HOUSE OF REPRESENTATIVES

Friday, August 2, 1996

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to indicate that I have received communication from the Member for Port of Spain South (Mr. E. Williams), the Member for San Fernando East (Mr. P. Manning) and the Member for San Fernando West (Mr. B. Sinanan), all asking to be excused from today's sitting of the House. Leave is indeed granted to them.

NEWSPAPER REPORT

Mr. Speaker: I bring to the notice of hon. Members that an article appeared on page 5 of today's issue of a local weekly newspaper, *the Independent,* which *inter alia* invites others to be associated with a contest which "disparages and humiliates powerful and influential Members of Parliament".

The general permission given by the Speaker, under Standing Order 88, to a representative from a newspaper or other medium of public information to attend the sittings of the House, is intended to facilitate serious, accurate and responsible reporting of House proceedings, and is certainly not for purposes of fun, of being scandalous, or of reflecting on the character or proceedings of the House.

Accordingly, counsel will be sought as regards the offensive publication after which appropriate action will be taken.

It is important, hon. Members, that as we mark yet another anniversary of an impudent armed assault upon our Parliament, we remain ever vigilant and guard against efforts to demean the House of Representatives which remains one of our country's symbols of democracy.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1993. [*The Attorney General (Hon. Ramesh Lawrence Maharaj)*]

2. Report of the Auditor General on the accounts of the Public Library of Trinidad for the year ended December 31, 1994. [*Hon. R. L. Maharaj*]

3. Report of the Auditor General on the public accounts of the Republic of Trinidad and Tobago for the year ended December 31, 1995 and on other Selected Audit Activities. [*Hon. R. L. Maharaj*]

Papers 1 to 3 to be referred to the Public Accounts Committee.

4. Annual audited accounts of the Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 1996. [*Hon. R.L. Maharaj*]

5. Annual audited accounts of the Trinidad and Tobago Methanol Company Limited for the financial years ended December 31, 1992; 1993; 1994 and 1995. [*Hon. R. L. Maharaj*]

Papers 4 and 5 to be referred to the Public Accounts (Enterprises) Committee.

6. Report of the Supervisor of Insurance for the year ended December 31, 1994. [*Hon. R. L. Maharaj*]

7. The Matrimonial Causes (Amendment) Rules, 1996. [*Hon. R. L. Maharaj*]

8. The Matrimonial Causes (Amendment) (No. 2) Rules, 1996. [*Hon. R. L. Maharaj*]

9. The Weights and Measures (Amendment) Regulations, 1996. [*Hon. R. L. Maharaj*]

REGULATIONS COMMITTEE REPORTS

Presentation

The Minister of Public Utilities (Hon. Ganga Singh): Mr. Speaker, I wish to lay the third and fourth reports of the Regulations Committee of the House of Representatives for the 1995—1996 session.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House proceed to "Bills Second Reading."

Agreed to.

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL

Order for second reading read.

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

That a Bill to make provision for the State to have the right of appeal in criminal proceedings; to amend the rules of evidence in criminal proceedings; to make provision for the giving of notice of an alibi; to extend the jurisdiction of the Petty Civil Court; to make provision for the awarding of interest by the Petty Civil Court; to make certain offences triable summarily; to increase the quantum of compensation which could be awarded by the High Court in criminal matters, be now read a second time.

Mr. Speaker, in some respects it can be said that this Bill seeks to make radical reforms to some of the aspects of the criminal law, as well as to amend provisions of the existing law in an effort to deal with conditions that have overtaken the state of affairs for which the existing law ought to cater.

1.40 p.m.

This Bill owes its origin to recommendations made by the Law Commission of Trinidad and Tobago which, except for the Chairman of that Commission, comprised of private legal practitioners. It was felt that some of our laws are outmoded and have been unable to keep pace with the developments in other spheres of our lives. In particular, the difficulty our courts have been experiencing in criminal cases, resulting in obviously guilty defendants and accused persons escaping the legal consequences of their acts. *[Interruption]*

For example, in an English case, a wife was able to claim that even though she was a competent witness, she was not compellable to give evidence against her husband, who was charged with personal violence against her. The clever husband married that witness after the events which gave rise to the charge against him and before his trial.

Mr. Valley: Who was the lawyer?

Hon. R. L. Maharaj: So that, even though they were not husband and wife when he assaulted her, when the case came on for hearing, they were. The case was decided several years ago under the English common law, and cases like those in England called for reforms of the criminal justice system. As any schoolboy or schoolgirl would know, one cannot have reforms of the laws unless laws are

passed in Parliament. Under our civilized system, only governments can change the laws of a country.

Mr. Speaker, the English Parliament, recognizing the injustice caused to society, decided that it was going to enact legislation to reform that aspect of the law and it did this over a period of time. The last bit of reform of that aspect of the law was done under the Police and Criminal Evidence, 1994, in the United Kingdom. That Act abolished this common law rule that a wife was not a competent witness for the prosecution against her husband.

With the reform in the United Kingdom which we are attempting to pattern, it means that if a husband commits a criminal offence in the presence of his wife, and the wife is the only witness under the existing law, the wife is not competent to give evidence against the accused in a criminal prosecution. The wife can only be called by the accused. This amendment would, in effect, make the wife a competent and compellable witness for the prosecution.

In Trinidad and Tobago similar situations occurred in which, not only could persons not be convicted in such circumstances, because the spouse was not a competent witness, but even where there were convictions and matters were done on appeal, the Court of Appeal ruled that having regard to the law as it stood in Trinidad and Tobago, there could not have been indirect circumvention of the law and that a wife was in no case competent to give evidence against the husband in a criminal matter, especially in cases of murder. As a matter of fact, one knows of the well-established principle of the law that, even if the prosecution is trying to circumvent that law and achieve indirectly what may not be achieved directly, there is also the principle of the law which overrides those considerations, which is that one cannot do indirectly what one cannot do directly.

This has been a grave loophole in the law and the Law Commission, over the years, decided that it was going to effect these reforms, has had extensive discussions and consultations, and has come up with this Bill. On getting into office, this Government was very interested in having some of these reforms done and it expedited the process in order to have this Bill brought to the Parliament as quickly as possible.

I should mention that the Bill, which is now before this House, has been examined over a period of time by the Law Commission and was amended from time to time by it. After consultation, the Bill was scrutinized by several bodies and by the Legislative Review Committee, which also made further amendments and adjustments to the Bill.

Part I of the Bill is concerned with preliminary matters. In the Short Title and Commencement of the Bill it should be noted that, although the Bill envisages that it may be necessary to bring several parts of the Bill in force at different times to facilitate the establishment of administrative infrastructure, it is to be noted that under section 5(2) of the Statutes Act of Trinidad and Tobago, it states:

> "Where a statute provides that it is to come into force or operation on a day or date to be fixed by the President by proclamation, or that it is not to come into force or operation until a day or date to be so fixed, any such proclamation—
>
> (a) may apply to the whole or any part or parts or portion or portions or section or sections of the statute; and
>
> (b) may be issued at different times as to any part or parts or portion or portions or section or sections of the statute."

One sees that even though certain parts of this Bill may not be able to come into operation at the same time as other parts, that is not a problem, because the law provides for different parts of the Bill to come into operation at different times, because one knows that in some of these measures it would take some time to put the administrative structures in place. For example, where one is dealing with the video recording of evidence, one knows that it is after the Bill has been passed, then one has to put those institutions and that infrastructure in place to get the necessary material resources to deal with those matters.

Part II of the Bill introduces for the first time appeals to the Court of Appeal by the state against an acquittal by a judge and in respect of a sentencing given by a judge of the High Court. It should be noted that this Bill is not going to give to the state a *carte blanche* or full right of appeal in all criminal matters, all cases of acquittal.

1.50 p.m.

Mr. Speaker, what it is going to do is give to the state a right of appeal in matters where the judgment or verdict of acquittal was as a result of a decision of the trial judge to uphold a no-case submission, or withdraw the case from the jury on any ground of appeal that his decision was erroneous in point of law. That is important because all that can be appealed under this Bill would be a decision on law given by the judge, so that a jury's decision cannot be appealed against by the state. It is not giving to the state a right of appeal against the verdict of a jury on the question of facts. It is, in effect, giving to the state a right of appeal against a

judge on any ruling of withdrawing a case from a jury where the state is alleging that the judge made an error of law.

As one knows, in any prosecution, in any case, in any matter which is tried before the courts of Trinidad and Tobago, there is a presumption that an accused person is innocent unless proven guilty. As an important principle of law, it is the duty and the responsibility of the prosecution of the state to establish guilt beyond a reasonable doubt and the prosecution must adduce evidence in order to show the essential ingredients of the offence, and whether the case is before a magistrate or a judge, at the end of the state's case, an accused person or his lawyer is entitled to make a submission to the magistrate or to the judge, that the prosecution has failed to establish a case, because in law, there can be no case established.

As has happened in the past, magistrates can dismiss cases in the Magistrates' Court. Under the Summary Courts Act, the state already has a right of appeal. In the High Court, however, where the judge withdraws the case from the jury—for example, I think it is important for me to put on the record, although we have several lawyers here and we also know that some persons who are not even qualified as lawyers, profess to be experts in the law. One knows that when one is doing a criminal trial before a judge and jury, what happens is if the judge agrees with the submission, the judge directs the jury, as a matter of law, that it must return a verdict of not guilty having regard to the direction in law that he is giving it and the foreman and members of the jury must accept the ruling of the judge.

Assuming that there is a case before a judge and the judge makes an error—because one knows that no legal system is infallible—in law but assuming that there is a strong case of murder or manslaughter and it is not a case in which the judge should direct the jury to withdraw the case, or to direct a verdict of not guilty; under the present law, even though the judge made an error, the state cannot appeal that decision. What the state can do under the Supreme Court of Judicature Act is that the Attorney General is given the power to refer a case to the Court of Appeal. It is provided clearly in the Supreme Court of Judicature Act that it does not affect the order of acquittal that is made; it is in order to see whether a mistake has been made and to provide some guidance for the future.

This amendment, therefore, is something which is new. It is regarded as new in several jurisdictions that have adopted this kind of philosophy. But may I

mention that several of the jurisdictions have gone the whole hog, if I may use that
expression, and instead of going halfway, they have, in effect, provided for appeals in all acquittals in the High Court.

For example, Mr. Speaker, there are a number of Commonwealth jurisdictions which have provided for rights of appeal against verdicts of acquittal in the High Court. If one looks at Tasmania, one would see that that country has gone the whole route, not only errors of law but any acquittal. Singapore has gone that route; Sri Lanka has gone that route; India has gone that route.

Mr. Speaker, from the research given to me, it also states that in the 1930s in Canada, the Attorney General was given, on behalf of the state, the right to appeal against any acquittal on indictment on a point of law and against sentence with leave of the Court of Appeal. One sees that there are countries which have gone the route of having a restricted appeal, in favour of the state; and other countries which have gone for an unrestricted appeal in respect of any acquittal by a judge.

I should also mention that in Trinidad and Tobago there has been a call by several sections of the population for the law to be changed and for the state to be given this right of appeal.

Clause 4 of the Bill would amend the Supreme Court of Judicature Act, Chap. 4:01, by inserting a new Part III in that Act containing several new sections. The purpose of this new part is to give to the Director of Public Prosecutions the right of appeal in indictable proceedings, that is, proceedings before a judge in a criminal jurisdiction, against an acquittal on a question of law and against sentence. In respect of the appeal against a sentence, it will be an appeal against a sentence other than one fixed by law with the leave of the Court of Appeal. So that in respect of the appeal against sentence, one will have to get leave and there can only be an appeal in respect of a sentence which is not fixed by law.

