.

Mr. F. Hinds: Much obliged, Mr. Speaker. As I come to the end of my contribution, and taking into account your suggestions, recognizing the developments and wanting in the usual PNM way to conform to the observations

and dictates for the good guidance of this House, may I state that it has been suggested by Members on the other side that during our term of government, we did nothing.

It must be put on record that it was during the tenure of the last administration in a valiant attempt to deal with the question of crime and improvement in the administration of justice, that we brought legislation such as the Bail Bill, as it then was, the Dangerous Drugs Bill and a proposed constitutional amendment and we met with no end of resistance and criticisms. Therefore, to say that we have done nothing is an untruth.

Mr. Speaker, we on this side support the measure wholeheartedly and hope that we would see and hear more to improve the system of justice in Trinidad and Tobago.

Thank you.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I join this debate in full support of the Bill that is before this House. As I listened to the hon. Member for Laventille East/Morvant, I am always impressed with his eloquent contributions but regrettably very distressed that he should spend so much time repeating words of the hon. Attorney General. It seems that those on the other side are obsessed with the hon. Attorney General and instead of getting down to the business of the House, which is a Bill to amend the Supreme Court of Judicature Act—

Miss Nicholson: They have nothing to do.

Hon. K. Persad-Bissessar: With the greatest respect to them, they have nothing to say.

This is a very simple Bill which seeks to allow the functioning of our courts by amending section 75 of the Supreme Court of Judicature Act to allow other business of the courts to continue while at the same time, as may be necessary, putting a stop to allow a case or cases in the criminal jurisdiction to continue. May I read the existing section 75 which says:

> "The President may at any time, by warrant under his hand and seal, require the Judges of the High Court to appoint special sittings to be held at such time or times as be directed by the warrant, for the trial of any particular criminal case or cases or class of criminal cases; and the Judges shall appoint and hold sittings accordingly and, in order to comply with the exigencies of the warrant, shall lay aside all other business."

So that the existing section 75 requires the laying aside of all other business.

What the amendment seeks to do is to insert the words "as is necessary" after the words "laying aside all other business". This is a perfectly reasonable amendment that will have important implications for the administration of justice.

Mr. Speaker, I commend this Bill to the House and may I say again that if the other side were so concerned with the administration of justice as my hon. Friend would want to tell us, as I asked on the last occasion, why are there so many phrases, "we would have", "we could have, but we did not"?

Thank you.

11.40 a.m.

Mrs. Camille Robinson-Regis *(Arouca South)***:** Mr. Speaker, it is unfortunate that the former Attorney General would seek to denigrate the contribution of another Member in the House of Representatives. We feel that any Member who speaks here is making a contribution to the House and to the society. *[Desk thumping]* We are saying that we have been accused of being arrogant, but indeed, that contribution which I think was about five minutes, was an example of the clearest and surest amount of arrogance that I have ever seen in this House. In addition to that, Mr. Speaker, if we were to sit here and denigrate each other's contributions, then, clearly, we would have a lot to say about the contributions that have been made on the other side by this coalition Government, and we have not sought to do that because we feel that we have a contribution to make in this House and we are not here to denigrate one another.

Mr. Speaker, a statement has been made by the Member for Siparia that she cannot understand why we keep quoting the Member for Couva South. If someone appears to be saying things which they appeared not to believe in on a previous occasion, we see no reason why we should not draw this to the attention of this honourable House and, indeed, to the attention of the national community.

In addition to that, Mr. Speaker, we are concerned about the slap-dash approach of the Government to legislation which it brings before this honourable House. We have the Bill that was sent to every Member of this House, the Bill described as "An Act to amend the Supreme Court of Judicature Act, Chap. 4:01" which was first sent to Members of this House. Its Explanatory Note said that the Bill "sought to enable sittings of the High Court in civil and criminal cases to be held at any place in addition to Port of Spain, San Fernando and Scarborough as may be prescribed by Rules of Court".

The second part of the Explanatory Note stated:

> "The Bill would empower the President by warrant under his hand and seal to require special sittings"—

and note, I repeat that—

> "to require special sittings of the High Court in criminal cases to be held at any place in Trinidad and Tobago, whether or not prescribed, and at such times as may be directed."

However, Mr. Speaker, in this slap-dash manner that the Government has sought to treat its legislative agenda, the Bill that was sent out stated in clause 1:

> "This Act may be cited as the Supreme Court of Judicature (Amendment) (No. 2) Act",

and so on; in clause 2:

> "In this Act, 'the Act' means the Supreme Court of Judicature Act".

Yet, in clause 3 it stated:

> "The Act is amended by inserting after section 26 the following new section -
>
> > 26A. Notwithstanding section 26 (1) and (2) but subject to section 26 (3), where the original deposition or part thereof, or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified..."

and it continues in that way, Mr. Speaker.

Mr. Speaker, the point I am making is that the section that appeared in the Bill was the section that should have been in the Act to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01. Clearly the Attorney General did not ensure that the correct Bill was before the Members of this honourable House. Indeed, when the mistake was recognized, which was on Friday, we got a corrected copy of the Bill. It may be that there was some administrative problem. However the Attorney General must ensure, if he is not handling his work in a slap-dash manner, that Members have the right legislation in order to know exactly what is before the Parliament. That is why, Mr. Speaker, we consistently have to refer to the things that this Attorney General is doing. He is treating his legislative agenda in a slap-dash manner.

We have a clear example of it, also, with regard to the rent restriction legislation which is before the Parliament for validation, even though we on this side insisted that it needed validation when it came before the last Parliament. *[Interruption]* As the Member for Diego Martin Central is clearly and correctly saying, it was a waste of an entire day, because the Attorney General had been dealing with his portfolio in a slap-dash manner, maybe, because he is dabbling in other people's portfolios. The Minister of National Security, apparently, has nothing to do.

Mr. Panday: She wants to run my Cabinet now.

Mrs. C. Robinson-Regis: Mr. Speaker, I would like to state that this piece of legislation seeks the ability of the Supreme Court to appoint other places as additional courts, or to designate another place apart from the Halls of Justice in Scarborough, San Fernando and Port of Spain as a supreme court or a high court; to designate other areas as High Courts in Trinidad and Tobago.

Mr. Speaker, the legislation, essentially, is seeking to designate what was the Chaguaramas area, which was used for the housing of the Jamaat al Muslimeen and for the court matters that involved the Jamaat al Muslimeen, and to use that particular building, I think it was called a gymnasium, as a high court. Mr. Speaker, essentially, as my colleague said, we have no difficulty with that, but the designation of an area as a high court must mean much more than a piece of legislation coming before this honourable House.

11.50 a.m.

A high court must have judges' rooms, jury rooms and a proper courtroom setting. We understand the renovations are under way and we are asking what is the status of those renovations to ensure that after this particular piece of legislation is passed it is, in fact, implementable. Events must be sequenced in such a way so that this piece of legislation does not just remain a piece of legislation.

The ability to designate an area a court must be implementable and consequently, we want an assurance that the designation of other areas as high courts will, in fact, lead to a removal of bottlenecks, and that it will not be a situation where we have just another layer of courts and the essential elements that are causing the bottlenecks have not been eliminated. It is not just that we want to see that there is a new building, we want to make sure that the essential

roadblocks are, in fact, eliminated so that the legislation does not just exist there as a piece of paper.

Mr. Speaker, as I continuously say, we have no difficulty with the legislation. We recognize that in cases of peculiar or particular sensitivity, there must be the ability of the high court to ensure that areas other than those high courts that exist now, can be designated high courts for particular purposes. I repeat, in areas of peculiar sensitivity. It may be that when we have drug cases, particularly, or cases involving arms and ammunition, we must have a court set up which has the type of security that is necessary for the jury, judges and even members of the public to feel confident that when they enter that court, they have special security because they are dealing with a case or cases of particular sensitivity.

Mr. Speaker, we on this side have been accused of saying that we would have done this or we should have done that, but we are not fearful of continuously saying what was in the pipeline. We have no difficulty with that. The PNM Government has been consistent in its recognition of what it had or did do to work toward removing the bottlenecks and removing the delays in the system of justice.

Mr. Speaker, we are saying that coming to this House and saying that this is just a simple piece of legislation can never be enough. It can never be what we in this House need to know, and it could never be what the members of the public need to know. I repeat that members of the public and we in this House need to know what is the comprehensive plan of the Government for two particular things: firstly removing the delays in the administration of justice. It cannot be only, as the Member for Couva South puts it, these two simple pieces of legislation. It cannot be that.

Additionally, we want to know what is this Government's crime or anti-crime plan. We are now hearing about a strike force. We want to know what is this so-called strike force. How is it to be made up? What exactly is it to do? To whom would this strike force be answerable? One cannot come to the public and state that one would be having a strike force without saying more. We must hear more than that. This is a Government that has stated that one of its pillars is transparency. We are asking this Government to be honest, transparent and faithful to its words that it would keep the public informed of what it is doing.

We are also wondering, in its statement that there would be consultation with regard to what is implemented by this Government, whether there has been consultation with other arms of the national security administration with regard to

this strike force. Has the police been consulted? Have the associations of the police service been consulted? We are asking what is, in fact, happening and what is this strike force to do.

Mr. Speaker, I repeat that building a court or designating an area a court is not all that has to be done with regard to the administration of justice. I want to end by indicating a concern I feel with regard to the use of the gymnasium as a court. I feel that concern particularly for the Member for Tobago East because it is interesting that that Member now has to preside over the transformation of that building into a court knowing the history of the building and knowing the involvement of the Jamaat Al Muslimeen with regard to that particular building. That building had its genesis in the 1990 coup and we are now witnessing this physical change in the building to accommodate a high court. So, too, the population is witnessing the renewed vows between the UNC and the NAR with apparently, the Jamaat Al Muslimeen as the bestman.

Thank you, Mr. Speaker.

12.00 noon

The Minister of Public Utilities (Hon. Ganga Singh): Mr. Speaker, I rise in support of this Bill and to congratulate the hon. Member for Arouca South for her support of this Bill. It seems that the Opposition continues its fixation which has now turned into a magnificent obsession with the Member for Couva South. Notwithstanding the facts, this obsession proved to be a fatal attraction as of November 6, 1995.

It is clear that the Opposition has no difficulty with this legislation and it recognizes that it seeks to correct an omission in the law. Therefore, it points to the kind of flexibility which the administration requires in order to designate certain areas for the administration of justice. It is clear that there is nothing that they can fault with what is happening on this side with respect to this Bill. Clearly, what is required is that the Opposition must recognize that as the hon. Member for Arouca South spoke, it brought to mind a sense of nostalgia on her part. She seemed to be mainlining the veins of the public of Trinidad and Tobago with a sense of nostalgia for their inaction. On the part of the current Attorney General there is action which is not prefaced with a lot of talk, but with the need to recognize that there is no nostalgia for the old structures of the past. In this society there is need for action and this Bill points to that. This is where the transparency has found itself, in action, on the part of the Government of Trinidad and Tobago.

The hon. Member for Arouca South was a member of the last Cabinet. In her contribution this morning I found that there was a kind of hectoring as to whether this Government should be consulting the police service. As young as I am, I can recall only too clearly the lack of consultation on the part of the former Minister of National Security who was a member of the former PNM administration. Throughout this country and carried in the newspapers of the day there was talk that the MUP team was answerable to the Minister of National Security. I wonder if the Commissioner of Police was consulted when the Member for Arouca South was a member of that Cabinet.

When the contribution is made in this manner it is clear that what is required from all of us as Members of this honourable House is to get on with the task of making our contribution in this hallowed Chamber in the interest of the people of Trinidad and Tobago. The time has come for us to get to the core of the matter, cut the old talk and get on with the action.

I commend this Bill to the House and look forward to action on the part of the Members of the Opposition.

Thank you.

Mr. Colm Imbert *(Diego Martin East):* Mr. Speaker, in keeping with the admonition of the last Member, let me go straight to the Bill which refers to the amendment of section 75 of the Supreme Court of Judicature Act by inserting after the words "to be held" the words "at any place in Trinidad and Tobago" and by inserting after the word "business" the words "as is necessary".

I think it is necessary to reinforce the fact that this Act arose out of a decision by the PNM administration to hold sessions of the court in the Chaguaramas area. As I have indicated previously, essentially, this will allow that court which was refurbished at a tremendous cost by the administration of the 1986-1991 period to be used for the purposes of holding preliminary enquiry trials. I think it would be remiss of me not to respond to some of the statements made by the Members on the other side which are directly relevant to this Bill and the continued refrain from the Member for Siparia that the PNM did nothing, and now the Member for Caroni East has joined in the refrain by referring to the inaction of the PNM and the action of the new Attorney General.

I think it is incumbent on me to give some history of the work the PNM had done to ensure that the business of the court could be held at any place in Trinidad and Tobago. I simply wish to recall the work that the PNM did in

refurbishing and improving the physical infrastructure of courts in Trinidad and Tobago. During the tenure of the last administration one of the primary concerns of the previous Attorney General was improving the physical infrastructure used by judges and other persons who have cause to use the courts. As I have indicated, during our tenure we were able to complete the refurbishment of the San Fernando Supreme Court. We awarded a contract and started construction of a new magistrates' court in Scarborough; the Tunapuna administrative complex which includes an entirely new magistrates' court building for the Tunapuna area and an industrial court which is not entirely related to this Bill before the House. If you will permit me some leeway, the new Industrial Court building will upgrade the physical conditions for Industrial Court judges to the standard that they deserve. It will bring that whole Industrial Court system up to a standard of physical infrastructure which has been required for a very long time.

In recognition of the proximity of the airport to the Arima area and the number of drug-related cases which occur as a result of persons being caught at Piarco and Crown Point, the last administration had done considerable groundwork for a new judicial complex at Arima. As a matter of fact, the cost of that facility was in excess of $40 million. Under the PNM administration, Arima would have become a centre for the administration of justice in the north east of Trinidad, and it was going to be quite an expansive judicial complex. The night court was started under the tenure of the last administration and the last Attorney General in the Arima area in recognition of the fact that a number of drug related matters occur in the Piarco/Arima area.

I thought it was necessary to rebut the statements made by the Member for Caroni East and the Member for Siparia about the inaction of the last administration. From the first day the last Attorney General and the last PNM administration dealt in a serious and meaningful manner with the administration of justice. The *Gurley Report* of 1992 was of PNM vintage. The whole question of using other places in Trinidad and Tobago whether because of expediency or special circumstances was dealt with in a serious and meaningful manner by the last PNM administration.

If we were presenting this Bill before the House we would have given some history and background—it is in fact our Bill—which led up to the necessity of having court held in any other place, and more particularly, some background to the requirement of this measure.

12.10 p.m.

I am very disappointed that in the new Attorney General's haste to expand his curriculum vitae, he believes that all that is necessary is for him to come to this House and lay legislation on the Table, whether it be good, bad or defective, talk for five minutes and say that it is necessary and sit down. Then there are no other contributions from Members on the other side unless Members on this side raise pertinent and relevant issues which embarrass them and then they get up and talk for two or three minutes. So I thought it necessary to join this debate to put on record the work of the People's National Movement with regard to the refurbishment, improvement and construction of courts in Trinidad and Tobago during our tenure, and to indicate that I hope that in the next few sessions, when I note that most of the legislation, if not all of it, comes from the Attorney General, he will be a little more forthcoming, give us the philosophical underpinnings of the legislation and the reasons why we must support these bills.

We are supporting these bills because they are our legislation; we did all the groundwork for the drafting of this legislation. We are not supporting this legislation because a proper case has been made. In fact, no case whatsoever has been made by Members on the other side, and it is simply not good enough for the Attorney General to drop pieces of paper on the Table in this august Chamber, talk for two minutes and sit down. We do not believe that is the way proper debates in this Parliament should take place.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I am convinced that the PNM is a "coulda, woulda, shoulda" party. On everything we have brought to this House, we hear what the PNM "coulda do, woulda do and shoulda do", but they never did it. So the PNM can really be described as a "coulda, woulda, shoulda" party.

Mr. Speaker, the Member for Diego Martin East seems to be arguing against himself. In one breath he is saying that this measure is what the PNM thought about and that is why he is supporting it; that we have made no case for the measure. He said that we did not explain the philosophical basis of the Bill. If it is his measure, he ought to know what is the philosophical basis of the Bill. Is he saying that the PNM had a plan, but had no basis and he supported it? Here he is accusing us of bringing a PNM measure and yet he is saying he does not understand it.

The hon. Member for Diego Martin East said that he intervened in this debate in order to state what the PNM did about the administration of justice. That has no

bearing on what is before this House. What is before this House is whether the Supreme Court of Judicature Act, section 75, should be amended to include words to prevent a construction that a special sitting of the High Court in its criminal jurisdiction can be had without the other High Court in its criminal divisions shutting down. This measure is attempting to prevent any abuse of the criminal procedure system to facilitate a special sitting of the High Court, whether in Chaguaramas or anywhere else, for which there has been issued a warrant by the President to deal with a particular case or class of case.

The Member for Diego Martin East knew that what he was saying was totally irrelevant to this Bill. I am not surprised because it would seem to me that he feels that he is an expert in everything. As a matter of fact, I think that he has classed himself as the Opposition Chief Whip. He wants to talk on every issue and would not permit the other Members to speak even though he does not know anything about the measure. He got up and read the amendment in section 75 (a) and (b), but he did not take time to see that what is before this House is not in clause 4(a), but simply an amendment to section 75 dealing with a particular situation, to include the words "as is necessary". This Bill is about including three words to prevent a shut down of the criminal justice system when there is a special sitting of the High Court in another area.

If he knew what he was talking about, he would have seen that by section 74 of the Judicature Act, the High Court can be held in San Fernando, Port of Spain, Scarborough, and such other place as the Chief Justice may designate, but section 75 deals with special sittings for particular cases and that is giving jurisdiction to the President of the country to assign that particular place. I would advise the Member for Diego Martin East to inform himself properly of these matters before he gets up to speak on a topic he does not understand.

He talks about this Act being amended in 1994 under the PNM administration. That is correct. This was the Supreme Court of Judicature Act No. 21 of 1994. I do not know if he was not paying attention or did not understand or if he had a written speech which he had to read out, but I mentioned that in my introduction. I mentioned that although this was done in 1994, there was a drafting slip which any government could make. In 1994, when this measure came before the House, we in opposition supported the measure and we did not see that particular point.

I am not accusing any government of deliberately being reckless or not seeing the point. One knows that in the law errors and omissions do occur, but we as a Parliament have a duty that when we recognize that there are those omissions, we

must get together in the national interest to deal with them so that the public interest would not be frustrated. That is what we are about this morning.

If he agrees with the measure, if it is their philosophy, if he knows about it and is supporting it, then why make all these irrelevant comments. He is filibustering.

I would like to deal with some of the matters raised by the Member for Arouca South.

12.20 p.m.

I am very surprised that the Member for Arouca South stood in this House and read the Explanatory Note of a Bill, and can, in effect, read a copy of a bill that she got—without checking the records of the Parliament's registry to determine whether there was an omission on any administrative aspect of the machinery—and can accuse the Government of having parts of a bill which was not supposed to be there.

Mr. Speaker, without going into all the details, what was submitted to the Parliament's registry was, in effect, what should have been printed. There was some mistake in respect of the printing of the Bill. I have been informed by the registry that Members were duly notified when the Bill came back. Mr. Speaker, this shows that the Members opposite have reached the bottom of the barrel. They would hold on to any straw!

Mrs. Robinson-Regis: Would the Member give way, Mr. Speaker? I would like to state that I was not notified. I have consulted a few of my colleagues and they, too, have said that they were not notified. If a notification was sent out we did not get it. All we are saying is that an error was made, we were told nothing about it and we were expected to talk on a bill where an error existed. We got the corrected copy on Friday. I repeat, I did not get any notification.

Hon. R. L. Maharaj: Mr. Speaker, be that as it may, if for some reason the Member did not get a corrected copy before, she should have recognized when she read that Bill that it dealt with a different Act altogether. As a lawyer, she must have known that "deposition" had something different to do with the "Supreme Court of Judicature Bill".

This shows the attitude and the conduct of the Members on the other side. They do not have any answers to the issues in the debate and therefore they have

decided to come here to try and hoodwink the population with all sorts extraneous matters.

The Member for Arouca South spoke about the building, the security measures, the walls and the renovations being done in the court. The Member for Arouca South should know, as a lawyer, that those concerns are not inserted in a bill. They came here to debate a Bill to correct a certain situation but the Member gets up and says: The Government did not say what is the state of the building; what is the state of the courts; what is the state of these measures; whether there would be sufficient judges and so forth. Mr. Speaker, they do not have anything to say! They come here totally unprepared! They have two things they want to talk about: the Jamaat al Muslimeen and what the Member for Couva South said in the debate on the administration of justice.

What we said about the administration of justice has nothing to do with this debate and it is not inconsistent with what we are dealing here. We said that reforms of the administration of justice must be done on a holistic basis. We are not dealing here with reforms in the administration of justice *per se*, we are dealing with the correction of a slip which occurred in drafting. In respect of the contribution of the Member for Arouca South, I think she should have said: I have nothing to say, I support the measure, and she should have taken her seat and we would have already been out of here with respect to this Bill.

We also heard the contribution that this Bill should have either been debated with the other Bill or these provisions should have been placed in the other Bill.

The Supreme Court of Judicature Bill which we did on Friday was already dealt with by the Senate. The Standing Orders do not make any provisions for bills to be dealt with in the way suggested. I can only come to the conclusion, therefore, that the hon. Member for Laventille East/Morvant may want us to go through a procedure which would create a loophole in the law, so that when a special sitting is held at Chaguaramas, some point can be taken that the Bills were not properly passed and the whole justice system could be frustrated with a particular trial.

I wonder why the Member for Laventille East/Morvant wants that to happen? If his party genuinely supports the Bill they would have come here— This is a debate which would have finished in half an hour, but they do not seem to want that, Mr. Speaker.

Mr. Bereaux: Mr. Speaker, on a point of order. Standing Order 36(5) says:

"No Member shall impute improper motives to any other Member of either Chamber."

Mr. Speaker: I rule that the Member could continue.

Mr. R. L. Maharaj: Mr. Speaker, I am much obliged. The other argument raised on the other side is that there is too much haste in passing this Bill. I do not know what the other side wants us to do. Do they want us to bring a lot of reforms and measures that would allow this situation to remain as it is?

Mr. Valley: Mr. Speaker, could the Member say who said that there was too much haste in passing this Bill?

Hon. R. L. Maharaj: Mr. Speaker, the hon. Member for Diego Martin East accused the Attorney General of being involved in haste; that his motives were hasty in order to add to the "CV" in introducing this measure.

I do not know, but perhaps Members on the other side could explain to us whether they think this is the kind of measure which should wait, or whether it should be done as quickly as possible when the matter is known. I would have thought that a responsible Opposition would have said: Listen, there has been an error and we ought to correct it quickly. We ought to ensure that the criminal justice system is not subverted, and they should have supported the Government right away.

12.30 p.m.

The other matter to which I would like to respond seems to have been misconceived by many. This administration is a responsible Government and we listen to the views of the Opposition; we take what happens in this House very seriously. This administration heard that in relation to the Rent Restriction (Re-enactment and Validation) Bill a responsible Government should, in effect, remove all doubts whatsoever. So where there are two arguments in respect of that Bill, we should remove all doubts. The Member for Diego Martin Central is on record as saying—I have read it over and over—that if this Government introduces a measure which they are talking about although it requires a specified majority, in order to remove all doubts and not to put tenants at a disadvantage the Opposition would support the Government in that measure—*[Interruption]*

Mr. Valley: Mr. Speaker, I wonder if the hon. Member would give way. I am grateful to the hon. Member. It is a pity that he did not heed our advice half an

hour into the debate which would have prevented us from wasting one day of parliamentary time. Once more I give you the assurance that we would support that legislation.

Mr. Speaker: Hon. Members, the sitting is suspended until 1.45 p.m.

12.33 p.m: *Sitting suspended.*

1.45 p.m.: *Sitting resumed.*

Hon. R. L. Maharaj: Mr. Speaker, as I was saying when we took the lunch break, I was dealing with the response of the Opposition and their misconception with respect to the laying of the Rent Restriction (Re-enactment and Validation) Bill, therefore, we are putting the Opposition to the test. We wish to see how they are going to delay the passage of these bills and how they are going to talk on a lot of irrelevant matters. I have great pleasure, and I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in Committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 3 be deleted.

Question put and agreed to.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 4 be renumbered as clause 3 and that the renumbered clause 3, section 75 be amended by adding after the word "business" the words "as is necessary".

Question put and agreed to.

Clause 4, renumbered clause 3, as amended, ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Bill reported, with amendment; read the third time and passed.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, be now read a second time.

Mr. Speaker, the purpose of this Bill is to redress any injustice which can occur to the state in the course of criminal proceedings through long delays in the hearing and determination of preliminary enquiries, also delays between a committal, and a trial for an offence when depositions or other documents relating to the trial are lost or destroyed.

Under the existing law, there are provisions for a magistrate holding a preliminary enquiry, or the trial judge, to exercise his discretion, based solely on the assessment of fairness and justice in a particular case, to admit secondary evidence of depositions or other documents in such circumstances. Such secondary evidence may be afforded by the production of copies or even oral testimony of the contents of the depositions or other documents.

1.55 p.m.

When one looks at section 26 (2) of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, one sees that:

> "Where the original of the complaint, any deposition of a witness, any documentary exhibit thereto the statement if any, of the accused person, the warrant of committal for the trial or any recognisance entered into is lost or destroyed, then in all proceedings at the trial (whether summary or indictment) or at a re-opened preliminary enquiry or a fresh preliminary enquiry or an inquiry under section 23 (8), secondary evidence of the contents of such document may, in the discretion of the Court or Magistrate be admitted in every case in which the original document would be admissible."