For example, if a death sentence is passed, that is a sentence that is fixed by law, there are certain statutes which provide for certain mandatory sentences and if those are passed, there would be no basis for an appeal on a sentence. The Court of Appeal on an appeal against an acquittal would be empowered to dismiss the appeal. Where it allows the appeal, it may set aside the verdict and order a new trial. So the Court of Appeal would be given the power to order a new trial, obviously depending upon the interest of justice.

When the appeal is against the sentence, the Court of Appeal would consider whether the sentence was adequate and the Court of Appeal may then vary the sentence or it may dismiss the appeal against sentence. It should be noted that provision is made for an appeal from the decision of the Court of Appeal to lie to the Judicial Committee of the Privy Council. That provision is there because it must be recognized that at the present time in criminal matters, there is the right to approach the Privy Council in criminal matters.

2.00 p.m.

I would like to make it quite clear, because things can be so easily misconstrued in some of these matters, that this Bill does not, in any way, interfere with the trial by jury, or the right to be tried by jury, or the existing law which permits trial by jury. The Bill does not, in any way, state directly or indirectly—and there is no jurisdiction being given to the Court of Appeal or to the Privy Council to interfere with the finding of a jury on a question of fact. The appeal is limited to questions of law; errors made by a judge in the discharge of his duties in a criminal trial.

Part III of the Bill deals with changes to the evidentiary law in criminal proceedings. The first issue which it addresses is the competence and compellability of an accused spouse to give evidence. As I indicated before, if one wants to state the law briefly, an accused spouse is generally not competent to give evidence for the prosecution, save when the charge is one of personal violence against the spouse and certain statutory exceptions. For the records, one can look at section 13(5) of the Evidence Act, Chap. 7:02. But the spouse is always a competent witness for the defence and is also a competent witness for the spouse's co-accused, but normally only with the spouse's consent.

In order to redress this imbalance in the criminal justice system, this Bill is putting into law the right of the prosecution to have the spouse as a competent and compellable witness for the prosecution. So that what this Bill is going to do is to abolish this so-called spousal privilege and the Bill would, in effect, put spouses in the same position as any other witness.

The second issue which Part III of the Bill addresses is the reception into evidence of certain forms of documentary evidence, such as photographs, computer records and government records. Clause 10 of the Bill amends the Evidence Act by inserting several new sections—14A to 14E.

The new section 14A of clause 10 would permit the admission into evidence of photographs of objects as *prima facie* proof of the identity of those objects. As

a safeguard, the photograph must be accompanied by a certificate signed by the photographer before a Justice of the Peace. The rationale behind this provision is to allow the return of stolen items to their owners so that they might enjoy the benefit of their assets and to obviate the necessity of storing recovered stolen property and producing them at trials.

Under the present system, having regard to the rules of evidence which have become very archaic, if one has to prove, for example, a larceny case, one has to prove that the objects were in the possession of the virtual complainant or the victim, and that the objects were taken away permanently with the intention to deprive the owner thereof, or the person with the possession thereof. What happens is that the prosecution has to be able to adduce evidence to show that the articles which the person had in his possession are the same articles which were found in the accused's possession, and therefore one had to prove identity of the objects. This entails, in many cases, keeping the exhibits, for example, a motor car, or whatever the objects are.

What this amendment is going to do is give the prosecution the option of having photographs taken or taking photographs and having those photographs of the objects adduced in evidence, instead of having to keep the objects until the matter is determined. Certain steps have been taken in order to ensure that the necessary requirements would be kept in order to preserve the identity, or that the identity evidence would not be lacking.

May I mention that what we are doing in Trinidad and Tobago now, even in respect of this aspect, has happened in other jurisdictions several years ago, because it has been recognized that the criminal procedure and the laws of evidence which have evolved over the years need to be updated, to be reformed, in order to meet the present-day circumstances. For example, in the United Kingdom, one has similar legislation now in order to permit this being done.

The new sections 14B and 14C provide for the admissibility of computer records, subject to certain conditions. It would allow for the admission of computer-generated information and is broadly similar to section 40 of the Evidence Act which deals with the admissibility of computer records in civil proceedings. One knows that the world is going computer and, therefore, there will be many computer records which can, in effect, form the basis of evidence, sometimes cogent evidence, to link an accused person with the commission of a crime. Therefore sections 14B and C would provide the ability of the prosecution

to adduce the records in order to save time and it will be subject to certain safeguards, obviously. Again, this is a provision which was recently passed in the United Kingdom. When I say recently, I mean a few years ago, and it was passed in order to achieve some of the same objectives that we are trying to achieve.

2.10 p.m.

The new section 14B provides that a statement in a document produced by a computer is admissible evidence of any fact contained in it if, *inter alia* there is no reasonable ground for believing that the statement is inaccurate because of improper use of the computer, and if it can be shown that the computer must have been operating properly at all material times. Or, if not, that any malfunction did not affect the accuracy or production of the statement. So, one sees safeguards in the Bill.

Subsection (2) of the new section 14B simply provides the procedure and additional requirements for the admission of computer evidence to be governed by rules of court.

Subsection (3) allows evidence by certificate for the purpose of identifying a document produced by the computer giving details of how the document was produced and showing that the prescribed conditions have been fulfilled.

Subsection (4) provides that the court may nevertheless require oral evidence to be given of any matters mentioned in the certificate.

Subsection (5) makes it an offence to knowingly make a false statement in a certificate required by subclause (3).

One sees that the Bill is drafted and put forward with the view to balancing the administration of criminal justice in order to redress the imbalance, and to have a balanced system giving the right to the prosecution and also to provide the safeguards in order to ensure that the rules cannot be misused or abused. Also, the Judiciary is being given the power to determine whether the evidence should be admitted or not.

Mr. Speaker, I am saying this in order to make it quite plain for the Opposition so that the debate can take place, because they are saying that this is to take away people's rights and alter fundamental rights. They will be able to show from their contribution how this Bill will be able to do that.

Mr. Valley: That is if you were here.

Hon. R. L. Maharaj: Mr. Speaker, I shall always remain on this side. The Member for Diego Martin Central will never get on this side.

The new section 14C is similar to section 41(1) of the Evidence Act in providing that a statement in a document which is admissible under section 14 can be proved by the production of a document or an authenticated copy.

The new section 14D would permit the admission into evidence of Government records as *prima facie* proof of the particulars which they record. This should reduce the number of witnesses to be called and lead to a reduction in time.

Mr. Speaker, I would like to make it clear here that this new section 14D must not be confused with section 19 of the Evidence Act because this is dealing with the admission of records, whereas section 19 deals with the admission of particular certificates.

For example, section 19 of the Evidence Act provides that in certain circumstances a document is admissible in evidence and is regarded as *prima facie* proof of the contents of the document. Such documents include a document which is carrying the signature and seal of a diplomatic agent of Trinidad and Tobago in criminal proceedings, and any document purporting to be a certificate or report signed by a government expert in relation to anything submitted to him for examination; medical certificates, both in criminal proceedings and in inquests and in post-mortem reports. “Government expert” is defined to mean certain persons.

The existing law does not seem to make similar provisions with respect to records kept in Government departments over which the defined "government expert" presides. So, the amendment which section 14D seeks to effect is to provide that records kept in those offices or in other offices that may be declared by the President by notification in the *Gazette*, would be also admissible as *prima facie* evidence of the contents of the records.

The final issue which Part III of the Bill is concerned with is that of corroboration. By inserting a new section 15A into the Evidence Act, it is sought to remove certain common law rules concerning the issuing of corroboration warnings. It abrogates the requirement that judges warn juries about convicting on the uncorroborated evidence of a person merely because that person is an alleged accomplice of the accused, or where it is a sexual offence. It also abrogates any corresponding requirement applicable to summary trials.

Mr. Speaker, until recently, it was considered that the evidence of accomplices and complainants in sexual matters was inherently unreliable, in the case of an accomplice because he might give false evidence in order to obtain a lighter sentence, and in the case of a complainant in sexual cases because she might give false evidence due to motives such as shame, neurosis or spite. Ideas about these matters have now changed. These rules as to corroboration have proven to be inflexible, complex and productive of anomalies.

Mr. Speaker, may I be permitted to quote the words of the Chief Justice of the United Kingdom, Lord Taylor, in a case of the *Queen and Shima* reported in 1994 in a *Weekly Law Report* at page 147. He said that this area of the law has become—

"Archean, technical and difficult to convey."

The effect of this new clause is that a judge is no longer required to warn a jury that it is dangerous to convict on the evidence of an accomplice, or of a complainant in a sexual case, and a magistrate is no longer required so to direct himself.

I would like to explain this a little more. Under the present system, wherever an accomplice or a victim gives evidence in a sexual case, it is incumbent upon the judge to warn the jury—or for a magistrate to show that he has warned himself—that he can convict. He must have warned himself of the dangers of acting on the evidence of the person without any corroboration. What is corroboration? That is, in law, evidence of a material to the case coming from an independent source.

Mr. Speaker, the English have amended the law and their position is that that role has been completely abolished. There is no requirement to warn that a judge or magistrate must treat that evidence as any other evidence. We in Trinidad and Tobago have not gone the whole route. We have taken a half-way route and we have gone that route for the time being in order to see and we believe that is the route that can be taken at this time. The route we have taken is that in any case which is before the judge or magistrate, there is no obligation or rule of practice which has hardened into a rule of law, that the judge or the magistrate must warn himself or must direct the jury that it is dangerous to convict.

There may be some cases where the evidence is so strong, compelling and cogent that it would be violative of the public interest in order to give that warning.

2.20 p.m.

This Bill gives the judge or the magistrate a discretion, depending upon the nature of the evidence given by the complainant, or by the person who is the confederate of the accused, an accomplice or whoever he is, and the nature of the evidence of other witnesses, to determine whether he is going to warn the jury of that kind of evidence. In other words, there would be cases where a judge would determine that this evidence is so hopeless, so unreliable and it is his duty to warn the jury that it will be dangerous to convict unless this evidence is supported. But there will be other cases where the judge or the magistrate would say, no, this evidence is so strong, there is no need for me to give this warning and if I give this warning it will be unfair to the prosecution and to the public interest.

Therefore, we have gone that route because we believe that witnesses and their evidence must be treated equally as far as possible and, we believe that in many of these cases—child abuse cases, sexual abuse cases, even in murder cases—the public does not have a full view of the cases; there will be limited people who have seen these matters. For example, in a rape case it is the victim and the offender. What has happened is that we have decided to reform the law to give that discretion to the judge. Bearing in mind that any accused person who is convicted and feels that the judge should have given that warning, having regard to the particular circumstances of the case, can appeal to the Court of Appeal and put that as a ground of appeal, that the judge acted wrongly because he should have given that warning and the Court of Appeal would determine whether the judge properly exercised his discretion or not. If he is not satisfied with the Court of Appeal, he has the further safeguard to go to the Privy Council in London. I am saying this because this Bill does not take away anyone's right.

I have appeared in the courts of Trinidad and Tobago and have been involved in several criminal matters appearing for the defence. If one looks at this Bill, whether from a prosecution point of view, or from a defence lawyer's point of view, this is a fair Bill in the interest of the state of Trinidad and Tobago.

Part IV of the Bill is concerned with children's evidence in criminal proceedings and it seeks to amend the Children Act, Chap. 46:01, by repealing and substituting section 19 of the Act and by inserting several new sections, sections 19A—19E, to allow for the reception of children's evidence and to make it less traumatic for children to give evidence in certain instances.