Then it goes on:

> "(3) Without prejudice to any other method by which such fact may be proved—

(a) the fact that any document is lost or destroyed may be proved by the testimony of the officer in whose charge the document was last entrusted; and

(b) the fact that a document is a copy may be authenticated—

(i) where the document is a private document, by any evidence with which secondary evidence as to private documents may be authenticated; and

(ii) where the document is a public document, by a certified copy thereof issued by the officer to whose custody the original was entrusted."

A deposition at the present time would fall under the category of a private document and therefore if it has to be admitted in evidence there would have to be secondary evidence and the court would have a discretion as to whether to admit the deposition after the secondary evidence is adduced. The proof of a document as a copy may be made in the case of a public document such as those specified in the Evidence Act and, for the record, may I relate to what I am talking about.

Under the Evidence Act of Trinidad and Tobago, Chap. 7:02, there are documents which are regarded as public documents which can be tendered in evidence by the mere fact that it is a public document and it is being certified. Under section 21 of the Evidence Act:

"Part V - Documentary evidence in certain cases

'document' means and includes proclamations, orders, bye-laws, rules, regulations, warrants, circulars, lists, assessment rolls, minutes, certificates, notices, requisitions, letters, decrees, and all other records and writings whatsoever of a public character pertaining to the several departments of the Government in the first column of the Second Schedule;"

Under the Second Schedule of the Act, there are the names of the ministry and departments of office and the different ministries under which the documents can be produced and regarded as public documents under the Act.

Under section 22 of the Evidence Act:

"(1) Every document issued—

(a) by the President;

(b) under the authority of the President;

(c) by or under the authority of any department of the Government or officer mentioned in the first column of the Second Schedule; or

(d) being a record in any such department of the Government,

may be received in evidence in all Courts of Justice, and in all legal proceedings whatsoever, in every case in which the original document would be admissible in evidence in all or any of the following modes:

(i) by production of a copy of the *Gazette* purporting to contain the document;

(ii) by production of the copy of the document purporting to be printed by the Government Printer;

(iii) by production (in the case of any document issued by the President or under the authority of the President) of a copy or extract purporting to be certified by the Minister, Secretary to Cabinet or any Permanent Secretary; and

(iv) by the production (in the case of any document issued by or under the authority of any of the departments or officer, or being a record in any such department of Government) of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the said Second Schedule in connection with such department or officer."

Section 23 reads:

"No officer of any of the several public departments specified in the first column of the Second Schedule is, in any legal proceedings to which the State or he is not a party, compellable to produce any document the contents of which can be proved under this Act or to appear as a witness to prove the matters, transactions, and things recorded in it unless by order of a Judge made for special cause."

Under the present law, a deposition taken at the magistrates' court and even certified by the Clerk of the Peace is not admissible as a copy document.

What this Bill seeks to do therefore is to obtain parliamentary approval for the proof of a deposition certified by the Clerk of the Peace to be treated as a public document and it would be certified by the officer to whom the original was entrusted.

In the case of a private document such as a will, deeds or other documents by testimony as attesting witnesses, or other oral testimony as to the existence of the contents thereof, one can get those kinds of documents in evidence through secondary means.

In summary, therefore, the Bill would now make, in effect, depositions and other documents already in the custody of officials such as the Clerk of the Court, public documents and so capable of authentication by certified copy. In such a case the document would be admitted without further ado.

Mr. Speaker, I want to make it quite clear, however, that what this Bill is seeking to do is in respect of section 26 of the Indictable Offences (Preliminary Enquiry) Act. It is not dealing with other sections, that is to say, section 40 as to whether a deposition could be read in evidence if a witness is dead.

It is dealing with the situation where if a preliminary inquiry occurs and a witness gives evidence and that witness signs his deposition but for some reason the deposition is lost or destroyed, that deposition certified by the Clerk of the Peace can be admitted in evidence. That is what this particular provision deals with.

It has nothing to do with the question of reading the depositions under section 40. That is why the amendment says:

> "Notwithstanding section 26 (1) and (2) but subject to section 26 (3), where the original deposition or part thereof, or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held, shall be regarded as the original deposition or document as the case may be and dealt with as such for purposes of this Act."

Then in section 27 there are consequential amendments.

Mr. Speaker, having regard to what can happen in respect of the criminal process because depositions can be lost or destroyed, this Bill seeks to get parliamentary approval for depositions to be placed on the basis that they are public documents in the custody of public officials just as other documents are,

and that they should be admitted in evidence on proof of their being duly certified, and it is without prejudice to any other section, notwithstanding the provision of any other section.

I beg to move.

Question proposed.

2.05 p.m.

Mr. Barendra Sinanan (*San Fernando West*): Mr. Speaker, the Bill before us, the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill, seeks to amend the Act by inserting after section 26 the following section as stated in the Bill. I wish now to go to section 26(2) of the original Act, the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 which reads:

> "Where the original of the complaint, any deposition of a witness, any documentary exhibit thereto the statement, if any, of the accused person, the warrant of committal for the trial or any recognisance entered into is lost or destroyed, then in all proceedings at the trial (whether summary or on indictment) or at a re-opened preliminary enquiry or a fresh preliminary enquiry or an enquiry under section 23(8), secondary evidence of the contents of such document may..."

and I emphasize here—

> "in the discretion of the Court or Magistrate..."

I repeat:

> "in the discretion of the Court or Magistrate be admitted in every case in which the original document would be admissible."

Now Mr. Speaker, the amendment as proposed reads as follows:

> "Notwithstanding section 26 (1) and (2) but subject to section 26 (3), where the original deposition or part thereof, or any document mentioned in that section..."

Now the documents I have referred to, chiefly in section 26 (2)—

> "or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was

held, shall be regarded as the original deposition or document as the case may be and dealt with as such for purposes of this Act."

Mr. Speaker, it says the document must be duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held. Mr. Speaker, what happens if the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held is dead, or out of the jurisdiction? What happens then? The whole purport of this Bill will be nullified.

Mr. Speaker, I wish to propose for the consideration of the Attorney General that he includes also in this: "duly certified by the Clerk of the Peace and the Magistrate". I am proposing for his consideration that after the word "Peace" he adds "and the Magistrate of the magisterial district in which the preliminary enquiry was held," Again, Mr. Speaker, the amendment goes :

"shall be regarded as the original deposition or document..."

If we go back to the original Act, Mr. Speaker, section 26 (2) talks about discretion—"in the discretion of the Court or Magistrate." Again, Mr. Speaker, I am inviting the Attorney General to see whether it may not be prudent to include after the word "regarded" in the ninth line, "in the discretion of the Court or Magistrate". In other words, in the first proposed amendment, there is the safety in the sense that if a Justice of the Peace is not around (he is deceased or migrated) there is the Magistrate; and secondly the presiding Magistrate or Judge should have a discretion whether to admit a copy.

Mr. Speaker, when we speak of a copy it is presumed that there is an original from which to get a copy. In this regard it is necessary to increase the form of security that pertains at magistrates' courts and even the High Court, because it is not unknown to have documents either misplaced or destroyed in the magistrate's court or the High Court. So in bringing this Bill, I hope that the Attorney General would be mindful of the fact that there must be some form of security. There must be some custodian of these documents who would be held responsible for their safety.

Mr. Speaker, this Bill seeks to make copies of depositions and other documents, mentioned in section 26, admissible. Here, again, we would require photocopy equipment or computers at the Magistracy and the Judiciary so that copies can be easily made. There are copies being made at the magistrate's court and sent to the DPP's department. Somewhere in the procedure we have to get copies made and filed with the relevant authorities, so I am asking the Attorney

General to look at this point on the equipment at the Magistracy and the High Court in terms of photocopy machines and computers; and the security for the safety of these documents.

Mr. Speaker, I have a little difficulty with part of the drafting of this new clause. It states in the first three lines: "Notwithstanding section 26 (1) and (2) but subject to section 26 (3), where the original deposition or part thereof, or any document mentioned in that section" (which is the important part) "is lost or destroyed, a copy of the deposition or part thereof,..." Then it goes on to say: "or of the document," I am not sure what the Attorney General means by these words. Is it of the document referred to in section 26 (2)?

Mr. Speaker, with this short intervention I wish to say that I would have no difficulty in supporting this piece of legislation and I invite the Attorney General to take into consideration the amendments which I proposed.

Thank you.

2.15 p.m.

Fitzgerald Hinds *(Laventille East/Morvant)*: Mr. Speaker, as is well known, all criminal trials and indictments are preceded by a preliminary enquiry at the Magistrates' Court. It is here that the inquiring magistrate decides whether a *prima facie* case is made out, and as such there would be a chance of a conviction at the level of the High Court before a judge and jury.

Over the years in Trinidad and Tobago this facet of our system posed major problems, in particular, delays. The problem which this measure seeks to address is the question of lost, misplaced or destroyed documents including depositions.

In respect of delays, much has already been said in the last two debates before this honourable House and for the record, I would like to say that a major contributory factor to the question of delays has to be the question of the general state of inefficiency, tardiness and suchlike across the country at large.

Mr. Speaker, another major problem—or at least one that occupies the minds of many of our citizens—is the question of the death or disappearance of witnesses who gave evidence at the preliminary enquiry stage in what comes to be known as depositions. Of course, as the hon. Attorney General said, the legislation before us to be amended deals with that situation. Such depositions can be used before the High Court but, of course, it is subject to a discretion as was

made clear. So, the law permits the use of these depositions in principle, but in practice it does not always go that way.

Mr. Speaker, these problems were tackled in large part by the last administration—an administration with foresight and the determination to deal with the question of delays and crime in general in Trinidad and Tobago. In 1994 this House debated and passed an amendment to the very Act which permitted the use of written statements at the level of the preliminary enquiry. That is not a question of "woulda" or "shoulda". That was actually done and is on the record. And, it was done in the face of great opposition by the Members on the other side who were on this side at that time. Notwithstanding all of their efforts to suppress these facts, the records must show that whatever we did in the last administration to deal with these problems they opposed it. We are not like that. We would support legislation when we think it fit and in this case, we will, but the records must show.

Mr. Speaker, when we passed that amendment we understood its purport. The depositions would be used before the judge and jury at the High Court. Consequently, the problem or the concern about death or disappearance of witnesses who made these depositions at the preliminary stage, and the devastating impact that it is likely to have on such trials, has to some extent been, or is expected to be reduced. At least we hope for the sake of Trinidad and Tobago that this is the case.

Mr. Speaker, the proposed amendment seeks to permit the use of a duly certified copy of an original deposition—a copy certified by the Clerk of the Peace—where the original or part thereof was lost or destroyed.

I am sure the hon. Members of this House understand—though in some cases not with total justification—that a wider section of the community in Trinidad and Tobago carries in its psyche, deep fears about the administration of justice and the resolution of criminal matters before our courts. To some extent we have become a nation gripped by fear. Many persons are reluctant to come forward and perform their public duty by giving evidence before our courts as witnesses because they fear for their lives. The question of justice in Trinidad and Tobago is perceived by very many of my constituents, and very many citizens across the country, as a matter of life and death. Though we may not want to treat with those issues seriously, it is a question which the Government, the Opposition, every legal practitioner, judge and every citizen is concerned with. The administration

of justice has to deal with and resolve this question in the hearts and minds of the people of Trinidad and Tobago.

Mr. Speaker, we in Trinidad and Tobago must rise above any political or other sectarian concerns to deal with these issues as I have indicated, for the benefit of Trinidad and Tobago. I am confident in suggesting that this is why we are very much inclined to support the measure that is before this honourable House.

Mr. Speaker, as has been indicated in previous debates and must be said again, in a large part all of this has to do with trust and confidence. When trustworthiness is absent the whole system of justice flounders.

As I have indicated, though we are inclined to support this amendment—because we see it as a logical extension of the other—if depositions are permitted to be used before the judge and jury in the High Court, then quite naturally duly certified copies ought to be used when the originals are lost or destroyed.

The more we improve this mechanism and remove the likelihood of any perversion or an opportunity as it were to pervert the course of justice, the safer our citizens who are prepared to give evidence would feel. When we do this we should do it in such a manner that the criminals across the country would know, and they would not believe that the murdering of witnesses or attempts to destroy or misplace original documents could be of some benefit to them.

2.25 p.m.

I commend this measure because if persons who might be so inclined are aware that duly certified copies of those original documents including depositions could properly be used and made admissible in evidence, then it would be foolhardy to attempt the things which many have attempted before, and perhaps thought about. Perhaps many documents go missing not because of any criminal intent but because of sheer ineptitude, as well as it might be that documents are purposely frittered away for obvious reasons.

Mr. Manning: I forgot to tell you.

Mr. F. Hinds: I am grateful for your information, Sir.

When we take the measure which we are taking today and put these further safeguards in place, we would be ensuring that whether documents are lost, misplaced or destroyed because of carelessness or ineptitude on the one hand, or criminal or wicked intent to pervert the cause of justice on the other hand, we

would have done so knowing that the wheels of justice will continue to turn for the benefit of all the honest right-minded citizens of Trinidad and Tobago. There are few, perhaps, even a growing army of those who are not so like-minded in Trinidad and Tobago.

This brings me to some of the points of importance surrounding the administration of this measure. Firstly, and I think the previous Speaker alluded to it, I do not know for a fact exactly what system operates in the office of the Clerk of the Peace. I imagine that like most other government departments there is a registry. I do not know as a fact or whether at all—though I would expect that—officers who handle these files are accountable for them. In other words, when a file in the case of X versus Y comes before or to the hand of a particular clerk or officer, whether he/she signs as receiving them and as such could properly be held accountable if such files go missing. It would be foolhardy to consider a measure such as this without at the same time giving serious consideration to these administrative problems. Therefore, to ensure that the legislation works particularly well one should urge the persons who actually handle and work the legislation to be serious and commited to ensure that the measures we are implementing today, and no doubt would implement in the future, work.

At a glance one might argue that if it is insisted that for every file which goes to the Clerk of the Peace or an officer delegated to receive it, there must be a signature as having received the documents, it might appear cumbersome or even burdensome. No one can doubt that the principle of accountability overrides any such difficulty especially in a society like ours, where sadly, many times right things are not done simply because it is too much trouble to do them. Accountability is crucial in all this. I am suggesting that as we seek to pass measures through the usual channels and not by any unusual channels such as threat or intimidation, that the Government would put these administrative measures in place, such that there will be persons at every stage responsible for the documents which would come to his/her hand. If anything goes wrong in terms of any documents being lost as a result of carelessness or ineptitude, or whether they have been frittered away with an intent to pervert the cause of justice, some action would be taken.

All right-minded citizens of our country would know that in the end it is sincerity of purpose, integrity and honesty which make any system of justice work properly. This brings us to the point that where sincerity appears to be

lacking and there is general mistrust across the country, it is very difficult to see how such a measure can bring any heart to the people.

The hon. Attorney General has put this measure before us. As I have indicated, we are inclined to support it and we will. Over the weekend I read in the newspaper where the former Attorney General, the Member for Siparia said that she made history. She was the first woman to be appointed Attorney General and perhaps, if she still were, she might have brought this very important measure that we are debating in this House. She was also the shortest serving Attorney General that we have known, through no fault of her own, as I am reminded by my colleague and my erstwhile Leader of the Opposition, the Member for San Fernando East. *[Laughter]* My apologies. I was about to say erstwhile Attorney General.

The erstwhile Attorney General has made history. I commend him for the speed and concern which he appears to demonstrate as he brings these important measures before this honourable House. While I will demonstrate my admiration by giving it my full support, he too has made history in Trinidad and Tobago, but in a different way. The first such appointment to be so questioned and debated across this nation in buses, maxi taxis and on the street corners has been the appointment of the Attorney General. I suspect it is because he is well known for his prowess as an attorney. The fact is that he is reputed to know the system of justice in the country inside out, and some people say he is a rather outstanding practitioner indeed. This is coupled with his Government's claim of pervading some concept of national unity across the country. The people are hopeful but at the same time his good and honourable intention has been the most doubted and challenged across the country. The office which he holds should be seen as one that holds the system of justice together, if you like, and he ought to imbibe in the people of Trinidad and Tobago some degree of confidence. I applaud him for the measures that he is attempting to move.

2.35 p.m.

Mr. Speaker, however, given the lack of confidence in the system of justice which now exists, too much trouble is never enough. We should put in place these administrative measures to ensure that the amendments put before this honourable House work well.

In terms of that amendment, I would like to suggest that it be stipulated in the legislation—though I can see that this is an administrative point—that the Clerk of the Peace, having received the original documents, including the depositions

from the magistrates—because the Clerk of the Peace transmits these to the DPP's office—make copies and duly certify them. Some copies, along with the original, will be transmitted to the DPP. I am advised that when the files get to the DPP's office, there, too, copies are made and the file is transmitted to the Registry of the Supreme Court.

This measure will ensure that we are not faced with the strange situation in Trinidad and Tobago where someone attempts to duly certify a document long after the original is lost. A certified copy, of course, as the previous speaker said, implies a comparison with the original. If this is not stipulated, we may very well find that officers at the Magistrates' Court may make copies not certifying them at that stage and there will be the problem I mentioned. In addition, I agree with the previous speaker that measures be put in place to ensure that some person or persons are held responsible and accountable for these files and that they make provision to have them in safe custody.

With these thoughts, I support the measure and look forward to hearing from the Attorney General, who put the Bill before the House, as to what extent he is prepared to consider the measures that we are suggesting for the improvement and proper operation of his amendment.

Mr. Speaker, I thank you.

Mr. Roger Boynes *(Toco/Manzanilla)*: Mr. Speaker, please allow me to skip the stories, poetry and temptation to deal with nice but vague rhetorics. I rise here in this honourable House to deal specifically with the Bill before this House—an Act to amend the Indictable Offences (Preliminary Enquiry) Act. The Bill seeks to amend the said Act to provide for the use of a duly certified copy of depositions and documents where the original document or deposition is lost or destroyed. Whereas the purport and intent of this Bill is commendable, the manner in which it seeks to achieve its stated objective, unfortunately, is an abysmal failure.

The amendment on the face of it is a simple one, but the effect of it in the entire system of the administration of justice is very telling and I am sure that the Law Association should have been consulted with respect to this amendment, if not the Law Association, then the Criminal Law Association. It is my humble submission that this piece of proposed legislation is like a fig leaf. It is badly drafted. The intention is good, but in terms of the drafting it is sadly lacking.

I came here this morning to give my support to the Bill. I went through it while I was seated here and I have to point out certain problems and concerns I have with it. I refer to clause 3 of the said Bill:

> "The Act is amended by inserting after section 26 the following new section—
>
> 26A. Notwithstanding section 26(1) and (2) but subject to section 26(3), where the original deposition or part thereof, or any document mentioned in that section is lost or destroyed ..."

Mr. Speaker, when drafting legislation, one has to be clear and unambiguous, so that the court will not have the extra work to interpret the section and bring in the literal rule, mischief rule, as the case may be. This is why we are here today—to draft this Bill in a clear and unambiguous manner. I am humbly suggesting that that section gives one the impression that it is referring to section 26(3). I am respectfully submitting that the Member for Couva South could amend it accordingly to specifically state section 26(2). It is in that particular section that the document is specifically identified in the Parent Act.

Let me read the whole thing so that Members can follow the argument:

> "...or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document ..."

Mr. Speaker, it is very difficult to find out exactly how "or the document" falls in with what went before. When drafting legislation, one has to be tight. I can even suggest another amendment, which pertains to line 5. Can the hon. Member include before "deposition or part thereof, or of the document", the word "said"? It would link it with what is contained in the section as contained in section 26(2)?

2.45 p.m

The quote continues:

> "...duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held, shall be regarded..."

Mr. Speaker, "shall be regarded", we know what the Member means. He means that the copies shall be regarded as though they are the originals. What is "shall be regarded?" Perhaps what the Member wants to state is: "It shall have the evidential weight or effect of the original. It is very important to be clear when

one is drafting legislation. I am suggesting, if the Member could utilize this inclusion it will augur well for the country as a whole because this is a very important piece of legislation.

I continue to quote:

> "...as the original deposition or document as the case may be and dealt with as such for purposes of this Act."

Mr. Speaker, what does "dealt with as such" means? This is vague and proper drafting must be done. We must be clear, to the point and unambiguous. I am suggesting that the Member for Couva South use the same amendment that I suggested a short while ago in indicating that it should have the same effect. In that regard, the true purport and intent of this piece of proposed legislation, would no doubt, have its desired effects.

These are just a few of the proposed amendments that I am suggesting would strengthen the Bill to ensure that its desired effects are, in fact, felt. Without a shadow of a doubt the intention is a very good one. It is one that we on this side have no difficulty in supporting because of the fact that it is very important to ensure that the certified copies of documents that were lost or destroyed come in the proper manner before the courts. We do not want the clauses in the Bill drafted in such a loose manner that it would lend itself to various interpretations by the court.

We, on this side, are here to get the country's work done. We are here as a reasonable Opposition to succeed and to carry out the country's work in a professional manner. We must answer our opponent's polish and appealing rhetoric with a more telling reasonableness and rationality. We intend to win the case for the nation on the merits. We must get the public to look past the glitter and beyond the showmanship, to the reality; the hard substance of things. We will do it, not with speeches that sound good, but with speeches that are good and sound; not with speeches that bring people to their feet, but with speeches that bring people to there senses. *[Desk thumping]*

I hope that Members on the other side will work with the points raised and amend the Bill accordingly so that it would operate in the best interest of the people of this blessed nation.

I thank you, Mr. Speaker.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, I join this debate in support of the Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

I congratulate and thank the Members on the other side for their wholehearted support of this measure which is designed to assist with the administration of justice in this country. The Member for Laventille East/Morvant, if I am not mistaken, indicated that this was an important measure in a nation that was gripped by fear. When this administration came into office in November 1995, it came on a platform and on a thrust to deal with the crime situation in the country. It was then that a nation was gripped by fear, fighting against that fear, elected this Government into office in November 1995.

On that platform, and with that mandate to deal with crime, those Bills, including the present Bill, have been brought to this House. This Government is very much aware, and we thank the Member for Laventille East/Morvant when he says: In this nation we must set aside political interests, we must set aside sectoral interests and we must come together in national unity to support a cause that is right. This Bill he told us, is one such Bill. Put aside sectoral, put aside political interests and support, in true national unity, what is needed for this country. Mr. Speaker, we thank the hon. Member for recognizing that this is what we must seek to do.

The Bill before this House is one in a series of pieces of legislation designed to deal with deficiencies in the law. The hon. Attorney General has indicated today, in his introduction to this Bill, the deficiencies that are meant to be corrected with the particular amendment. I want to take a moment, if you will permit me, to deal with the proposal made by the Member for San Fernando West. The proposed clause 26(a) should include: “that a copy of the deposition or part thereof, or of the document, should be duly certified by the Clerk of the Peace and the magistrate”. He wondered about the difficulty should the Clerk of the Peace be beyond the seas or dead. He proposed that there should then be two signatures. With the greatest respect to the Member it seems to me that would only compound the alleged difficulty that he pointed out. If he now requires two signatures, and he used the conjunctive “and”, which therefore, would require, in his proposal, two signatures, then the problem would be compounded because we would now have to find two people to sign or duly certify the document. If either signatory dies or cannot be found, we would be in serious problems based on the argument the Member has put forward.

With the greatest of respect to the Member for San Fernando West, it is my respectful view that that proposal is not viable for this amendment before the House.

2.55 p.m.

Further, the hon. Member for Laventille East/Morvant quite rightly indicated that this Bill has something to do with the delay in the administration of justice and having cases brought to court. I take this opportunity to remind the hon. Member that the majority of those delays and the difficulties that we are meeting now are not things that have happened today—are not delays that have accumulated as of today, last month or the month before—but have accumulated over the years when his party was in government.

Mr. Speaker, this amendment seeks to deal with the problem which was created over the years, so that where a deposition was lost, or a document is lost or destroyed, because of the length of time from the preliminary enquiry in the Magistrates' Court and when a matter is put into the assizes, any number of things can happen. That is what the Member said, whether intentionally, that is, deliberately or unintentionally, whether by omission or action. Over the years because of the number of years of delay that a matter takes to come from the Magistrates' Court to the assizes in the High Court then this particular section would seek to give us some leeway, flexibility to deal with the situation therein contained.

Mr. Speaker, with these words I support this Bill wholeheartedly and commend this Bill to hon. Members.

I thank you very much.

Mr. Colm Imbert *(Diego Martin East)*: Mr. Speaker, the Attorney General in his presentation appeared to me to be a bit jumpy when he brought up a matter which was really unnecessary in his presentation. I wonder if it was a freudian slip when he made a statement that this Bill does not refer to situations where witnesses are murdered. I submit that the whole question of the murder of witnesses is entirely irrelevant to this Bill before the House. This is why with a freudian slip the Attorney General made that statement.

Mr. Speaker, on a previous occasion the Member for Diego Martin Central made the point that in his opinion the Member for Couva South has a credibility problem, and when one sees this kind of legislation before the House which if it were in effect, 15 or 20 years ago, certain persons have been incarcerated. When

one sees this kind of amendment one wonders about the whole question of credibility.

I was struck by a newspaper headline this morning. It says: "Attorney General to media: Let's work together." The article states:

> "Maharaj said his government does not construe media opinions as an attempt to interfere with the operations of government or the right to govern."

In this particular case the Maharaj referred to is the hon. Member for Couva South. This is why one must be suspicious when one sees a Bill of this nature laid by that hon. Member, but I will come to that in a little while.

In the *Trinidad Guardian* dated Monday, March 18, 1996 one sees this statement:

"AG to media: Let's work together."

This is why my hon. colleague has, in my view, a credibility problem. This is why when one looks at this Bill one has to scrutinize it very, very carefully. One has to judge persons on their past behaviour. One cannot judge them on what they say, one must judge them on what they do, what they have done or what they are likely to do and so forth. So that when one sees a headline like this and one remembers the television programme just a week ago when the same hon. Member for Couva South made a categorical statement—that certain media owners in this country are attempting to undermine the Government and attempting to preach disharmony and disunity it is directly contradictory to what we see in the newspapers today. *[Interruption]*

Mr. Speaker: I know that the hon. Member has 45 minutes and then a possible 30 minutes of extension time, but seeing that we have started off just a few minutes ago, could we make desperate efforts to try to stick to the issue before us within the pages. I know that we very often have some latitude, and I oblige, but let us fight desperately to stick to the relevant aspect.