At present, a child who has sufficient understanding to know the nature and obligation of an oath can give evidence in legal proceedings. Section 19 of the Children Act provides that, if, in the court's opinion, he did not understand the nature of the oath, a child of tender years could, nevertheless, in criminal proceedings give unsworn evidence if, in the court's opinion, he had sufficient intelligence to justify the reception of the evidence and understood the duty of speaking the truth.

Mr. Speaker, the new section 19 of the Children Act provides that in criminal proceedings the evidence of a person under 14 years of age must always be given unsworn and a deposition of such evidence may be taken for the purposes of criminal proceedings. However, the court is empowered to determine whether the child is of sufficient intelligence to justify the reception of the evidence and whether the child understands the duty of speaking the truth. A child's competence would hinge on his position of sufficient intelligence and not on his understanding of the nature of an oath. Further, it is provided that the evidence of one child may not support or may not corroborate the evidence of another child. The position as to convicting an accused on the uncorroborated evidence of a child has been somewhat modified in that an accused person may be convicted on the uncorroborated evidence of a child, provided the jury is warned of the danger on the uncorroborated evidence of a child.

Let me see if I could explain that a bit more. Under the present law, a child who has to give evidence is interviewed by the court and it is called a *voir dire* in order for the court to determine whether the child's evidence should be given sworn or unsworn. Under the present law a person cannot be convicted on the uncorroborated evidence of a child. No matter how strong the evidence of a child is, if that evidence is not corroborated, a person cannot be convicted.

It has been found in several Commonwealth jurisdictions, including the United Kingdom, that this law has become outdated and it has been recognized that there are several cases of child abuse—of all sorts of abuses—being done to children on which convictions cannot be had because of the law being outdated.

For example, what we have here is the same law which was been passed in the United Kingdom some years ago. The law is saying that the evidence of a child must be taken unsworn; but before the evidence of a child is taken unsworn, the judge would still have to conduct a *voir dire;* so it has abolished the question of unsworn or sworn evidence. The child's evidence must be taken unsworn and the evidence can be acted upon if there is corroboration and if it is supported by independent evidence. It can also be acted upon if the judge or the magistrate

warns himself that it is dangerous to act on this evidence unless it is supported; that the members of the jury can examine the evidence; that they can scrutinize it, that they can determine whether it is cogent; whether it is compelling; they can weigh and consider it and if they feel that they can rely upon the evidence to find a

conviction, notwithstanding the direction that the judge or magistrate gives that it is dangerous to convict, they are entitled to convict.

It gives to the state the entitlement to call unsworn evidence. It abolishes this rule that one cannot have a conviction based on uncorroborated evidence of a child, but it also gives the protection to an accused and the right to a fair trial that a magistrate must warn himself that it is dangerous to convict, that if he or she or the jury believes that the evidence is convincing, compelling and cogent enough to sustain a verdict of guilty, the jury can be sure of the guilt and it can return the verdict.

The new section 19A provides that a person charged with a sexual offence—and one would see that together with the amendment which was done, that a person charged with a sexual offence, sexual violence or cruelty offence—may not cross-examine the alleged victim or a person who has witnessed the commission of the offence, if that person is a child, unless the cross-examination takes place by means of an electronic device linking the voice and imagery of the accused with the voice and imagery of the witness. What will happen in matters like these is: let us say that there is a sexual offence against a child, the child under the present law has to sit in the court; has to look at the accused; the accused can cross-examine the child in that environment; the accused can, by his looks, traumatize the child; there is a psychological disadvantage.

What is going to happen when this Bill is passed is that the child would not be in the court. The child would be in a room and the child's image and voice would be linked to a video screen. The accused person or his lawyer could cross examine—it is not going to take away the cross-examination—and would be seeing the child on a screen and would be able to cross-examine the child and the voice and imagery would be transmitted. The only difference would be that the child would not be physically there, but the cross-examination would take place.

2.30 p.m.

Mr. Speaker, this is a provision which has also been adopted in several countries including the United Kingdom and the reason for its adoption was to ensure that there is fairness. There was no taking away of the cross-examination,

but in order to put the child in a position where the child would not be at a disadvantage in answering questions and being humiliated and traumatized to the extent which may affect the child's power of recollection, or power to give evidence, it is hoped that the amendments to the Children Act will make a conviction of alleged child abusers easier by making children competent to give evidence and by making admissible, as evidence-in-chief, a video recorded statement and, prohibiting face-to-face cross-examination of a child or a child witness by an accused child abuser, or an accused child abuser's defence attorney.

The new section 19B enables a video recording of an interview with a child witness about a sexual violence or cruelty offence to be admitted into evidence as the child's evidence-in-chief in criminal proceedings. A video recording may only be used with the leave of the court, but the court, subject to its general power to exclude evidence, must give leave unless one of the exceptions in section 19B(3) applies. Where a video recording is admitted into evidence, a child witness must be called by the party who tendered it, but the child is not to be examined in chief in any matter dealt with in its recorded testimony. Any statement made by the child witness which is disclosed by the recording is treated as direct oral testimony.

Here again, it is an attempt to reform criminal procedures to ensure that the interest of the state is protected, on one hand, yet not taking away the safeguards and the rights of a person charged for a crime to get a fair trial. It must always be recognized that there are two sides of a coin when the state is involved in a criminal prosecution. The state charges someone, but that person may not necessarily be guilty and the person is entitled to certain rights, because it is in the public interest for a person who is charged for a crime to have those rights. Why is it in the public interest? It is so that the state would not be able to manipulate the legal system in order to take advantage of persons and the rule of law in the society would be preserved. It is never in the public interest if there are laws in which the rule of law can be disobeyed with impunity.

I want to make this quite clear because in order to understand these measures, one has to understand the concept of the legal profession, the role of the state in criminal prosecutions; also one has to understand the role and functions of the Judiciary and the legal profession in their administration of criminal justice. That is why it is such a cardinal rule of our system that from the first time a person who is accused or suspected of a crime comes into contact with the state, the Constitution provides that he is entitled to communicate with a lawyer. That is why our system also provides that if a man cannot afford a lawyer, the state must provide one for him, and that is why the Legal Profession Act, 1986, provides that

a lawyer who appears for that man, whoever that lawyer is, has a duty to put every point in favour of the client to the court. That is why the law specifically provides that a lawyer must not prejudge his or her client, and that is why the law specifically provides that lawyers must not be associated with the facts of a particular case; the reason being that one cannot have the rule of law in a society if lawyers are not independent, free and fearless to take up and appear in unpopular causes.

Even though one may have a child abuser as an accused, it does not mean that the child abuser must not have rights. In relation to this clause, the evidence, which is video recorded, will constitute the evidence-in-chief and the lawyer who is appearing for the accused person, or the accused person himself, is entitled to advance reasons to the court why that video recording should not be admitted. The court can determine that notwithstanding these things have been done, it is not in the interest to admit the video recording, but it gives the discretion to the court. Although this video recording is done, it does not say that is the end of the matter. It can only be admitted if the child is going to be produced for cross-examination, and the child would be produced for cross-examination but not in the physical court, it will be done through the link up to the video and the voice and photo imagery.

Mr. Speaker, why this thought to have video recording of evidence? As a matter of fact, this is the way many countries have gone. The United States of America, Canada, Australia, New Zealand and the United Kingdom which are supposed to be much more advanced have recently gone that route in respect of these similar provisions. The reason for that is when a child is abused, it is more advantageous to the state and in the interest of justice for the child to give his evidence as quickly as possible. When a case is postponed for three or five years and a child has to remember that evidence to give a statement, the evidence of the child is not there on the video; so that this is a means of preserving the evidence, of introducing fairness in the criminal justice system and also providing the safeguards which any civilized society must provide in the administration of the criminal justice system.

2.40 p.m.

Part V of the Bill consists of only one clause which amends the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, by introducing two new sections, 16A and 16B. The new sections, in effect, prevent an accused person at a trial on indictment from calling “evidence in support of an alibi” without leave of

the court, unless he has given to the prosecutor particulars of the alibi, including the best information he has about the identity and whereabouts of the witness.

This new provision, would afford the prosecution an opportunity, in advance of the trial, to investigate the accused's alibi and prepare its case in answer. It is foreseeable that where the accused's alibi is substantiated, the trial may be avoided, thereby freeing the judicial system to deal with other matters; and in any event the prosecution would not lose time during the trial investigating the accused's alibi. This would have been done before the trial.

The term "evidence in support of an alibi" means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time, he was not, or was unlikely to have been at the place where the offence is alleged to have been committed at the time of its alleged commission. The definition contemplates the commission of a specific offence at a particular time and place and has no application to an offence of a continuing nature.

The new section 16A provides that without the leave of the court the accused may not adduce "evidence in support of an alibi" unless before the end of the prescribed period, he has given notice of the particular alibi. Nor may he, without such leave, call any other person to give such evidence unless the notice of particulars of the alibi includes the name and address of the witness. If the name or address is not known to the accused at the time he gives the notice, he is required to provide any information in his possession which might be of material assistance in finding the witness. Where the name or address is not included in that notice, the court must be satisfied that the accused, before giving the notice, took and thereafter continued to take, all reasonable steps to secure the name or address. If the name or address is not included in that notice, but the accused subsequently discovers the name or address, or receives other information which might be of material assistance in finding the witness, he must give notice of the name, address or other information as the case may be. If the accused is notified by, or on behalf of, the prosecutor that the witness has not been traced by the name or at the address given, the accused forthwith gives notice of any such information which is then in his possession, or on subsequently receiving any such information, he forthwith gives notice of it.

Mr. Speaker, why must we have this law? Under the present system the prosecution can go to court, say, with a murder case. The accused person does not have to say to the police before the trial, where he was. The prosecution opens the

case. Case of murder X, Y, Z on so and so date, prosecution calling so many witnesses. Even in law there is no obligation—perhaps in ethics, but not in law—to put to the prosecution exactly where the accused was; or what his defence is, and give the particulars of the alibi. The prosecution closes its case. An accused person
goes in the box. "On the day in question I was at a wake." "At so and so time I went to the wake; and I left at so and so time". During that period of time the accused is saying he was at a wake. He calls about ten witnesses who allegedly saw him at the wake—cases are happening five years later—and the prosecution, police, state have no means of investigating this alibi.

This is a very unfair system, Mr. Speaker. It has to be, because the accused person and the accused's lawyers are given an advantage and the prosecution is taken by surprise. What has to happen is that government must find ways and means of addressing these injustices, this imbalance. Therefore, what we are saying is, yes, we are not taking away one's right to raise an alibi. We are not taking away one's defence. What we are saying is that if one is going to raise a defence that one was not there at a particular time, on a particular date in relation to this offence, one must give the state notice of it—the particulars, one's witnesses—so that the state can also investigate in order to prepare its case to cross-examine the witnesses.

We have an adversarial system of justice in Trinidad and Tobago, a criminal trial is regarded as a war, sometimes. What happens is that the prosecution goes there and the defence has all its ammunition, all its "guns", to cross-examine the witnesses. Here it is that the defence can cross-examine the prosecution witnesses; put all sorts of things to them.

Mr. Bereaux: What a world.

Hon. R. L. Maharaj: When it comes to the defence to call witnesses, it is as if the prosecution's hands and feet are tied, because it did not have the opportunity to prepare itself to investigate the alibi. This measure is, to some extent, to free the prosecution of those shackles; to be able to give it an equal opportunity to be able to probe the defence story.