Mr. C. Imbert: Mr. Speaker, I am finished with reference to this newspaper report. I simply raised it as an issue surrounding the credibility of the Government; I just raised it as background information with regard to the credibility of the Government and the credibility of the Attorney General.

Mr. Speaker, some years ago there was a matter where a particular individual was charged with conspiracy to commit murder. The matter proceeded in the normal way, it went to preliminary enquiry—and we are dealing here with the

whole question of evidence. This Bill seeks to treat with evidence—and there are serious loopholes—*[Interruption]*

Mr. Speaker: Hon. Members, we need to tread very carefully where we are utilizing a privilege of Parliament in waking up issues of the past which may have the effect of casting aspersions on the character of people generally and moreso, of colleagues in the House. Again I ask that we try to stick to the issues and not to assassinate, attack or impute improprieties concerning someone. If one wants to bring a substantive Motion one may do so—*[Interruption]*

Mr. Bereaux: Mr. Speaker, the attitude which you have taken is very laudable because I sit here every day and hear things coming across the floor attacking people—*[Interruption]*

3.05 p.m.

Mr. Speaker: Again, I think that we need to have a session with respect to procedures. What was happening is that the Member is indeed on his feet, he is making a contribution; the Speaker has the authority to disturb him, which I have done, but I am not too sure that the Member for La Brea has the authority to comment upon what I have said with the Member still on his feet.

With the greatest deference I was dealing with something that the Member for Diego Martin East was saying, and I dealt with it. The Member for La Brea has not got up on a point of order. He has not got up to ask the Member for Diego Martin East to give way. The Leader of the Opposition will know that what he just did is not right. So that I am simply saying that yes, you made a speech it has gone down in *Hansard*, but I ask, please, that we try to play it according to the rules. I am trying to be co-operative but if a Member feels that I am being too soft he could approach it differently.

Mr. C. Imbert: Thank you, Mr. Speaker and I wish to give you every assurance that I have absolutely no intention of assassinating anybody's character. Some persons are capable of doing that quite well on their own without any help from me. Let me reassure you on the line that I am taking, Mr. Speaker.

We are talking here about evidence, and what this Bill seeks to do, although in a rather ambiguous way, is to plug the loophole in existing statutes which does not allow or give the magistrate discretion as to whether certified copies or other types of evidence, other than original depositions can be admitted into evidence in a preliminary inquiry. I have no intention of questioning the conduct of anyone, I

would like to give you that assurance, but let me return now to the example and, perhaps, you will see the line of my argument.

As I was saying, some years ago, a certain individual was charged with conspiracy to prevent justice. The matter went through the court in the normal way and went to preliminary inquiry. During the course of that matter, two things happened: One, the main prosecution witness was killed and shortly thereafter, the evidence disappeared.

It is my view that the population was never able to determine the merits or demerits of that case. If we had such a law as we have today—if that law was in effect 15 years ago, this Bill that we are seeking to make law today—then certified copies of those original depositions could have been used in that case and, notwithstanding the fact that the originals were lost, the case could have continued. If it was in trial it could have been carried to conclusion and I think that person has been done a severe injustice. I think that the defendant in that case who was in fact, the hon. Member for Couva South, was the one charged with conspiracy to prevent justice and during that matter, a witness was killed and original documents were lost and the matter was dismissed. As a result, there is tremendous doubt in the population as to whether there was innocence or guilt, and I think it was a tremendous injustice to the Member for Couva South that he was never really able to prove his innocence for the entire population to see.

This is why, Mr. Speaker, I am grateful you have allowed me to elaborate on exactly where I was coming from. I regret that this measure was not in effect 10 or 15 years ago because my hon. colleague would have been able to establish and confirm his innocence if that matter had gone to conclusion. He would have been able to clear his name in that whole matter where he was accused of conspiracy to prevent justice. I hope I have satisfied you, but I was simply seeking to raise a procedural matter and not assassinate anybody's character.

I do not know if there are people in this House who feel that we on this side must be muzzled, that we must not speak out, that we must rubber-stamp anything that comes before us. I get the impression that that is what the Attorney General wants. When we come into this Parliament, we simply rubber-stamp whatever piece of legislation is brought; sit down and say nothing; not raise pertinent issues; take insults hurled at us across the floor by persons who should know better.

I am paid a salary to speak. One of my primary functions as a Member of Parliament is to parley. That is where the word, "Parliament", comes from. I am paid to parley and any attempts by the Members on the other side *[Interruption]*

I am not referring to you at all, Mr. Speaker. Let me disabuse anybody of that notion, I am not speaking about you. *[Interruption]*

Mr. Manning: I am not afraid of you either.

Mr. Maharaj: Badjohn on the other side.

Mr. Speaker: Hon. Members, the situation is getting a little out of hand. Would the Member please continue in relation to the Bill, and could we please have less crosstalk across the House?

Mr. C. Imbert: Thank you very much, Mr. Speaker. I mean, look at what is being hurled at me across the floor. The hon. Prime Minister just called me a sewer rat. A sewer rat!

Mr. Speaker: I have just asked, rather kindly that we proceed with dealing with the matter and we are back to the talk of sewer rat. If hon. Members feel we are having difficulty in proceeding, I could adopt a certain course. I ask you please, could we get on with the matter?

Mr. C. Imbert: Thank you most kindly, Mr. Speaker. As I was saying, if this piece of legislation was in effect years ago, a number of persons would have been able to clear their name and it is very relevant to drug-related cases and murder cases. In these types of cases, the whole question of evidence becomes particularly relevant, the whole question of testimony, and the weight a judge or magistrate will place on the ability to cross-examine witnesses, I feel this amendment here today is another step in plugging all those loopholes about which I spoke on a previous occasion where matters are delayed for many, many years.

3.15 p.m.

As a matter of fact, Mr. Speaker, I remember about a year ago reading about a murder trial which had gone on for 10 years without reaching a conclusion, and what struck me about that particular murder case was that it was reported that during the process of that 10-year period, all four prosecution witnesses were murdered and the case was dismissed. If there was something like this in effect, then there could have been original depositions, certified copies of depositions in safe keeping and perhaps this whole question of killing witnesses would not be of primary importance to the criminals in our midst.

Without this piece of legislation, it has become very easy for the drug barons, the murderers and the other criminal elements who are defended by those who practise criminal law, to seek to escape justice by tampering with one or other pillar of the whole justice system.

In the whole justice system persons must have a right to be heard, accused persons must have a right to challenge the evidence of the prosecution, the integrity of the evidence must be tested and so forth. And, because of the number of loopholes that exist at present, it is very easy to just wipe out the witnesses, steal the files or arrange for the files to disappear or be burnt or mysteriously lost and then there is the whole question of a case breaking down. That is why this amendment is absolutely necessary.

Look at the whole question of the case that is currently engaging the attention of Trinidad and Tobago; the drug related matter where recently—

Mr. Speaker: I find it necessary to bring to the hon. Member's attention that it is very improper to be referring to matters that are now before the courts. That is very clear. As I said, you have been sailing very close to the wind; I ask you, please, desist. That has all sorts of implications.

Mr. C. Imbert: Thank you, Mr. Speaker. I did not raise any particular case by name and I will not do so. I am simply making the point that this legislation is long overdue. There are very serious matters engaging the courts—and I will not name them—where the matters are not concluded.

Mr. Speaker: Members, could we have some order. There are two things I want to draw to the Member's notice: firstly, the one that I just drew and, secondly, the Standing Orders talk about repetition. You are in fact repeating the same point and rubbing salt into the wounds. I simply ask you to bear in mind that you have made your point sailing close to the wind, and I have allowed you to do it. I stopped you on the question of matters that are now before the court. The fact that you do not mention the person's name does not matter and having made your point and having allowed you to do it, I ask you, please, not to continue to repeat it.

Mr. C. Imbert: Thank you, Mr. Speaker.

The legislation before us follows on other bits of legislation which have been laid in this Parliament recently and other pieces of legislation are due to follow this particular Bill. There are very serious issues that surround this Bill. It cannot

be treated in isolation. It affects in a pivotal manner the whole question of the administration of justice.

One of my concerns, as I indicated at another time, is the haste with which the Attorney General is bringing legislation before this House, and we have already seen an example of the errors that can arise from hasty and slipshod work. I refer now to what happened with the Rent Restriction Act where the drafting of that Motion was slipshod, where it was null and void. Today, we have a situation where the hon. Attorney General referred to drafting errors in legislation. We were given one bill previously; a few days later we are given a corrected copy which changes the whole intent of the Bill, then we are told that there were drafting errors.

The reason why one must treat this whole thing very seriously is that one must look at the effect of this legislative change on other legislation. This Bill changes the whole concept of evidence in Trinidad and Tobago.

The Member for Siparia in her very brief contribution indicated that this Bill was part of the UNC's fight against crime. She made the astonishing claim that the UNC came into office with a mandate to deal with crime because the nation was gripped with fear and the electorate gave the Government a mandate to deal with the crime problem. I am not satisfied that the piecemeal approach of the present administration to legislation, particularly legislation of this import, is satisfactory. I am not satisfied that the present administration is serious about dealing with crime and I believe that it does not matter how many bits of legislation are brought before this Parliament.

If one examines what is happening in the Parliament, one would see that this Bill has four clauses: the first clause is the title; the second one is the interpretation; the third one is the essence of the Bill and the fourth one is just a procedural clause. The Bill we debated earlier today had two clauses. On Friday when we went rather late, how many clauses did that Bill have? Two. I would prefer to see comprehensive review and overhaul of the legislation rather than these bits and pieces.

Mr. Speaker, how does this fit into the matrix of the administration of justice? How does this fit within the whole framework? How does changing the law so that a certified copy of a deposition can be used in a preliminary enquiry treat with a very serious crime problem that exists in Trinidad and Tobago, referred to by the Member for Siparia when she made the astonishing claim that the UNC Government was elected to deal with crime and that they were given a mandate

and that they are doing a good job and so forth? How does this Bill fit into that? What evidence is there? When has this really worked? What has happened since the UNC administration came into office? Has there been a decrease in violent crimes? Has there been a decrease in the number of violent murders?

3.25 p.m.

What kind of murders have occurred since the UNC Government has come into office, and how does this piece of legislation help in diminishing the incidence of violent crime and murders? This is what I want to hear from the other side. It appears to me, Mr. Speaker, that the other side and the hon. Attorney General have a very rigid and legalistic approach to matters. A very inflexible and tense approach, as it were, to matters in this Parliament. They do not want to share their philosophy with us. They do not want to tell us what they intend to do. *[Interruption]*

I opened the newspapers, Mr. Speaker, and I did not see the Attorney General talking about the intent of this Bill and giving examples of where, if this Bill was in effect years ago, matters would have gone to trial. All I see is that a strike force is about to be created to deal with white-collar crimes, involving local and foreign police. That is what I see. Is that part of the UNC Government's attempt to deal with crime? To create a "mongoose gang" Mr. Speaker? Is that the intention? A *tonton macoute?*

While we have all this pretty, lovely legislation on the books, very important and necessary legislation, [*Interruption*]

Dr. Lasse: Ramesh strike force.

Mr. C. Imbert: I support it wholeheartedly, Mr. Speaker, and I wish it had been in effect 15 years ago. I wish. But we have this nice, pretty legislation going on the statute books. How is the strike force going to deal with the whole question of crime and punishment? Are they going to wipe out people? I do not know, I am just asking. I do not think so. But, Mr. Speaker, one has to be worried and this is why we come back to the whole question of credibility. What is going on? We see very conflicting statements coming from the Government side on matters of a serious nature. That is why we have to question: Is this a smokescreen? Is this all an attempt to give the impression that the UNC administration is dealing with crime when, in fact, it is not so?

I come back to this matter of a *curriculum vitae.* There is nothing wrong with expanding someone's *curriculum vitae.* I support that sort of thing, but is

that the intention, Mr. Speaker? I submit that the UNC administration has already failed this so-called mandate that they say they got from the population to deal with crime and punishment. Is this all that is going to happen, that we come into this Parliament and attempts are made by the Members for Couva North and South to muzzle the Opposition, to prevent us from speaking, to prevent us from pointing out the political hypocrisy of the Members on the other side? Because it seems that that is their intention. They want to confine our debate; they do not want us to raise matters incidental and relevant to the import of this Bill, which deals with the whole question of crime and punishment.

Hon. Member: That is right.

Mr. C. Imbert: They would prefer that we have this kind of developmental journalism that I see here. Nice pretty stories; nice public relations exercises that do not really deal with the meat of the problem. Mr. Speaker, I hope that at some point in the future we can see evidence that the UNC administration is serious about dealing with crime and criminals. *[Interruption]*

Dr. Lasse: You all can laugh, but the strike force would strike on both sides.