This does not, in any way, take away the rights of an accused, and for the records, several other Commonwealth jurisdictions have, years ago, reformed that aspect of the law. The British did so a long time ago and, only governments can

reform law and Parliament is the machinery whereby this is done. If these laws were not reformed before, one knows where the fault lies. *[Interruption]*

All these reforms in other jurisdictions occurred after 1990. So I would like the blame to be taken, and I would expect people to accept the blame and come and say, "look we are very happy this Government is doing this, and we are very happy that it is reforming the law." *[Interruption]* Mr. Speaker, do you see how it is easy to get them to react? *[Interruption]* The only thing is, that Opposition does not seem to have one daddy—it has several.

Mr. Valley: Whom the gods wish to destroy, they first make mad.

Hon. R. L. Maharaj: The other aspect of the Bill deals with the question of giving legislative effect to several recommendations of the *Gurley Report*. We have heard much about this *Gurley Report*. The Petty Civil Courts Act will be amended by this Bill to increase the jurisdiction of that court by increasing the monetary limit from $5,000 to $15,000 to ensure that actions which fall within the monetary limit of the jurisdiction of the Petty Civil Court are commenced. There the Act would bar the commencement of these actions in the High Court except where the Registrar of the High Court certifies that the issue of law which is the subject matter of the action, is suitable for determination by the High Court.

2.50 p.m.

Mr. Speaker, what this is going to do is to take away some of the cases from the High Court, increase the jurisdiction of the Petty Civil Court in order to attack some of the delays. Petty Civil Court judges would now be given this jurisdiction. This has been recommended a long time ago in the *Gurley Report* and a long time ago, the Opposition when in government said that it agreed with that report and it was implementing it as a matter of urgency.

"The Act would also be amended to give the Petty Civil Court the power to award interest on debts and damages, and...provision is made for judgement debts to carry interest at the rate of six percent."

This would bring the power of the Petty Civil Court on par with those of the High Court in respect of awarding interest. This, again, was in the *Gurley Report* and we are doing it at this time.

"Sections 28, 29 and 30 of the Larceny Act..."

Chap. 11:12

> "...would be amended so that the offences of house-breaking and committing an arrestable offence, house-breaking with intent to commit an arrestable offence and being found by night armed or in possession of house-breaking implements would be triable summarily."

That is before a magistrate. That is done in order to expedite the hearing of those proceedings.

The Gurley Report found that a lot of these cases are tied up because they have to be heard in the High Court and what should be done is that the summary courts, the Magistrates' Court, should have been given the power to hear and determine these matters to give increased sentences so that the Magistrates Court can deal with them. The Gurley Report recommended that this needed urgent attention. The Opposition when in government said, yes, it agreed it needed urgent attention, but this new administration is now implementing the recommendations of the Gurley Report.

"Finally, section 54 of the Criminal Procedure Act..."

Chap. 12:02

> "...would be amended to increase the quantum which may be awarded in the High Court by way of satisfaction or compensation in criminal matters."

Under that Act in respect of compensation, the judge has a jurisdiction of $480 in a criminal matter and now this is being increased to $50,000. That also has been a recommendation of the Gurley Report. Many people suffer injustice in this way in that they do not get sufficient compensation.

Mr. Speaker, all in all, these measures in the Bill are an attempt to reform the criminal justice system in Trinidad and Tobago. I have no doubt that it will be given the support of any right-thinking person in Trinidad and Tobago. Thank you.

Question proposed.

Mrs. Camille Robinson-Regis *(Arouca South)*: Mr. Speaker, from the outset, I must state that the Bill that was laid originally before this Parliament was one that raised certain very questionable issues in the minds of all those who obtained that first piece of legislation; the piece of legislation that the Member for Couva South referred to in his submission, where he said that this legislation does not attempt to take away trial by jury, or does not attempt in any way to interfere with that fundamental part of our common law and procedure.

I must make the point that in another place, we are thankful to Sen. Daly who brought an amendment which was accepted by the Government, because the original intent of the Bill that was laid was, in fact, to take away a right to which we had become accustomed. That fact must be made very, very clear, because it leaves us to wonder if that amendment was not suggested, would that intent still be part and parcel of the Bill which we are being asked to support?

The Bill before us seeks to make changes to some of the aspects of our jurisprudence to which we have become accustomed and aspects which have served us well over time. But it is a fact that law is a creature of the society. It is a creature of the society it serves and as the society develops, so too, will its jurisprudence. The jurisprudence of any society, however, must in fact reflect the needs of the society and attack the issues that plague the society at any point in time, and that is when we are sure that legislation and societal norms and values are in sync.

It is against this background that I must respectfully submit that this Bill should be subjected to public comment. It should be subjected to public comment to ensure that the amendments that we are being asked to approve in this House are amendments that are in sync with the development of our society. I sincerely hope that those on the Government Benches and in particular, the Member for Couva South, will take note of this request as there are certain aspects of this Bill to which I will refer later which may be in need of attention by other bodies before this Bill is passed.

I make this point knowing that in the past, we on this side have pointed out several errors in Bills that were brought to this House by this administration and when the Bills have gone to the other place, then we have been vindicated. I could mention several bills which this administration has brought about which we have raised concerns and because of its arrogance, it neglected to listen to us and had to bring the bills back here for attention.

3.00 p.m.

The Attorney General, the Member for Siparia and the Member for St. Augustine were very strong in their convictions that everything was right and correct about the Rent Restriction (Amdt.) Bill. Even though we complained bitterly on this side that that Bill had lapsed and consequently was void, the Members of the Government persisted and yet had to bring it back for us to re-do. We also have the example of the Jury (Amdt.) Bill, the Supreme Court of Judicature (Amdt.) Bill, the Military Training (Prohibition) Bill and the Immigration (Caribbean

Skilled Nationals) Bill, which have created problems. Those are just a few; there are others.

Let me say that it is symptomatic of this Government of the type of arrogance that it has shown. Whereas we, on this side, when we were in government and were faced with requests for similar consultations to be made for time to be given—and I must say that if we were to examine the *Hansard*, it is littered with requests from those Members of the Government who were then in Opposition for the PNM administration to defer consideration of bills for public comment, or for further consideration of Members of the House, and these, in humility, were usually granted.

Even though the Attorney General, the Member for Couva South, has said that the Law Commission consulted with organizations and the Bill is as a result of such consultation, I still have a concern, because there is no clear evidence as brought by the Member for Couva South that the Law Association and the Criminal Bar were consulted with regard to this particular piece of legislation. When I say consulted, I do not mean what the Member for Couva South terms consultation, that is, sending the Bill to the organization and not waiting for a response. I mean consultation in the true sense, where the Bill is sent and a response is, in fact, received and considered. I feel certain that there was no proper consultation with regard to this particular piece of legislation.

I must go on to say that in a sense it is fortuitous that a bill of this nature is before this House at this time when, interestingly, approximately six years ago it was the time that the so-called attempted coup took place. It is fortuitous. Section 65E(1)(a) that is before us raises a dilemma. The dilemma that is raised is, upon an acquittal being appealed by the state, whether the accused will be re-arrested or kept in custody. Because remember, he has been acquitted, essentially. What will be the move of the judicial officers in terms of the accused's status at the time that the appeal is taking place?

I say it is fortuitous because questions of that nature faced the Director of Public Prosecutions arising out of the 1990 disturbances when the Privy Council gave its ruling, and this is the ideal opportunity for us, on this side, to request that kind of clarification and to indicate that throughout that period and the subsequent period where the trial relating to that attempted coup was taking place, we, on this side, always acted responsibly, with a certain amount of commitment, to ensuring that justice was in fact served.

I am therefore concerned about this particular question and I await an answer. What will be the process? I am not suggesting that the process be stated in the legislation, but I am saying that we need to be given an indication of what the process will, in fact, be. With the original intent of this Bill which appeared to be to take away the fundamental right of trial by one's peers, trial by a jury, we have seen, what I like to call, a Dr. Jekyll and Mr. Hyde syndrome taking place with regard to this particular administration. It may be more prevalent in certain Members of the administration, but it does, in fact, colour the entire administration. So when certain things are left unanswered, we, on this side, need to ask the questions.

Let me give you an indication of why I refer to this administration as a Dr. Jekyll and Mr. Hyde-type administration. Again, it leads me to refer to the events of 1990 as an example of this administration's split personality. Indeed, when the incident first occurred, the Member for Couva South said, and I quote from a book entitled *Scales of Justice* at page 219, Chapter 23, which is entitled: "The Dilemma of Ramesh Lawrence Maharaj". The author is Israel Khan. In that book the author said:

> "No Court would have agreed with the document to give amnesty to the Jamaat members. It was total madness. I could not be a part of that. *Ramesh Lawrence Maharaj."*

3.10 p.m.

Dr. Rowley: Whose words are those? I want to hear them again.

Mrs. C. Robinson-Regis: Ramesh Lawrence Maharaj's words. Apparently some Members did not hear the quotation. I am quoting from a chapter entitled "The Dilemma of Ramesh Maharaj":

> "No Court would have agreed with the document to give amnesty to the Jamaat members. It was total madness. I could not be a part of that. *Ramesh Lawrence Maharaj."*

Mr. Speaker, the chapter is entitled "The Dilemma of Ramesh Lawrence Maharaj", a dilemma that seems to persist up to today, apparently. The irony is that he had a dilemma then, because notwithstanding all the advice he gave—and I believe that at the time it was probably *pro bono*—he still became the defence attorney in the matter. As I said, the dilemma persists because we are not clear as to the process to be used by the enforcement agencies in these new circumstances; re-arrest the person in custody whilst the case is being appealed.

We have become accustomed to getting so-called political guarantees with regard to matters that are brought up by those of us on this side. As one would recall, we requested some information with regard to the Jury (Amdt.) Bill as it related to whether there would be any difficulties or problems in the implementation of that particular piece of legislation. We were told that we were being frivolous; we
were asking questions that were of no substance; and that questions relating to accommodation for jurors were of no consequence. Yet, in actual practice, those are the questions that have created problems in the present circumstances.

Mr. Speaker, if you would permit me, I would like to quote from an article in the *Newsday* of July 11, 1996 under the title "Murder trial of Dole Chadee and eight others"—

Mr. Maharaj: Mr. Speaker, I would like to object to any reference to matters which are before the court and to the trial. Apart from it being totally untrue—I am not on that aspect of it—I would like to object to any discussion of matters that are, directly or indirectly, engaging the attention of the court, particularly, a court involving a jury trial.

Mr. Speaker: If indeed, the Member was about to refer to something that deals with a current murder trial, I would ask the Member not to do that. If the reference is to a copy of the *Newsday* of a certain date—that is as far as you got—but to a criminal trial which is now in progress, I would ask the Member not to refer to it.

Mrs. C. Robinson-Regis: Thank you, Mr. Speaker.

The issue is that we have grown accustomed to this administration giving certain guarantees. As I said, we are not asking for procedures to be put into the legislation. I am stating that if guarantees are given—and as the legislation is put into effect—and are found, in fact, not to be accurate, then we must request that on this occasion more attention be paid to the questions being asked and to the answers that are eventually given. We are requesting that Members on that side not be so arrogant and, in fact, work in the interest of the citizens of Trinidad and Tobago.

With regard to section 65E(1)(a), the amendment is proposing, in effect, that the prosecution can appeal where counsel for the defence is successful in a no

case submission on a point of law—that he can appeal on a point of law where counsel for the defence has been successful in a no case submission.

When one looks at a trial, a court would uphold a no case submission where the prosecution's evidence is manifestly unreliable so that no tribunal can convict where the prosecution's evidence has been totally discredited under cross-examination, or where a crucial element of the offence charged is missing. For example, in a case of theft where there was no actual appropriation or the intent has not been proven. So that the clause which is before us indicates that the only appeal that can take place will be an appeal on a point of law.

Mr. Speaker, in his presentation of this Bill, the Member for Couva South indicated that there are several jurisdictions which have this type of amendment. I must indicate that this type of legislation has existed over a period of time in common law jurisdictions like Uganda, Lesotho and Sri Lanka. In those jurisdictions, it is usually a situation where a judge is acting without a jury.

3.20 p.m.

I must point out that in our circumstances, most times, and in particular for this piece of legislation, its most fundamental parts have been taken from the United Kingdom legislation.

In the United Kingdom the state is given a right of appeal up to the House of Lords with leave, and on a point of law of general public importance. I repeat, the state is given a right of appeal on points of law of general public importance.

The prosecution can appeal from the magistrate to the divisional courts of the Queen’s Bench Division on a point of law, or on points of excess jurisdiction in the United Kingdom provision. That is why, because our particular provision has not specifically stated that the point of law must be a point of law of general public importance, I am concerned about the intent of the section and the question must be asked again: What happens to the accused when this point of law is being appealed?

The other question that comes to mind at this time is: If the state is given the right of appeal and the state appeals up to the level of the Privy Council, is there any provision to be made for the accused person to have a defence during that period? When I say have a defence, I mean in terms of paying for legal counsel because, as matters reach further along the judicial ladder, they become essentially more expensive. Will it be a situation where the state can appeal and the person who is accused does not have the substance to be able to pay for a

defence during that period? I am not essentially against the right of the state to appeal. I must state that. I am here to make known concerns that may exist with regard to the implementation of that right. Those are some of the concerns that have been raised. The Legal Aid and Advisory Board will pay for cases up to a certain level, but as they go above that level then they are unable to assist persons who may not be able to pay their way throughout the legal system. In those circumstances, I ask the question: How will those persons who need to pay for a defence find the money to pay for that defence once the state appeals?

As I talk about that particular section, I am tempted to wonder if the Member for Couva South who has indicated to us, as the Attorney General, that his intention is to stop loopholes, in fact, may be leaving a loophole for those who may soon be returning to their criminal practice. I am just throwing that out as a question that may need to be addressed.

Mr. Speaker, even though I am raising those concerns, and I would be grateful for an answer, let me state that I will never—and I am of the view that those on this side will never—attempt to interfere with ensuring that the administration of justice is dealt with at all times at its optimum level, but we must at all times be assured that whenever any legislative changes are made, the true intention must be that of overseeing what is best for our society. Again, I make that point given what I have said before that the concerns of this Jekyll and Hyde administration—this administration which is a coalition of persons whom I sometimes call "encouragers of behaviour"—are not at all times to be accepted by our society.

When we see legislation of this type coming, legislation which may not have had the full consultation that it should have had, then concerns are raised with regard to the intention of the coalition.

I say "encouragers of behaviour" that is not all times to be accepted when I do research on issues that may influence the thinking that comes forth from that side. I am stating that from the top to the middle to the bottom of that coalition, there are those types of people. We have to be concerned about the intention behind any piece of legislation that comes to our Parliament from that coalition Government.

On Monday, October 21, 1974, the *Daily Express* carried a banner headline which stated and I quote:

"Robinson rules out peaceful change. ANR: Only a coup will topple Govt".

3.30 p.m.

Mr. Robinson: Mr. Speaker, may I say that whatever that report may be, it is totally false as so many false reports that had been made about me in the media over the years. I say it is totally false and I ask the person who is using that statement and document to withdraw it. A great deal of damage has been done to public figures through such false reporting over the years. It is false and malicious. *[Desk thumping]*

Mrs. C. Robinson-Regis: Mr. Speaker, the report stated and I am quoting:

> "The leader of the unpopular DAC made clear his intentions when he suggested that his followers should not look at the police as their enemies, as their business was to make friends in those places. The reason according to the Tobago-based politician was":

And they are quoting:

> "If we don't have the guns then we will have to make some sort of alliance with the people who have them."

Mr. Speaker, this report, as I have said, emanated from a banner headline which stated: "ANR: Only A Coup Will Topple Govt." and the later quotation is taken from the *TnT Mirror* dated September 20, 1991.

May I go on to say that at the time these statements were not refuted.

Mr. Robinson: May I state, Mr. Speaker, that I have always been on the side of peaceful and constitutional change. Whatever speeches I had made in that report about any coup are recorded in a book that is printed which clearly states the entire speech that I had made. That is a totally false report that misrepresents what I said on the occasion.

May I say that there has been a certain newspaper in this country that I took to court. It charged me with treason, it libelled me 17 times in different issues and that is what happens with some of these reporters, but I have survived them all and I will survive them, and if the hon. Member is not careful, her too. *[Laughter]*

Mrs. C. Robinson-Regis: Mr. Speaker, I stand here on the side of truth and justice. *[Desk thumping]*

Mr. Assam: What are you doing in the PNM then?

Mrs. C. Robinson-Regis: The Member for Tobago East is now refuting those statements, it is unfortunate that such an action was not taken at the time.

Mr. Robinson: May I say, Mr. Speaker, if the Member is going to quote me, the Member must quote all that I said and not pick out parts which are very

misleading. *[Interruption]* I must object. I am saying that the Member is misrepresenting what I said—

Mr. Speaker: It is not proper for anyone in the House to try to rule on an issue sitting in his chair. I rule on issues. If any Member feels that procedurally someone is doing something, one could rise on a point of order. It is not correct, and it will not be permissible that one would shout from one side of the House to the other. That is not how it should be done.

The Member, as I understood it, did not rise on a point of order which is what was being shouted about. He did not rise on a point of order because there is a very well-settled way in which I deal with points of order. There was a question of clarification, obviously he was asking the Member to give way and the Member was giving way.

Could you please proceed?

Mrs. C. Robinson-Regis: Thank you, Mr. Speaker.

It is unfortunate that the Member for Tobago East became the victim of those with the guns and as fate would have it, in the coalition—*[Interruption]* I hope I am not being threatened by the Member for Tobago East. Mr. Speaker, as fate would have it, the Member for Couva South became the defender of those with the guns, and as fate would have it, the Member for Couva North is the leader of the unholy alliance that sits before us. That is why when we on this side see any Bill, either in its original intent, or even after it has been amended by Senators or persons in the other place, our first inclination is to be extremely suspicious. *[Desk thumping]*

The behaviour, the language and apparently the threats that are continuously made, not only to persons on this side, but to members of the media and other persons, leave us wondering whether those on that side are truly interested in justice, the administration of justice and the welfare of citizens. *[Desk thumping]*

I ask the question: What is to take place with regard to this particular piece of legislation, particularly section 65E(1)(a)? How do we take what is said by those on that side? How do we deal with persons who are now hugging and kissing each other and just a few years ago, were attacking each other bitterly? *[Interruption]*

Mr. Speaker, I seek your protection please.

Mr. Speaker: Hon. Members, I am sure it is not necessary for me to remind you that the Member is entitled to speak and be heard and not be interrupted.

Mrs. C. Robinson-Regis: Thank you, Mr. Speaker.

I make this statement asking the question, how do we deal with persons who are now apparently hugging and kissing each other when just a few months ago, moreso a few years ago, the Member for Couva North had this to say with regard to—

Mr. Assam: Rowley and Manning were hugging and kissing before November too.

Mrs. C. Robinson-Regis: I am not referring to the Member for St. Joseph, specifically kissing the Member for Couva North as the *Trinidad Guardian* has stated. *[Laughter]*. Mr. Speaker, the question is based on this kind of information that is stated in the *Daily Express* of Thursday, July 25, 1991 and the headline is: "Light a candle on Robinson's head—Panday" and it says:

"UNC political leader Basdeo Panday said the party was asking members to light a candle or deya on Robinson's head, and pray that he will not be with us after the next election. If we have to light a candle or a deya it should be in remembrance of the fact that Robinson and the NAR were solely responsible for what happened."

I am stating quite clearly that therein lies the danger of those of us on this side accepting any legislation that comes from those on that side, lightly, because we are never sure of their intention.

3.40 p.m.

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

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

Question put and agreed to.

Mrs. C. Robinson-Regis: Mr. Speaker, I repeat that it is for these reasons that we on this side are always concerned when we see a Bill coming before us that, ostensibly, has not been the subject of consultation with those interest groups that are interested in how the particular Bill will affect them.

Another area of the Bill which is of particular interest is the section that deals specifically with evidence of spouses. The initial example given by the Member for Couva South, that persons who have been the subject of domestic violence can now give evidence against a spouse is one which I must query, because the Evidence Act already states that in situations of domestic violence, spouses are competent and compellable—

Mr. Maharaj: Mr. Speaker, on a point of order, I think the Member knew the special section was quoted under the Evidence Act, that in respect of certain matters, evidence is permissible, so that in fact, Mr. Speaker—

Mr. Speaker: Is it a point of order or clarification?

Mr. Maharaj: Point of clarification. I specifically mentioned in my contribution—probably she was not listening, Sir—that one recognized in certain circumstances a section of the Act was quoted, evidence is permissible, but not in all cases.

Mrs. C. Robinson-Regis: Mr. Speaker, I indicated that the first example given was not an accurate one, because the Evidence Act as it now stands, indicates that spouses are competent and compellable. I specifically said, the first example given was not accurate, because in fact spouses are, by the Evidence Act that operates in our jurisdiction, competent and compellable in cases of domestic violence.

The Member for Couva South went on to indicate that this type of development exists in the United Kingdom jurisdiction, and that it is part and parcel of the Police and Criminal Evidence Act, 1984. I have no quarrel with that. That is in fact so. But I must bring to the attention of the House that the indications are that when the Police and Criminal Evidence Act, 1984 was brought by the United Kingdom jurisdiction, it was brought after consultation with various groups in the society. When I say various groups, I do not mean only officers of the court, the lawyers or the Law Association. I mean religious organizations, organizations that deal with women's issues, with men's issues and if, in fact, we are to have an amendment which deals with changing the status of spouses, then we must examine whether the amendment is one that will, in any way, affect the institution of marriage.

Mr. Speaker, one of the main concerns has been that in situations of domestic violence spouses can give evidence; and we are happy with that. But in these situations where the competence and compellability issue is now being broadened, we are enquiring whether the religious institution—which sees

marriage as an indication that the two have become one—will find that in our particular society broadening the ability of spouses to give evidence against each other will, in any way, shake the foundation of the institution of marriage. I feel that it is important for that question to be asked and answered, because in situations of domestic violence the marriage has already reached a stage where in most, if not all, instances, there has been irretrievable breakdown.

It is not a situation where the marriage is to be protected, but if it is a situation where the marriage is still whole, will this broadening result in spouses having difficulty after they have been compelled to give evidence against each other? I am not for one minute suggesting that, necessarily, a spouse should condone a criminal action of another spouse, but I am saying that it may, in fact, be necessary for us to look a little more closely at that broadening of this particular evidential rule and see whether, and how, it relates to our society.

3.50 p.m.

Mr. Speaker, I would like to state that it is very ironic that this administration is bringing legislation which deals with broadening the ability of spouses to give evidence against each other, because as I said before, this is clearly an unholy marriage, so it may be that it comes from their relationship that they now feel that spouses should be able to give evidence against each other. Interestingly enough, as I said previously, the anomalies, or the Jekyll and Hyde syndrome, exist from top, middle to bottom of this administration.

I would like to indicate why I am linking the spousal competence and compellability with this coalition. I am quoting from the *Daily Express* of Tuesday, August 7, 1990. The headline is "Sudama—I kept my cool".