Mr. C. Imbert: I hope this strike force will look into all areas of wrongdoing, everywhere. I hope it will look into all matters. I certainly hope so, and not just confine its observations to certain people who may not be in sympathy with the Government of the day.

In supporting this piece of legislation, Mr. Speaker, I ask the Government to cease trying to muzzle the independent voices in this country. Stop trying to muzzle Members on this side; stop trying to muzzle the media; stop trying to interfere with the entire democratic traditions in this Parliament. Allow us on this side to have our say. That is what Parliament is all about. *[Interruption]* If we feel, Mr. Speaker, that there are issues that are embarrassing to the Government, but that they must be raised in the public interest, I ask the Government to allow us to raise them; and I hope that in the near future, Mr. Speaker, rather than little two-page Bills and one-page amendments, that we will see a comprehensive review of our laws dealing especially with murder and other indictable offences. A comprehensive review, plugging all of the loopholes, rather than just one loophole every Friday. I hope that is what we will see, rather than this slipshod, flippant, piecemeal and erratic approach to legislation as we have seen today.

I thank you, Mr. Speaker.

Mr. Valley: Mr. Speaker, I simply want to give notice that we intend to move certain amendments at the committee stage. We are just trying to have those filed with the Clerk in time for the committee stage.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, again in such a serious matter we are seeing that some of the contributions, particularly, that of the Member for Diego Martin East, have shown that they are really bankrupt of ideas; they have lost all direction; they cannot recover from the defeat of the general election; they have decided to come here and make false statements and innuendoes.

Mr. Imbert: What!

Hon. R. L. Maharaj: I will deal with some of the statements made by the Member for Diego Martin East, but I would like to give notice to him that the statements he made here were totally untrue and I would like to put it on the record that, since he is a Member of this House and if he checks, those statements are untrue.

Mr. Imbert: Which statements?

Hon. R. L. Maharaj: He has certain duties which he ought to fulfil, but I will come to that later on.

Mr. Speaker, the Member for Laventille East/Morvant talked about the Indictable Offences Act being amended in 1994, and said that the Government of the day dealt with reforms and tried to suggest that it was, again, a government idea. But, Mr. Speaker, the 1994 amendment dealt with the question of the use of written statements given by witnesses at preliminary enquiry hearings. It permitted for these written statements to be tendered in evidence provided the accused, or counsel for the accused, agreed to such a course.

Mr. Speaker, the Opposition at that time supported the legislation. When the Bill was initially put out for public comment, or it was introduced in the House, the Opposition asked for certain safeguards in the Bill and as a result of the safeguards given by the then Government, the Opposition supported the Bill. It is not correct for it to be said, or for the impression to be given, that the then Opposition opposed the Bill. The measure could not have been passed without the support of the Opposition.

3.35 p.m.

It is very significant, however, that even though the Government of the day introduced that measure, it did not address the issue of depositions being lost or destroyed and certified copies being used as evidence. One would have thought, especially in the light of what the Member for Diego Martin East said about witnesses being killed, depositions being stolen or lost, and criminal justice being subverted, that if the PNM administration was truly committed to improving the administration of criminal justice, they would have, in effect, taken steps to do that, but, they did not do that. That is a matter of history and record.

Mr. Speaker, that is why one has to always ask the question: Can it be concluded from all the evidence that the PNM government was really interested in dealing with the crime and drug situation? The public would give that answer, but the reasonable inference to be drawn was that since the then government did not do that, the public gave the answer. That is why there was a change in government in Trinidad and Tobago. If one wants evidence, that the PNM government was not interested in dealing with the drug trade it is in the election results. It was not interested in dealing with crime. The Member for Diego Martin East was not interested in dealing with corruption, he was probably more interested in the gold trade. We do not know, but it may be.

Mr. Speaker, it is easy to get up and say things and make innuendoes, but when it comes to discussing the issues neither the Member for Diego Martin East nor any of his colleagues—with the exception of one or two on some points—really dealt with the measure. Their strategy seems to be one of diversion, bacchanal and trying to create confusion in the minds of the population.

Mr. Speaker, they talked about trust and confidence. The Member for Laventille East/Morvant said that the people must have trust and confidence in the judicial and legal system. That is exactly what we were saying whilst we were in Opposition. We were saying that unless the population was convinced that the government of the day was honest and truly committed to uplifting the lives of the people in Trinidad and Tobago, then no legislation would have any effect in dealing with the crime situation. That is why today, in Trinidad and Tobago, after just 100 days of this Government of national unity, from the statistics—not from bacchanal or old talk—one can see that the crime rate has gone down and there has been an increase in the detection of crime. *[Desk thumping]* Members on the other side should not get up and talk off their heads without checking their information or the records at the office of the Commissioner of Police and the

Ministry of National Security which would show that the crime rate has gone down and the rate of detection, especially with respect to robbery and some white collar crimes, has gone up. *[Interruption]* If the Member for La Brea asks a question he would get an answer. The Member also knows that there is a way to ask it.

Mr. Speaker, I would like to try to explain, in layman's language. It seems that although there are lawyers on that side they do not really understand the import or purpose of this Bill.

If a witness who has given evidence at a preliminary enquiry is killed, and if the deposition is stolen or lost and the witness who can give evidence of the secondary nature of the primary evidence is also killed, or is dead, then under the present system the case would collapse no matter how strong the prosecution's case is. What this Bill seeks to do is to permit that where a deposition is taken and there is a certified copy made of that deposition the magistrate, or the judge, must accept that document as if it were an original. That is simply what this measure is about.

I took the trouble to explain the difference between a private document and a public document. I took the trouble to explain that this measure is subject to section 26(3), and I was surprised when the Member for Toco/Manzanilla got up and read when he talked about section 26(1), (2) and (3). The amendment states that:

> "Notwithstanding section 26 (1) and (2) but subject to 26 (3), where the original deposition or part thereof, or any document mentioned in that section is lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held, shall be regarded as the original deposition or document as the case may be and dealt with as such for purposes of this Act."

And 26(3) deals with the question of how a private document and a public document are to be dealt with.

Mr. Speaker, a point was raised that suppose the Clerk of the Peace dies. Well, I thought that was clear, and lawyers on that side should know—it happens every day—that in respect of documents which are in the custody of a public official who dies does not prevent the documents from being admitted into evidence. Under section 39(2) of the Interpretation Act which states that:

"In a written law a reference, without qualification, to the holder of any office includes a reference to any person for the time being charged with the execution of the powers and duties of the office and, in particular—

(a) words in a written law directing or empowering the holder of an office to do any act or thing, or otherwise applying to him by the name of his office, apply to his successors in office and to any person duly appointed to act for him;

(b) where a written law confers a power or imposes a duty on the holder of an office, as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office."

Mr. Speaker, it does not matter if the Clerk of the Peace is dead or alive, the fact of the matter is that as long as it is certified by the Clerk of the Peace—not only whilst he was alive, but any other Clerk of the Peace—the document is admissible into evidence. That is why this measure is being introduced. The measure is being introduced to ensure that if witnesses, Clerks of the Peace or persons who know of the evidence die, the evidence could be put forward so that the public can be protected through the administration of the criminal justice system.

3.45 p.m.

Mr. Speaker, if one is discouraged easily, one could become very frustrated. When I assumed office as Attorney General, there were matters which came up, and one of the matters which came up deals with the point made by the hon. Member for Laventille East/Morvant. One probably does not understand how difficult those responsibilities are. I would give an example of one of the matters. The hon. Member for Laventille East/Morvant talked about the Preliminary Enquiries Act. Although the Act was amended and its purpose was to expedite the criminal justice system, up to the time the PNM left office no machinery was put in place to implement it. As a matter of fact, no machinery has been put in place to have the statements duly certified. Police officers have not been trained to take the statements in that particular way. No lawyers have been assigned to the police department to do that. The objects of the Act are totally frustrating.

As a matter of fact the hon. Chief Justice talked about that at the opening of the lower courts in October 1995. Although the Act has been passed it is of no

use because the government of the day did not take the necessary steps to have it implemented. We have taken the step.

Mr. Hinds: Thank you hon. Attorney General and Member for Couva South. This is why very early in my presentation if you recall, I indicated that there are a number of factors responsible for the circumstances which exist in Trinidad and Tobago today. I highlighted them. They are the general state of inefficiency, tardiness and bad work attitudes. We understand they are contributory factors.

Hon. R. L. Maharaj: They were in government, but they were incompetent and had no commitment to deal with it. We are dealing with it, but they have the brass face to get up there and talk about these issues.

However, there was one point made by the Member for Laventille East/Morvant that I think is worth consideration. I wish to assure him that the necessary administrative machinery would be put in place to ensure that the implementation of this Act is not frustrated. I agree with him that it would not make any sense passing this Bill if machinery is not put in place in the Magistrates' Courts to have the depositions after they are taken for the necessary photocopies to be made, for the necessary certificates to be placed and even for them to be safely kept, so that there would not be frustration in the implementation of the Act.

The hon. Member for San Fernando West asked for certain amendments to be considered. The hon. Member for Siparia dealt with his concerns. I hope he is satisfied with that, but may I say that if his amendments are inserted they would frustrate the intention of this section; make it very bureaucratic and it would defeat the purpose of the section. The purpose of the amendment is to ensure that where there is a certified copy it would be admitted by the court in the same way as if the original were there.

The Member for Toco/Manzanilla talked about bad drafting. I must confess with the greatest respect to him that not only did I have difficulty following him, but also his views on drafting cannot be accommodated because if they are, they would contravene all the rules of drafting. In drafting one does not draft for the weight of evidence but for the admissibility of evidence. I would like him to know that this Bill is not only considered by the office of the Attorney General, but also by the Law Commission and the Chief Parliamentary Counsel. If he is saying that the drafting is bad but he recognizes that it is not bad, I hope that he would apologize to the legal officers in those departments. He has not even put a draft as an amendment. That is how they operate. He is talking about an

amendment in such a slipshod manner but does not circulate a draft. I am very surprised that the hon. Member for Toco/Manzanilla would deal—

Mr. Boynes: As far as I understand the proposed amendments are to be circulated by the administration. I have given it to them for the kind consideration of this honourable House.

Hon. R. L. Maharaj: I am sure that the hon. Member for Toco/Manzanilla would know—and he is also a lawyer—that according to the rules and practice there are special ways for these things to be dealt with. I know they would be circulated later on. If he is going to talk about an amendment he should have it prepared. As a matter of fact, I would have thought that lawyers would prepare their work in that way. Having regard to the leadership that he has I do not blame him.

In respect of the hon. Member for Diego Martin East, I would like to put on the record that in relation to what he has said, in the 1980s the Member for Couva South exposed the then PNM Government for being involved in the drug trade. As a result he was prosecuted. One of the prosecutions was a conspiracy for murder charge together with another charge. Those matters were heard at the San Fernando Magistrates' Court before the Chief Magistrate at the time, Mr. Lincoln Dwarika. The prosecution did not adduce any evidence although the magistrate gave an opportunity and ordered them to adduce the evidence. No witness was stayed. As a matter of fact the witness who was supposed to give evidence indicated that he was bribed by the state to lie. The matter was dismissed because the prosecution could not have proven it. Because of the allegations made by me in my capacity as President of the Human Rights Bureau, the PNM Government of the day was accused of being involved in the drug trade.

Mr. Speaker: Hon. Members, this is serious business. The whole point is that the Member for Couva South is responding to a serious matter with respect to implications which were made. I think that he should be allowed to make that for the sake of the record.

Hon. R. L. Maharaj: There was a judicial determination of the matter. The state did not take any further steps in the matter and the Member for Couva South filed an action against the state for malicious prosecution.

There was another set of harassment by the PNM Government. I want to get it clear in order to show that the Member for Diego Martin East deliberately misled this House on such false statements. The Member for Couva South was

prosecuted on six criminal charges after his law office was searched shortly after he accused the then Prime Minister and the Members of the Cabinet of being involved in the drug trade. A witness by the name of Mervyn Hall was recruited by the state and paid money to give evidence in the Magistrates' Court. After he gave evidence—*[Interruption]* It was no question that any witness died. It was before the court and the magistrate considered the prosecution's evidence and dismissed the case. Subsequently, Mervyn Hall was killed after he gave evidence. I am coming to the killing now. There was an inquest into the death of Mervyn Hall. His Worship Mr. Melville Baird made a judicial finding that he was killed by a policeman whom he attacked whilst robbing a grocery. That is the matter of record. This hon. Member for Diego Martin East comes to this House and makes these statements without any evidence. I ask him to take the honourable decision and do what he is supposed to do when he considers the matter.

Hon. Member: Is the threatening people?

Hon. R. L. Maharaj: I am not threatening the Member. I am advising him.

3.55 p.m.

Mr. Speaker, I would like to say that I am very fortunate that I have seen the law on all sides. I have seen the law as a student. I have seen the law as a lawyer. I have seen the law as an accused. I have seen the injustice which can come from the administration of law and I am very privileged to have seen it that way. I know how people can be harassed, even by governments. I know how the prosecution process can be used and even manipulated for political purposes. That is why this administration is committed in its legislative plan to have all the necessary safeguards to ensure that power is not misused and abused.

We on this side of the House know that when we attempt to promote integrity in public life, we would be attacked, and there will be all forms of attack. We on this side of the House know that as we attempt to deal with the drug trade, we will be attacked, in this House and out of it. We know the person or persons who can be involved in those attacks. We also know that when, as we have started to do, we attempt to deal with organized and white-collar crime, we will be attacked, but attacks do not cause us to be scared. *[Interruption]*

We on this side of the House know that we do not have anyone who, as a Minister ... *[Statement expunged from the record]*.

Mr. Valley: Mr. Speaker, I rise on a point of order. I refer to Standing Order No. 36(5). The Member is imputing improper motives.

Mr. Speaker: The hon. Member has risen on a point of order claiming that Standing Order No. 36(5) has been contravened by the Member for Couva South who has imputed improper motives to him, he being another Member of this Chamber. To suggest that he did something improper by doing certain things— *[Interruption]* Gentlemen, allow me to deal with this, please. For the Member for Couva South to suggest that he did something improper by doing certain things would in fact fall under Standing Order No. 36(5) and I rule that it be expunged from the records.

Please proceed.

Hon. R. L. Maharaj: Mr. Speaker, since there can be no basis for any allegation that this Government is really not serious about dealing with crime and the drug trade, and since this Bill is a measure to redress any injustice which can be done to the state if persons are involved in stealing depositions or causing them to be destroyed, I think that the Opposition should have come to this House and said, "Listen! We support this measure." But they have come to this House, not to get involved in the issues.

I say, in conclusion, that the reason is that they have not been able to deal with the crime situation. They were not interested in dealing with the crime situation. They were not interested in procedural reform to prevent the frustration of the criminal justice system; they were interested in having the criminal justice system subverted. All they are interested in is character assassination.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

Mr. K. Valley: Mr. Speaker, I know it is early for tea time, but we are just getting the amendments copied. I wonder whether we can have some time, or take tea at this time.

Mr. Speaker: Member for Couva South, do you have any objections?

Hon. R. L. Maharaj: I do not have any objections to giving them more time so that they can draft their amendments.

Mr. Speaker: I am sure that a break at this time will also have the effect of allowing tempers to cool.

Hon. Members the sitting is suspended for half an hour.

4.05 p.m.: *Sitting suspended.*

4.45 p.m.: *Sitting resumed.*

House in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mrs. Robinson-Regis: Mr. Chairman, I beg to move that clause 3 be amended as follows:

"In line 4 insert instead of 'that section', 'section 26.'"

Mr. Maharaj: Mr. Chairman, I think that clause is quite clear in the way it is drafted because 26 is the section and 26(1), 26(2) and 26(3) are the subsections. As a result, I do not think it is necessary. I have been advised that it is the modern way of doing things. I therefore ask that the Opposition reconsider that amendment.

Mrs. Robinson-Regis: Mr. Chairman, our argument is that in the last mentioned section 26(3), it may be construed that that section refers to 26(3) only, and not section 26 in its entirety. That is why we have suggested that amendment.

Mr. Maharaj: Mr. Chairman, I am glad that the hon. Member mentioned that, because 26(3) is not a section it is a subsection, 26 is the section.

Mrs. Robinson-Regis: We are aware of that.

Mr. Valley: Mr. Chairman, then we would need to make a correction in line 1, where reference has been made to section 26(1) because that also is a subsection.

Mr. Maharaj: Mr. Chairman, "Notwithstanding section 26(1) and section 26(2)"—

Mr. Valley: Then one would have to say "Notwithstanding subsection 26(1)".

Mr. Maharaj: It says 26(1), 26(2) and 26(3) so when it refers to that section it refers to all the subsections in the section.

Mr. Valley: I have to agree that it is not clear. The same way the Attorney General thought it necessary, because there was doubt with respect to the Rent Restriction Act, to clarify this I suggest, that in fact, this says 26A.

Mr. Maharaj: Mr. Chairman, I do not want to go into the Rent Restriction Act because that is a different matter entirely and I will deal with it at that stage. I must state, however, that this is quite clear and we regret very much that we cannot accede to the Opposition's request.

Mr. Valley: We do not have a problem, Mr. Chairman, if we have to come back here and change it next year, again, it is the Attorney General who would look bad.

Mrs. Robinson-Regis: Mr. Chairman,

"In line 5 insert 'the said deposition' instead of 'the deposition.'"

Mr. Maharaj: Mr. Chairman, again, "said" is really the ancient way of doing things and in any event it would just have the effect of confusing the whole section. This is very clear and it does not add to the clarity, therefore, I regret very much we cannot accede to that request.

Mrs. Robinson-Regis: Mr. Chairman, if they do not want to accept the amendment we have no difficulty with it. We were not aware that they were against accepting the old amendment.

Mr. Maharaj: Mr. Chairman, we do not want to amend for amending sake.

Mrs. Robinson-Regis: Mr. Chairman, we are suggesting an amendment for the sake of clarity, but if the Government is of that view, I do not think it is detrimental to the legislation.

Mr. Maharaj: Mr. Chairman, it really does not add to the clarity. With the greatest of respect to the hon. Member, I really do not think, and I regret very much that we cannot accept that request.

Mrs. Robinson-Regis: Mr. Chairman, in the next line it is a similar amendment:

"In line 6 insert 'the said document' instead of the document.'"

I assume that the argument is the same.

Mr. Maharaj: Mr. Chairman, it really does not add to the clarity and we regret very much we cannot accede to that request.

Mr. Robinson: Mr. Chairman, we have noticed the difference in style.

"In line 7 after the word, 'the Peace' insert the words 'and the Magistrate or either of them.'"

Mr. Maharaj: Mr. Chairman, could the hon. Member give reasons for that amendment?

Mrs. Robinson-Regis: Mr. Chairman, as was argued during the debate, we are of the view that the issue should not simply rest with the Clerk of the Peace, essentially, it should be with both the Clerk of the Peace and the magistrate in the magisterial district. Therefore, the legislation should particularize that the Clerk of the Peace and the magistrate should be responsible for certifying the document or the deposition.

Mr. Maharaj: Mr. Chairman, if the Clerk of the Peace and magistrate are included that would just increase the bureaucracy. In any event, having regard to what I stated in the provisions of the Interpretation Act, there is continuity with the Clerk of the Peace.

Mr. Panday: Mr. Chairman, I think the point raised by the other side was: Should the Clerk of the Peace die. They thought, mistakenly, that the Clerk of the Peace who was present at the time when the deposition was made is the person to certify. That is not necessarily so, because if he dies— Which Clerk of the Peace will die? If a Clerk of the Peace died last week and another one took over this week, then the notes would be certified by "the" Clerk of the Peace and it says quite positively that it is "certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held,...". That is a more permanent office than that of the magistrate.

4.55 p.m.

Mr. Valley: Mr. Chairman, as a layman let me just ask: how is this then to be certified, if the original document is lost or destroyed? If the Clerk of the Peace who saw the original document is dead, how would this new Clerk of the Peace be able to certify the document when the original is lost?

Mr. Panday: The Clerk of the Peace certifies all office copies of documents emanating from the Magistrate's Court, for example, notes of evidence and so forth.

Mr. Maharaj: Mr. Chairman, if I may further explain. That is the reason it is regarded as a public document, that is to say, it is in the custody, not of the person—the Clerk of the Peace—but the office holder of the Clerk of the Peace, so it does not really matter here.

Mr. Valley: I understand all of that. As a layman I just want to understand. There was an original document that was lost, the Clerk of the Peace who saw

that document is also dead, we are approaching 10 years later and we do not have the original document but we are coming to certify a copy, how do we know that that is a true copy? I thought that there would be some type of certification of the copies at the same time when one sees the original. There are copies made and they are certified as true and correct by the Clerk at that time and they are kept separated from the original otherwise I do not know how we are ever going to be able to get a copy certified if the Clerk is dead.

Mr. Maharaj: Mr. Chairman, as long as the record was in the official custody of the court, the Clerk of the Peace at the time or anybody subsequently can certify the documents. Even though the document may not have been signed at the time but it was in the custody of the court, the Clerk of the Peace can certify that that is a copy of the document.

Mr. Bereaux: Mr. Chairman, maybe the problem is that if you look at section 26B(1) that might indicate the reason why there is some concern about having the document certified at the time. Section 26B says,

> "The Clerk of the Peace shall upon receipt of the original deposition or any document mentioned in section 26(2) prepare or have prepared duly certified copies of such depositions or documents."

Which implies that that would be done on or about the taking of the depositions—yes, I know that is why I am explaining that maybe the two things need to be considered.

Mr. Panday: Mr. Chairman, I see the point being made by the hon. Member for La Brea. I think the point the Member is making—please tell me if I am wrong—is that these depositions are taken in handwriting; after taken in handwriting they are re-read to the witness; signed by the witness and then signed by the magistrate not the Justice of the Peace. The Member is then saying that if this document is now sent to the DPP's office and it gets lost in the DPP's office, what would be certified as correct? So, that is a good point. The problem is, therefore you do not need the question of "and the Magistrate or either of them".

The point being made for the new section 26B is that it really should be done administratively and not in the Act because it opens a door and a loophole for defence counsel to take the point that the procedure was in some way not followed identically as the law proposed in section 26B which says:

"The Clerk of the Peace shall upon receipt of the original deposition..."

What does that mean? Does it mean when the court is finished? Or, any document mentioned in section 26B(2) which says:

> "...prepare or have prepared duly certified copies of such depositions and documents."

I agree that that should happen. I do not think that it belongs to the Act because you open up all kinds of loopholes. "The Clerk of the Peace shall upon receipt..." Receipt, what? Six months later. Receipt, how? Because the notetaker is taking it; he has it in his possession; it becomes part of the court files and the Clerk of the Peace may not see that at all.

Mr. Hinds: Well, it is the Clerk of the Peace who has to duly certify according to your amendments.

Mr. Panday: Administratively, you are right. I did not think that you could put it in the Act because when you put in the Act you open up avenues for challenge.

Mr. Hinds: How?

Mr. Panday: Because the Clerk of the Peace may not have done it upon receipt. He may have done it two or three days later—

Mr. Hinds: Upon receipt means as soon as it comes to hand. That is the point.

Mr. Panday: So if he does it two or three days later a lawyer takes a point and says that it was not done upon receipt, it was done three days later. That is my point. You are creating loopholes that do not exist.

Mrs. Robinson-Regis: Are you arguing therefore that it would make the document invalid?

Mr. Panday: Yes, it may make the certification invalid.

Mrs. Robinson-Regis: What about the first point that is being raised that if the document is lost or destroyed who is going to certify the validity of whatever document is brought for the Clerk of the Peace?

Mr. Panday: A copy of it is made but as an administrative act certified by the Clerk of the Peace—and these are directions given to the Clerk of the Peace where depositions are taken you must immediately make a copy and certify it as being correct, send the original to the Clerk of the Peace and keep a copy down here. That is the key. That is an administrative act. Once you put it into the law

you open the door to challenge, that is to say, when you try to put a copy of the depositions in two years after the trial the defence lawyer says, "Sir, that is not admissible because the law says: "The Clerk of the Peace shall upon receipt..."

But he did it two days later—not upon receipt—he received it on the 2nd and he copied it on the 3rd and therefore he violated the law. You are opening loopholes which might not be there. That is my simple argument.

Mr. Valley: I wonder whether the hon. Prime Minister would simply tell this layman again what assurance one can have, if that is merely an administrative role, that it would be followed. It seems to me that if it is in the legislation, it is there for all to see. But it is not likely to be followed if one leaves it as an administrative procedure. My fear is that it may not be done in some cases and we are back where we have started.

5.05 p.m.

Mr. F. Hinds: Mr. Chairman, 26B(2) is incomplete to the copy you have here. After certified copy it reads, “He shall be accountable for his production and safe custody”. I am saying that when we sent this around, those three lines were left out inadvertently.

Mr. Panday: Should there be a comma, semi colon, full stop?

Mr. Hinds: A comma. No. I think a full stop. “He shall be accountable for its production and safe custody.” What we are saying is that the Attorney General recognized in the debate the importance of this administrative procedure for the effective operation of the legislation and we are considering that it is sufficiently important to find a place in the legislation.

Insofar as your submission is concerned, Member for Couva North, I think that if such a document will ever be challenged, it will have to be on the grounds of its admissibility, whether it was a duly certified copy or otherwise. That will be the crux of the issue before the court. Even if it came two days or three days after, the proposed amendment is saying once it comes to hand, it should be copied and duly certified.

Administratively, it may come a day later. What happens, in fact, is that the magistrate as you have described, properly prepares the notes, the witness signs and it becomes a deposition which is then passed to the Clerk of the Peace. Whether it is passed on the same day or the following morning I think that is really immaterial. It is when it comes to hand. What we are saying, is that once it comes to hand, it should be copied and duly certified.

Mr. Panday: That is not what the Member is saying. What the Member is saying is that upon receipt he must make a copy. That is what he is saying. If I were—I am sorry, I do not do criminal cases.