> "Sudama said he had made it quite clear that when the armed took over the Parliament Chamber that as an Opposition parliamentarian, he should not have to pay for any of the deeds of those who had power and authority.
>
> Sudama said, 'I know that members of the Government did not like what I said, but I nevertheless had to say it.'"

That is why I am saying that at times one may be involved in a marriage and one may say something against one's spouse when things are not going too well and then one remarries and sometimes those issues return to haunt one. It is interesting that the Member for Nariva should choose to leave when I read that particular quotation seeing that he was the staff writer who wrote that particular quotation. That is perhaps a clear example of how those particular clauses will, in

fact, play out in reality. We must be quite sure that any amendment that we do make to spouses' competence and compellability, is an amendment that is for the good and welfare of our citizens, and that it does not affect marriage as an institution. Let me again state that the Evidence Act already provides for spouses to be competent and compellable in situations of domestic violence.

I would like to deal very quickly with the issue of corroboration as regards the amendment that is being proposed in clause 11 of the Bill before the House. The Member for Couva South spoke about the issue of corroborated evidence and the extent of the amendment that is proposed in the Bill before us today. I must make the point that for section 32 of the Criminal Justice and Public Order Act of the United Kingdom legislation of 1994, a long explanatory note is given on the section dealing with this change to the use of corroboration and the warning that must be given by a judge in situations where corroborated evidence has been adduced. We have not seen this type of explanation which allays any fears that we may have about corroboration and about the judge's duty to indicate how the jury deals with the corroboration evidence.

Mr. Speaker, as that particular section of the United Kingdom Criminal Justice and Public Order Act is played out in the United Kingdom, the assumption is that other statements and other indications are given to jurors when corroborated evidence has been adduced; it is not just stated baldly that a judge may or may not give the warning to corroboration evidence. In addition to that, unlike the section that we are being asked to agree with, the UK provision completely abolishes the need for giving the warning with regard to corroboration evidence. The explanatory note that worked in tandem with the section indicates that courts ought not to use the word "corroboration".

The Law Commission of the United Kingdom which amended this piece of legislation also indicated that there was widespread consultation before this amendment was placed in the United Kingdom legislation. I must indicate that in situations of corroboration there may be times when accomplices could give uncorroborated evidence to serve their own ends, and we must take note of that in a situation where this legislation indicates that the judge may not necessarily have to give the corroboration warning.

In situations where persons may be accused of sexual offences, there may no longer be the need for corroboration. Mr. Speaker, that is a very dangerous situation because issues involving sexual offences must be handled with a higher degree of sensitivity than issues of another nature, so we must be careful when we

are looking at that amendment to corroboration that is being put forward by this Bill.

4.00 p.m.

Although the section states that the rules of corroboration are amended, the section holds back somewhat and states at new section 15A(3):

"Nothing in this section shall prevent a judge from exercising his discretion to advise a jury of the need for corroboration."

So we are finding a situation where it appears to be either/or. We may again find that as the case law develops with this change, we still are not clear on how this particular section will, in fact, be used. It was very clear before and the United Kingdom section clearly states that it is one thing and not the other, but our section leaves us still wondering.

That is, again, an example of the two-sidedness of the administration that now governs our country, Trinidad and Tobago. As each day dawns, we are never sure of what they will be coming with next and we are never sure whether the man "we love to hate" will come with something that we love or something that we find hateful and contemptible. That is why at all times we must be on our guard with all aspects of bills that come before us and we must be on our guard with every situation or issue that is brought by this administration to the attention of the country of Trinidad and Tobago.

We are also concerned that the opportunity was not taken—seeing that these are miscellaneous provisions dealing with the administration of justice—when dealing with documentary evidence, that the powers of the Director of Public Prosecutions to be able to put depositions in evidence as was made with regard to the Preliminary Enquires (Amdt.) Bill, were not also extended to statements of witnesses. I make that suggestion based on several cases that have occurred recently, where statements of witnesses are not now allowed into evidence and witnesses, whom I would call living witnesses, do not come to court and cases have to be thrown out because statements of witnesses are not now allowed into evidence and are not now part of the documentary evidence that is allowed into our courts. This may have been the ideal opportunity. Indeed, if I recall, that suggestion was made on a previous occasion, to broaden these provisions to ensure that statements of witnesses are part of the documentary evidence that will be allowed into court, so that situations that we have seen developing will no longer exist.

I repeat, I am trusting that some of the concerns that have been raised will be dealt with—concerns surrounding the process after someone is acquitted and the state appeals; concerns surrounding whether there was any proper consultation by this administration with regard to institutions that have a bearing on this particular piece of legislation; concerns with regard to whether, in fact, this piece of legislation is one which will benefit, to a large degree, the majority of citizens in Trinidad and Tobago; and concerns which leave us to wonder, given the original bill that came before the Parliament, whether that intention is not somewhere lurking in the minds of this administration, the intention to interfere with rights and freedoms that have existed over time and with which this administration appears to have a propensity for interfering.

I thank you, Mr. Speaker.

The Minister Extraordinaire and Minister of Tobago Affairs (Hon. A.N.R. Robinson): Mr. Speaker, it is a pity that the hon. Member for Arouca South, whom I have said on previous occasions has a great deal of potential if properly tutored, should have dishonoured the elegant garb in which she is so beautifully clad, by descending to the misuse of a newspaper report concerning the Member for Tobago East.

May I say, first of all, for the benefit of the Member, when quoting from a newspaper, it is the practice in Parliament to produce the entire newspaper. May I ask that the extract referred to, be passed to me so I may read it and deal with it. Please, do me the grace of passing the extract to me, which is the proper thing to do. I deny it, categorically, and I deny, again, that I ever said that only a coup could remove that government. Nothing that the hon. Member read subsequently in the newspaper says that. That could possibly have been something written by a sub-editor who did not read the report properly. Will she pass it to me so I could refer to it?

The second point I want to make is, this attempt to associate the Member for Tobago East with the violent overthrow of government has been a practice and a pattern of PNM behaviour from the time I left the PNM.

4.10 p.m.

I was charged with having sat at the Prime Minister's desk, while he was making his way to Jamaica, and gone through his papers as part of the design for that coup. A newspaper inference by the PNM charged me specifically with that attempted coup; the violent overthrow of the government. I took the newspaper to

court, won the case and was awarded damages, but the PNM continued to make the charge.

Mr. Maharaj: That is their culture!

Hon. A.N.R. Robinson: They sought to lock me up on several occasions. They locked me up twice, wrongfully. On one occasion I obtained damages for false imprisonment. They terrorized the population of Tobago saying that arms and ammunition were hidden. They spread the report that Cuban arms were brought from Cuba and deposited on the island. They sent policemen all over the island searching people's homes. They terrorized activists of the party that I then led. They did not find any guns and ammunition. When they locked me up they had to set me free and had to pay damages, yet they have continued a pattern of attempted character assassination.

During the reign of terror, even members of my family came under threat and pressure from that government. Even my 80-years-old mother came under pressure from that PNM government. I have not dwelt on it. That is behind me. If they did not appear in the church service on Sunday, and cannot explain their absence for not joining with the national community in emphasizing the values that underlie our multireligious, multiracial and multicultural society, they should not blame it on me. If they regard the attempted coup of 1990 as a personal matter against Robinson, one day they would find out that it was not so.

They had their campaigns of dirty tricks. They found a dragon on the Red House which was placed there by the Member for Tobago East and they continued. After their spiteful behaviour for years, the President of the Republic thought it fit to award me silk, they then told the public that I had awarded myself silk. The leader of the Member for Arouca South talked about the nonsense of synthetic silk, and so they have been going on. Character assassination. That is why they are on that side of the House.

If they cannot understand why they are on that side of the House, it is because of the dirty campaign that they have been conducting over the years against the people of Tobago and this country whom they do not particularly favour. This personal level to which they have reduced politics—and the continuing behaviour in that mode—out of which I thought the hon. Member for Arouca South had escaped, but the direction of her leadership points the direction which she takes.

Her leader came to the island of Tobago to take away what had been granted by this Parliament—to nullify the laws of this Parliament—and substitute himself for the laws passed by the Parliament. He came to lecture. *[Interruption]* They do

not even have shame. No shame. A leader who bought a car as an election bribe. Shameful.

Mr. Speaker: Could I ask Members of the House to—

Miss Nicholson: Behave themselves.

Mr. Speaker: —take it easy? They will all have the opportunity to speak for 40 to 45 minutes and an extra half hour. Please!

Hon. A.N.R. Robinson: Mr. Speaker, I can spend a lengthy time but the whole country knows their pattern of behaviour. When they were in trouble with their own citizens, they sent for foreign arms to defend themselves.

It was the Minister of Defence of the United Kingdom, Mr. Dennis Healey, who revealed to me at a place called Lake Como in Italy at the Rockefeller Villa where he was writing his memoirs, that they sent telegrams which would have meant the British moving back into Trinidad and Tobago and taking over. Venezuela was asked to send arms to defend their skins when they were in trouble. So, it is not surprising that they were not at the religious service on Sunday. They pledged loyalty to the country and to the values that underlie our multicultural and multi-racial society. All they are concerned with is that the Member for Tobago East was responsible for moving them from power in 1986 and the Member for Tobago East was responsible for moving them from power in 1995. That is all they are concerned about. *[Desk thumping]* So, I had to be personally attacked and vilified, but I have survived it all. They have just begun.

I have no bitterness. I hope the Member for Arouca South would continue, as beautiful as she is. I have absolutely none whatsoever. What I want to emphasize is this pattern of behaviour by the party that has turned out the most corrupt characters this country has ever seen and wasted the money of this country in the most incredible fashion. *[Interruption]* I have to reply. They had 10 times as much money to spend in one year as they expected to spend and blew it until an hon. Member from another country had to say "it passed through them like a dose of salts". One can understand what comes from that side and why they behave in the manner that they do, and one can understand that that kind of behaviour would continue.

4.20 p.m.

I have stated my philosophy of government in many ways. I wrote the *Mechanics of Independence* as a record of my stewardship. *[Interruption]* You

go and write one! I do not envy you for anything! Learn to behave yourself for once!

I would be happy if all of them would write books and give an account of their stewardship. I would be happy if the Member for Diego Martin Central could write. I said so about past ministers of government in a lecture at the Institute of International Affairs. I advocated that past ministers of government should write, and I see one writing in the newspapers today. I hope the hon. Member for Arouca South reads what he writes because he has certain views about her leadership, or what are coming events casting shadows. Ah, see how she smiles! See how I can make them smile when I want!

Mr. Speaker, my record is like an open book. They tried their best to sully it: they have tried their best to destroy me personally—physically. I stood up against guns in a village called Ste. Madeleine when the police came to stop a constitutionally convened and conducted meeting. The police was sent to stop it. I stood up against them. They set the police against a people and they were becoming hostile to the police. I said, "No, do not blame the police! Make friends with the police as a matter of self-defence. They have put you in opposition to the police who have guns. You do not have any guns! When they terrorize you and put the police against you and you become hostile to the police, understand that the police have guns. You do not have guns so make friends with the police!"

There is a certain newspaper which was started for the purpose of character assassination. Seventeen copies were put into evidence by Mr. Algernon Wharton, QC, who represented me, showing the pattern of behaviour of that newspaper. They continued the pattern of behaviour. Let me state categorically that they have tried, and on no occasion could they prove in any way, or demonstrate with any degree of credibility, that I have been associated with any attempt or any advocation of forcible overthrow of the Government of Trinidad and Tobago.

Mr. Maharaj: On the contrary, in 1990, they were involved. The prison record will show that.

Hon. A.N.R. Robinson: My ideas have been put into writing. I have given, not only a record of what I have done as a Minister, but also my ideas for the future. They never referred to them. It is not my fault. On future occasions I will say a great deal more about that. They were warned about the direction in which they were taking this country. Time and time again they were warned, but they

would not listen. They persecuted persons who warned or gave a different point of view, and one of the principal persons targeted for this persecution, character assassination and even physical destruction was the Member for Tobago East. After 40 years they have not learned. The Member for Tobago East has survived. The reputation of the Member for Tobago East has survived.

The dragon on the Red House; dragon down from the Red House in the dead of night—the Member for Tobago East does not operate in that fashion. The Member for Tobago East operates in the daylight. Everybody sees what he does; everybody knows and hears what he says.

Let me emphasize that whatever they do, they will be fighting against ideas. The Member for Tobago East is not going to use any guns. He was once given a gun as a minister of government and the gun remained locked up until it became rusty. When it was taken back it was a rusty gun that could not even fire. The Member for Tobago East does not contest with guns, he contests with arguments and ideas. The Member for Tobago East is committed to constitutional and peaceful change all over the world, not only in Trinidad and Tobago. The Member for Tobago East is a member of the executive of an organization called Parliamentarians for Global Action, and Parliamentarians for Global Action is committed to the dissemination of democratic ideas, principles, practices and institutions all over the world.

Mr. Speaker: Hon. Members, the sitting is suspended for half an hour.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Hon. A.N.R. Robinson: Mr. Speaker, having regard to the charge made, it was necessary for me to demonstrate the pattern of conduct over the years of which, what we witnessed this afternoon has been the latest example, and that is an attempt to fix on the Member for Tobago East some desire or advocation in respect of violent overthrow of the Government of Trinidad and Tobago.

I pointed out that it started ever since I left the PNM and stayed in Trinidad and Tobago, rather than emigrate as C.L.R. James did, as Winston Mahabir had to do and so many others. If they did not emigrate, they had to remain silent and leave public life altogether. The besetting sin of the Member for Tobago East was that he stood up to the PNM and along with the supporters, he defeated them not only once, not twice, not three times but several times *[Desk thumping]* and on two occasions was principally responsible for the PNM's loss of power and going into

the Opposition; and for that it is clear that they do not intend to cease their campaign of attempted character assassination.

The more they do that Mr. Speaker, one would have thought that they would recognize that the campaign has been a failure and they would re-examine their ways and turn to different methods of achieving power. It is not for me to suggest to them how they may do so. That is their dilemma, but one way I know they will not do so is by their constant denigration of the Member for Tobago East.

History teaches those who learn and certainly July 27, 1990 was an occasion for us all, if we did not learn before, to learn. What happened was not an attack on the Member for Tobago East, or even an attack on the Government. It was an attack on the Parliament of the country in the course of which Members of both sides of the House were imperiled, injured, in one case died, and in the course of which innocent persons were killed. It is a point that I have been making over the years that violent overthrow of Government is no respecter of persons. That is why I have campaigned over the years for peaceful change.

The "No-vote Campaign" was one such, when they refused to bring back the Ballot Box. I remember what their leader said at the time, that the PNM would not encourage the electorate to dream the impossible dream. And what was the impossible dream? To remove the voting machines in which a large section of the population had no confidence whatsoever, and bring back the Ballot Box. That was an impossible dream. But that impossible dream became reality and it was not through violent change, but peaceful change.

The "No-vote Campaign" resulted in the appointment of a Constitution Commission. The Report of the Constitution Commission was rejected and the principal author of that report, one of the most distinguished sons of Trinidad and Tobago ever, was denigrated for three hours in this very Parliament. What was his sin? He sought faithfully to discharge his mandate to produce a report based on consultation throughout Trinidad and Tobago for constitutional reform of the country. Not long after he died. C.L.R. James had to leave; Winston Mahabir had to leave the country also; Hugh Wooding was denigrated and he died. So many others were silenced, and so many participated in the campaign. Where are they today? I would have thought that the fledgling Members of the Opposition would have realized that they have had many predecessors up to recently and they have just been swept like chaff before the wind. It is the one who took the greatest risks and who went through the greatest sacrifice in standing up against the PNM, who has survived.

Where is their comrade of yesterday? Only yesterday the one Member for Laventille, who at one time was so critical—and we all sympathize with him now. "Poor fellow," we say, "look how he died." The Member for Diego Martin West, soon we will be saying "poor fellow", and the Member for Diego Martin East, I do not think anyone will be saying "poor fellow" for him. *[Laughter]*

Mr. Sudama: The less said of him, the better.

Hon. A.N.R. Robinson: So do not exult over July 27, 1990. Do not exult! It was no victory of vindication for the PNM as you think it was.

The hon. Member for Arouca South spoke as though it was vindication for the PNM.

5.10 p.m.

Mr. Bereaux: Would the hon. Member give way for clarification?

Hon. A.N.R. Robinson: No, no, you had your chance.

Mr. Bereaux: Okay.

Mr. Sudama: He cannot say anything sensible anyway.

Hon. A.N.R. Robinson: How ironic, she said, waving—

Mr. Hinds: Look how many times we gave way.

Hon. A.N.R. Robinson:—the excerpt from the newspaper. How ironic, she said—[*Mr. Hinds rises*] Allow me. There are times when you must show respect! *[Desk thumping]*

Mr. Sudama: To your elders and betters. *[Interruption]*

Mr. Hinds: Every time the hon. Member asked me to give way, I have done so out of respect.

Mr. Sudama: All right, Member for Laventille.

Hon. A.N.R. Robinson: I said, there are times when you must show respect, and this is such a time.

Mr. Assam: "Nuff respeck!"

Hon. A.N.R. Robinson: Do not vindicate. It is not a vindication of the PNM. So, "it is ironic"—hear the language—"that Robinson, who was advocating a coup in 1974 should have been the subject of a coup in 1990". Do not exult over it.

Mr. Hinds: Whenever I was asked to give way, I would give way.

Hon. A.N.R. Robinson: I want to emphasize and drive home that when "guns start to play", there are no respecter of persons.

Mr. Valley: The hon. Member should have known that in 1974. That is the point she was making.

Hon. A.N.R. Robinson: We all do not know. We all cannot tell. We must exert our efforts to mobilize our endeavours in order to ensure that those things do not happen. I want to give you—Members of the House and the country—the assurance that no attempt at character assassination will deter me from the discharge of my responsibilities. No misrepresentation—and there have been so many; too many to enumerate—will prevent me from stating my views which are known, not only in this country, but also in many parts of the world.

Mr. Hinds: Where?

Hon. A.N.R. Robinson: I am respected for the views that I hold and for the actions that I take. [*Mr. Hinds rises*] No, I am not giving way. You will have your chance. You and your predecessors will never give up.

Mr. Bereaux: You are defeating yourself.

Hon. A.N.R. Robinson: You will never give up. There is one thing I want to assure you all, that my commitment is to the country! So it was in 1956 when I entered politics. When I left the PNM, it was because I could no longer tolerate the practices and the wrongdoing that were taking place in the PNM. And I said it. I fought within the PNM before I left. I never sought to displace the leader. I made my views known.

Mr. Imbert: You are fighting now.

Mr. Narine: He fought and ran away.

Hon. A.N.R. Robinson: No. I stood up.

Mr. Assam: Do not disturb the leader.

Hon. A.N.R. Robinson: When I left, I did not run. I stood up.

Miss Nicholson: And you fought.

Hon. A.N.R. Robinson: And I fought.

Miss Nicholson: And he defeated them.

Hon. A.N.R. Robinson: Yes. Fought them in the streets—peacefully.

Mr. Sudama: On the beaches.

Hon. A.N.R. Robinson: Peacefully. In the valleys—peacefully. *[Interruption]* In our homes. Peacefully. And defeated them. Peacefully.

Mr. Maharaj: Look how they are broken today. Without a leader. I feel sorry for them. Look at them.

Hon. A.N.R. Robinson: And the rest in fear. Mr. Speaker, one would have thought that at this stage of the existence of the PNM, some intelligence would have been brought to bear on their situation. *[Interruption]*

Miss Nicholson: Williams is rolling in his grave.

Hon. A.N.R. Robinson: One would have thought that they would have considered the circumstances that brought them there, and the circumstances in which they are, at the present time. *[Interruption]* But, so consumed are they with the motivation of revenge and thoughts of venom and snakes and dragons; so frightened are they by their own images, *[Interruption]* that they have lost the capacity to think!

Dr. Mohammed: They were never capable of thinking in the first place.

Hon. A.N.R. Robinson: All they can do is to concentrate, go back to their primordial origins and base their case on character assassination.

Hon. Member: Lacking vision.

Hon. A.N.R. Robinson: A characteristic and hallmark of the PNM for many years. Would you believe they have been trying for over 20 years?

Mrs. Persad-Bissessar: And still trying.

Hon. A.N.R. Robinson: And they would not give up; and would not recognize the error of their ways. They do not recognize how senseless that approach is, particularly at this time.

Miss Nicholson: Nobody to lead the young ones.

Hon. A.N.R. Robinson: But like the Galilean swine—

Mr. Bereaux: The hon. Member knows a lot about swine.

Hon. A.N.R. Robinson: —they continue on a path of total destruction. All I can say is, may God help them. *[Desk thumping]*

Mr. Colm Imbert (*Diego Martin East*): Mr. Speaker, it is unfortunate that, for the last 45 minutes or so, *[Interruption]* we have been regaled by the Member for Tobago East; and his contribution today, I regret—because I have a certain respect for the hon. Member as a senior Member of this Parliament.

Mr. Robinson: I am glad to hear you say that.

Mr. C. Imbert: It is a fact. As a person who has been in public life for many, many years, I have a certain respect for the Member for Tobago East, and it is unfortunate that he allowed himself to be rattled by reference to a newspaper article and treated us to 45 minutes of personal explanation.

The fact is, Mr. Speaker, the matters raised by the Member for Arouca South were two newspaper articles. *[Interruption]* I have asked the Member to photocopy them and give them to the hon. Member.

Miss Nicholson: Is he the Leader of Government Business, now? Has he taken over from Valley?

Mr. C. Imbert: If he does not get it from the Member, I will get it to him. I make that undertaking here today.

The fact is, Mr. Speaker, when one looks at the newspaper articles in question: one was a *TnT Mirror* article of 1991 referring to a *Daily Express* newspaper article of 1974. The headline in the *Daily Express* newspaper article was in reference to a coup, or threat of a coup; and the person alleged to have made this statement is the hon. Member for Tobago East. What the *TnT Mirror* article sought to do was to make the point that the Member for Tobago East should not speak about coups and so forth, because he allegedly threatened a coup in 1974.

5.20 p.m.

The point I am making, is the article is a matter of interpretation. It is a matter of opinion. The reporter who wrote the article said, in his opinion, the Member for Tobago East should be the last person to talk about attempted coups because he allegedly advocated that in 1974.

I really would have thought that someone with the experience of the Member for Tobago East, a former Prime Minister, would have just ignored that. If the article is inaccurate, if it is not true, if the reporter was making mischief, all he had to do was get up and make a simple statement that the article was not true, the statements were not correct. But instead we got 45 minutes of personal explanation. I would ask the hon. Member to please not succumb to his emotions

and get so carried away by simple references to newspapers. It is not becoming one of his experience in this Chamber.

Mr. Speaker, let us deal with the Bill because the hon. Member did not deal with it, so I will have to respond to the hon. Member for Couva South. *[Interruption]* No, no. It is just that he let his emotions get the better of him unfortunately. It is most unlike him.