Mr. Hinds: Even if an Attorney argued that it was not done as soon as he got it, that it was done an hour later, or a day later, in fact, I think that that would hardly ever be an issue. What would be an issue according to this—

Mr. Panday: Why create one when there is none?

Mr. Hinds: Well there is none, and none is being created.

Mr. Panday: Why create that it may or may not be and so forth? It could be left like that and administrative instructions to issued magistrates, or Clerks of the Peace that whenever depositions are taken, copies must be made before originals are sent to your DPP and those copies must be certified and kept at the magistrate's court so that they are in two places. But that is an administrative act.

Mr. Hinds: I accept that this is largely an administrative procedure. I am submitting however, that it is sufficiently important particularly in the light that the Attorney General conceded, if this whole thing is to work right, to be legislated for. Particularly the latter part of the second part of the amendment that I am proposing here—26B(2) which speaks about the accountability for production and safe custody. In other words, one has to have a record of what one has kept and the Clerk of the Peace has a responsibility for production. So when one Clerk of the Peace moves on, he hands over those. It is going to be very important in the years ahead, so he has to properly hand over the records that he has, which must be ascertained by the in-coming Clerk of the Peace. This is sufficiently important otherwise this legislation will be rendered toothless.

Mr. Panday: You are creating complications. Tell the Clerk of the Peace upon receipt of the original he shall make copies and be accountable for his production. That may well mean the Clerk of the Peace who made the copy.

Mr. Hinds: No. On your argument previously it means the office of the Clerk of the Peace, it cannot mean a different individual.

Mr. Panday: That is my point. Once one put "he" one is referring to the same person.

Mr. Hinds: I think not.

Mr. Panday: What I am trying to tell the Member is that he is creating a situation for confusion in the law when there need not be any.

Mr. Hinds: So the Member submits that it is better to leave that up to—

Mr. Panday: An administrative act where the Clerk of the Peace is instructed that he must send these to the DPP. Before doing so, however, he must make copies and certify them.

Mr. Hinds: With the greatest respect, Member, I beg to disagree, but of course, the majority of this committee will have its way.

Mr. Maharaj: What I think is probably trying to be safeguarded is the possibility that there can be any manufacturing of depositions. What I would suggest is that in order to prevent any such thing, to make it absolutely clear and to make it fair, instead of what is suggested in line 7 after the word "Peace" we read "lost or destroyed, a copy of the deposition or part thereof, or of the document, duly certified by the Clerk of the Peace of the magisterial district in which the preliminary hearing was held, or the examining magistrate". Because the magistrate, in any event signs the depositions and a photocopy of that will show that it is certified by the magistrate.

Mr. Panday: That is it.

Mr. Hinds: A magistrate is not certifying the document, what the magistrate is doing is causing it to become a deposition that he witnessed was taken. What we are talking about is that the copy needs certification as a copy of the original. So I beg to disagree.

Mr. Maharaj: The deposition when it is signed by the magistrate can also be certified. There can be administrative rules that he certifies the depositions at once and make photocopies. But those are administrative matters. In legislation, we can only deal with the question of who are the office holders on the basis of their signatures, and the office they hold can regard the documents as being out of an official custody. That is why I would suggest that as a form of compromise and as a form of making it certain, there are no possibilities of abuse that after "held" we have "or the examining magistrate". In any event, many administrative arrangements would have to be made for this and when we come to deal with your amendment in 26 B(1) and (2), we can deal with some of those arguments. But if we can get rid of this amendment, at this stage, I hope we will be able to go with that.

Mrs. Robinson-Regis: Can the words "or the examining magistrate" which are the words that the Member are suggesting, not be better placed after "Clerk of the Peace"?

5.15 p.m.

Mr. Maharaj: With the greatest respect, it cannot be as suggested. It reads:

"... duly certified by the Clerk of the Peace of the magisterial district in which the preliminary enquiry was held", it should be "or by the examining magistrate". It cannot be before.

Mrs. Robinson-Regis: We have no difficulty with that.

Mr. Chairman, we are of the view that, in line 8, the words "be regarded" should be deleted and the words "have the same effect" inserted after "shall".

Mr. Maharaj: Mr. Chairman, what is the purpose of that proposed amendment? It says:

"... shall be regarded as the original deposition or document as the case may be and dealt with as such for the purposes of this Act".

It is just a difference in style.

Mrs. Robinson-Regis: Mr. Chairman, it may be a difference in style but we feel that our suggestion sounds a bit more legal. We feel more comfortable with this. It does not change the sense of the legislation and it is not something that we would fight over.

Mr. Maharaj: Mr. Chairman, since the hon. Member admitted that it would not change the sense, and having regard to the advice I have had on this, it is better to make it quite clear and it is made quite clear as it reads.

Mr. Bereaux: I see the Member's point, but that may be the words to use.

Mr. Maharaj: The court is regarding the certified copy of the deposition as if it were the original so "regard" is the word.

Mrs. Robinson-Regis: Mr. Chairman, our proposed amendment is that in line 10, the words "dealt with as such" be deleted and replaced by the words "dealt with as though it were the original deposition or document".

Our argument with regard to this proposed amendment is really for the sake of clarity and for the effect of specificity.

Mr. Maharaj: Mr. Chairman, I think the hon. Member should look at the whole context in which it was said. It reads:

"... dealt with as such for the purposes of this Act"

It means that the certified copy will be regarded as the original for the purposes of the Act so it does not change anything, so I think it could be left as is.

Mrs. Robinson-Regis: Mr. Chairman, it is not something that we would fight over but we felt that the drafting was better done in the way that we proposed.

This amendment as stated had basically been argued previously when we dealt with the amendment in line 7. Our contention is that it is necessary for the Clerk of the Peace to certify the copy upon receipt of the original document because there will be difficulties if he has to certify what is presumed to be a copy if the original is already lost. We feel that it is imperative that the legislation states quite clearly what the Clerk of the Peace has to do when he receives the original document, so there would be no question as to whether the document he certifies is in fact a true copy of the original document. Once he has seen the original document, he should have it copied and then have that copy certified. That basically is our view of why this clause should be amended as proposed.

Mr. Maharaj: Mr. Chairman, it is not right to put into legislation matters of administrative procedures. If this is done and for some reason the procedures are not followed, the effect of not following the procedures can lead to the point being taken that the certification was not proper and was *ultra vires* the Act. Therefore, I would like the Opposition to reconsider its position. These are really matters for administrative requirements and I give the undertaking that we would see that the necessary administrative machinery is put in place. If it is put in the Act we would just be counter-productive and acting against the intention of the Act, and one knows the kinds of points lawyers can take, as they would be entitled to.

The fact of the matter is that we should not, as a Parliament, pass legislation and create administrative machinery which may not be followed or which could cause frustration.

Mrs. Robinson-Regis: Mr. Chairman, we are of the view that the necessity for the document being certified at a particular point is so important that it should be included in the legislation. We feel that if a document is presented and it is not the same as the original, the original having been lost, then a difficulty is created with regard to that particular document.

5.25 p.m.

We had intended to ask for the undertaking he gave. If this amendment is not included, he should give us the undertaking that the administrative machinery

would be put in place to ensure that we did not have a problem where the original was already lost and a copy was never certified, because we feel that is really what this section is attempting to ensure—that what is certified is a true and exact copy of the original. It really makes no sense. If the original is lost then what do we have? So we are trying to ensure that this is not what happens and find ourselves in the same position which the amendment is trying to cure. That is our difficulty.

Mr. Panday: The only argument was that if it was an administrative act, once it is produced as a certified copy, it is acceptable. If you put that in, when it is produced, it is going to be examined against this.

Mr. Valley: We understand that. What I am saying is that we need some assurance, and I think the population does, that in fact, if one is having it as an administrative procedure, it is going to be followed each and every time. If it is in the legislation, then the Clerk of the Peace has constructive notice of it and has to follow it. The likelihood that it would be followed has to be much higher than if it is simply an administrative procedure. We know that administrative procedures are not followed from time to time; and if that happens in this case, then we are back to square one. That is the point we are making.

Mr. Maharaj: Mr. Chairman, I think what must be remembered is that we acceded to an amendment which indicates that the examining magistrate has signed it. I indicated then that what we will have is an administrative procedure whereby the depositions are photocopied and they accept that before they are even typed. Therefore, in any event, the Chief Justice as administrative head of the Judiciary would be advised and the necessary instructions would obviously be given so that magistrates taking these depositions would know what sort of procedures to adopt. I give you the undertaking now that the necessary administrative machinery would be put in place *[Interruption]* If the Member goes with this, what happens with all the documents that have already been done?

If any one has to be admitted, we would be tying up the whole system, so that is why I do not think we should go with it. Under the existing law, after the Magistrates' Court it goes to the DPP's office, but under the new system although the original goes, there will be copies in the Magistrates' Court and at other places.

Mr. Chairman: Does that, therefore, mean that 26B(1) and 26B(2) can go by the board?

Mr. Hinds: Well I want to stress the point in respect of 26B(2). This to my mind—

Mr. Chairman: Okay, let us just move out 26B(1) and we now go to 26B(2). Yes.

Mr. Hinds: I submit that the question of production will be a critical one at some later stage. Where the original is lost or destroyed, then the question of the production of the certified copy will become crucial. Of course, if that is foreseeable then the question of safe custody is also crucial. I submit, because of the importance of that, if you did not put a really serious administrative procedure in place and take care of the question of production in the future and safe custody in the interim, it will render the entire amendment otiose, or as you would say Member for Couva North, "oshiose". However, because of the significance of this and because it is so intrinsically bound up in the success of this amendment, it should be legislated for—the question of the accountability for its production and safe custody. That is all I am saying. And impose some kind of duty on the Clerk of the Peace.

Mr. Maharaj: There is already indicated in the Act that the Clerk of the Peace must transmit all the depositions to the office of the DPP.

Mr. Hinds: Originals?

Mr. Maharaj: Yes. And the Office of the Director of Public Prosecutions then has the custody of the original documents. The person who has custody of the originals has the duty. The duty is there to produce the original documents. If the original is lost the administrative procedure that I mentioned would be that the Clerk of the Peace would have records and there are other institutions which—one does not want to say these things—would also have certified copies.

Mr. Panday: For example, if I may respond, Sir. Suppose the police have their docket and there is a copy in the police docket, we want the law to be such that it could be produced from the police docket, that is, a certified copy. Because the police may require a certified copy for their own files and a deposition coming out of the police docket, certified as required by law, should also be admissible in evidence. The Member is assuming that only one copy will be made. Several copies may be made. It has to be so, otherwise this does not make sense: “He shall be accountable for its production.” So unless the Justice of the Peace produces it, nobody else can; and we are saying, no, a policeman should be able to produce it as well. That is my humble argument.

Mr. Chairman: The question therefore is, hon. Members, that clause 3 be amended by inserting after the word "held", "or by the examining magistrate" between the words "held" and "shall" in the fourth to last line.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

5.35 p.m.

Mrs. Robinson-Regis: Mr. Chairman, before the Bill is reported to the House, I would like to raise a question. I know we are not dealing with the Evidence Act, but in the Second Schedule it states the ministries or departments and the name or title of certifying officers. I am wondering if there may be a necessity to have a consequential amendment to the Evidence Act based on what we have done with this particular piece of legislation, because section 22 of the Evidence Act states quite clearly what would be considered as certified copies of documents which are admissible as evidence.

Mrs. Persad-Bissessar: In civil proceedings?

Mrs. Robinson-Regis: I think it is all documents, so it can be civil or criminal. We are of the view that, perhaps, the Government may need to look at this and determine whether the Second Schedule, based on what we have done today, may have to be amended.

Mr. Maharaj: Under 26(3), it is regarded as a public document and is certified. So, it is dealt with specifically under 26(3).

Mrs. Robinson-Regis: Yes, but I still do not know if that answers the question.

Mr. Maharaj: But I wish to give the Member the assurance—

Mrs. Robinson-Regis: —because the Second Schedule specifies all the officers and officeholders whose certification of a document would cause that document to be considered admissible and I fear that if we do not do that we may have a difficulty in the Evidence Act.

Mr. Panday: If we do not put 'Clerk of the Peace' in there?

Mrs. Robinson-Regis: Yes, we should put Clerk of the Peace in the Evidence Act.

Mr. Maharaj: We would look at it.

Mrs. Robinson Regis: It is not something that has to be done immediately, but it can be looked at.

Question put and agreed to, That the Bill, as amended, be reported to the House.

House resumed.

Bill reported, with amendment; read the third time and passed.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House do now adjourn to Friday, March 22, 1996, at 10.00 a.m.

Mr. Speaker, may I announce that by agreement, we have decided to sit from 10.00 a.m. and we would not have Private Member's day on the 22nd but we would have it on the following Friday, March 29.

Mr. Valley: What would we be dealing with on that day?

Hon. R. L. Maharaj: Bills Second Reading: the Habeas Corpus (Amdt.) Bill, the Jury (Amdt.) Bill and if we have time we would do the Evidence (Amdt.) Bill.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.42 p.m.