What we have in this Bill here before us today is what the hon. Member for Couva South has referred to as improvements in the administration of justice. My own research tells me that a lot of what is in this Bill is borrowed from changes in the legislation in the United Kingdom and, again, points to a habit that is becoming more and more apparent—a habit of the Member for Couva South—of copying wholesale legislation from other jurisdictions without taking the time to see whether it is applicable to the society and environment in Trinidad and Tobago. As a matter of fact, this approach of the Attorney General has resulted in a lot of bad laws being passed in this Parliament. What has happened is that we are importing models and drafting from other jurisdictions and not taking the time to see whether there has been criticism of these models, or whether the legislation has worked in the countries from which it has come. In the United Kingdom, many of these amendments have been the subject of serious critical debate and the jury is out in many cases on whether the legislation is appropriate or not.

I ask the Attorney General—and I hope he takes the point I am making in the spirit in which I am making it; I have no difficulty with copying from other jurisdictions, they have more experience than we have; they have advanced the law in many cases, far more than we have. But he should study the implications of the legislation very carefully to see whether Trinidad and Tobago is ready for this type of legislative change. I will come to that in a little while.

The Bill, in my view, introduces a lot of grey areas into the law. Whereas the intent of the Attorney General may have been to clean up some loose areas in the administration of justice and deal with anomalies and other problems in the administration of justice, what he has done is introduced a lot of confusion into the law, in my opinion. This does not help the administration of justice, it hinders it; because what this Bill will do is to confuse the situation in the administration of justice, leading to more appeals, delays, adjournments and, of course, to the charge of exorbitant fees by criminal lawyers. The lawyers always benefit, with the greatest of respect, Mr. Speaker. The lawyers always benefit.

When bad law is made, what is done is that income is made for lawyers, because when the law is defective, there are more challenges, there are more adjournments, delays, mistrials, appeals and so forth. In my opinion—the Attorney General obviously has a different opinion; I have no argument with that—my view is that there are several clauses in this Bill which are loose, woolly, grey, ambiguous and will lead, not to streamlining of the administration of justice, but to confusion in the justice system.

I want to return to the point made by the Member for Arouca South that when one is bringing a bill that deals with the practice of a profession, or is related to the practice of a profession, one should consult the practitioners. This is a weakness of the Attorney General. Again, I hope he is listening and can sift through what I am saying and take the points, in his opinion, that have merit and not react in his usual emotional way. The practitioners in the justice system are the lawyers. The Attorney General is not the fountain of all wisdom in Trinidad and Tobago; he is not the source of all legal knowledge. I would have expected a reasonable and sensible Attorney General—one who is not afraid of his peers in the legal profession and their criticisms, if he is bringing a law to improve the administration of justice, as he said, to deal with anomalies in the court system, to clean up areas of evidence, to improve the administration of justice—to have consulted the Law Association and the Criminal Bar and to receive comments from them.

It is very easy for Members on the other side to say, "Yes, we consulted." "Yes, we gave them ample time to comment" and so forth. I would like the Attorney General to answer categorically and I have no doubt he will, because he has a tendency to do it, whether he consulted with the Law Association and Criminal Bar? Did he give them ample time to study the implications of this Bill? Did he receive their comments and did he study their comments to determine whether their comments had merit? Did he engage in proper dialogue with them? Or did he give them his usual cursory, superficial, flippant treatment, "Here, look ah bill and ah bringing it to Parliament next week, eh"? This is the typical approach of the hon. Attorney General. I wish he would change. I am asking him.

It is the same thing with the Land Surveyors Bill. The Member for Princes Town brings a bill to the Parliament, does not consult with the land surveyors, has to take back the bill and conduct the consultations. We could have saved ourselves a lot of trouble here, Mr. Speaker.

But I want to deal with certain aspects of the legislation. In particular, briefly with evidence of spouses. This is where I referred to the whole question of copying law from other jurisdictions. In the United Kingdom, in the United States and so forth, there have been changes in these areas, but Trinidad and Tobago is a unique country. It has a mixture of cultures, a mixture of races, a mixture of religions.

Mr. Assam: So does the United States.

Mr. C. Imbert: Mr. Speaker, I would say far more than a country such as the United Kingdom, Trinidad and Tobago has a mixture, a composition of its society that is far more complex than British society. In Trinidad and Tobago, we have virtually every race represented in significant proportion and virtually every religion represented in significant proportion, not so in the United Kingdom.

5.30 p.m.

I find much of the legislation that the present administration is bringing before this Parliament to be very amoral—not immoral—because it does not respect religious traditions; it does not respect institutions in the country that have arisen as a result of certain cultural and religious traditions.

The amendment to the Shop Hours Act is a case in point, where the Christian churches were opposed to this. Members of the Christian faith make up over 50 per cent of the population, yet their views were ignored.

Again, the whole question of the sanctity of marriage, the question of the union of marriage, the reason the spouses were not allowed to testify against their husbands or wives, as the case may be, is that it strikes at the very core of the union.

When people are married they become one. That is the Christian concept, and this legislation does not recognize that. It would now compel a spouse to testify against his or her husband or wife, and strikes at the whole concept of the Christian union of marriages. It is amoral legislation. It does not recognize any religious tradition. So, too, with the Shop Hours Act and this marriage thing that is coming up on another occasion. It does not recognize the opinions and the views of a large proportion of the population. It does not recognize the religious complexity of Trinidad and Tobago. This is amoral legislation and this is one of the problems of borrowing legislation wholesale from other jurisdictions. When one strikes at the concept of marriage, then one is interfering with the family unit; one is interfering with the bond between husband and wife. Are we ready in

Trinidad and Tobago for that? These metropolitan countries have been expanding the whole concept of divorce for years. Are we ready, in Trinidad and Tobago, for this sort of thing? These are serious points. One cannot just dismiss Christian concepts and religious concepts, whether they be Christian or otherwise, as irrelevant. Are we ready to borrow all of these amoral concepts from the metropolitan countries?

The other point I want to make relates to the new section 14 in Part III of the Bill. This deals with the whole question of Documentary Evidence. It allows for the first time the use of computer records. Now, again, in a society such as Britain and the United States where so many records are kept on computer, where computerization is very advanced, where forensic technology is very advanced, in Trinidad and Tobago we do not have persons with the skill to determine whether there has been tampering of computer records. But these other countries have this expertise. The easiest thing to do in the world is to tamper with a computer record. It is a fact. The reason original documentation has been required up to this point in time is that it is very difficult to falsify an original written document. The document may contain a signature, it may contain the handwriting of the person who prepared the document; it may contain an official stamp and, therefore, it is easy for a forensic scientist to look at an original document and establish whether the signature has been forged; the handwriting has been forged or the document has been tampered with.

How can one determine that a computer record has been tampered with? It is almost impossible. As a matter of fact, one can now tamper with computer records from a remote location—hackers, they are called. Unscrupulous persons can enter computers from a remote location, change the information contained in the computer record and in some cases if these persons are skilled enough, there will be no trace of the entry of that person into the system. The fact is that I consider it very dangerous with the level of technology in Trinidad and Tobago today, to introduce the use of computer records as evidence in court. It is very dangerous.

The accused person may not have the resources to establish whether a computer record is accurate or not. This would lead to requests for an adjournment of the trial. If an accused person is presented with a computer record and we do not have the expertise in Trinidad and Tobago to establish whether the computer has been tampered with—because, look at this, section 14B(I)(a) states:

"...there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;"

Who is to establish that? Which expert do we have in Trinidad and Tobago who is credible enough to get up in a court of law and say, "This computer was not tampered with. I certify that"? Who in Trinidad and Tobago can say that? Can the Attorney General bring one person who is competent to do that in Trinidad and Tobago? But in the United States there would be thousands of such persons who would be able to testify as an expert witness that, "Yes, I have examined the computer records and I can find no evidence of tampering". Section 14B(I)(b) states:

"...at all material times the computer was operating properly,..."

Who is to establish that? There are some computers which are not manned 24 hours. Someone may not have been there when the tampering took place. This is a very dangerous piece of legislation. As a matter of fact, using the licensing office as an example, banks, insurance companies and other organizations involved in vehicle transactions do not accept computer records from the licensing office at this point in time, because it has been established that there is tampering of those records, and they call for the original card copy of vehicles because they have more faith in original documentation.

It is my opinion that we, in Trinidad and Tobago, are not ready for this. The type of records that can be tampered with from a remote location, are banking records; ownership records; taxation records; identity records; date of birth, death, immigration, residency; medical records and so forth. They can all be tampered with by experienced computer hackers and we will be none the wiser, and this will delay trials in Trinidad and Tobago. The Attorney General can say what he wants, but the first computer record that is used in a court will be challenged and you would have to bring in foreign expertise to determine the authenticity of that record.

So, again, it is a question of the Attorney General importing legislation and we are not ready for it. The same goes for video recordings. There are many television productions that have been made showing you how people tamper with video recordings; how persons remove some of the "pic" cells and some of the other data on the electronic image; import new images; could change a person's entire face or hide it, for that matter—but we wish to bring video recordings into Trinidad and Tobago.

Another difficulty I have with this part of the legislation is that at least in the computer record section it refers to a person giving a statement, or a certificate identifying the record and signed by somebody who is in some way related to the computer or the computer records. But where is the similar safeguard with regard to video recordings? Perhaps the Attorney General can tell me. Who is to take this video record? A trained video operator? Who is to be present when the video record is being taken? Who is to certify that this video record is authentic? There is nothing here to that effect.

I would like the Attorney General to clarify this issue. I would like him to tell this honourable House who will be making this video record and who will be in charge of safekeeping this video record to determine it has not been tampered with. After the video record has been made, it can be tampered with. I would like the Attorney General to tell me. He seems, in his usual flippant way, to think that the points that are being made here are frivolous. But the courts of the United States, the United Kingdom and other metropolitan jurisdictions, are replete with cases which have been thrown out of court because of tampering with electronically-gathered evidence. Courts are replete with cases where video recordings have been determined to be faulty, where computer records have been determined to be bogus. It happens in the metropolitan jurisdictions. What is going to happen in Trinidad and Tobago? I would like the Attorney General to tell me. Therefore, we are not ready for this.

5.40 p.m.

Another point, in the United Kingdom, from whence the Attorney General borrowed this amendment—he has made it clear cut—is the whole question of corroboration, evidence of children; the whole question of unsworn statements and warning the jury. They have removed the requirement for corroboration. They have removed the requirement for swearing of a statement. They have made it absolutely clear that the judge does not get into the act and does not have a discretion to warn juries. What happens if the judge did not warn the jury on the whole question of corroboration as in Part III clause 11, new section 15A(3) which states that:

> "Nothing in this section shall prevent a judge from exercising his discretion to advise a jury of the need for corroboration."

So, I can go before one judge, he exercises his discretion, the Attorney General can go before another judge, that judge does not exercise a discretion so he appeals because he feels that the judge did not exercise his discretion. Why

introduce these ambiguities into the law? It is either left or right. It is either uncorroborated evidence can be allowed *carte blanche* or it cannot; not the halfway house that the Attorney General has brought here, that the judge, in his discretion, could decide whether to talk to the jury or not. I cannot accept this kind of badly drafted legislation. I cannot accept it.

In the same way with the uncorroborated evidence of a child, this is a loose and woolly insertion here, where it is confusing. The court will warn the jury or the court will not warn the jury. Take it out. If this is what you want to do, take it out. Remove the confusion.

Mr. Speaker, I do not want to prolong this debate much further. I realize that many Members on that side have neither the inclination nor the interest to study legislation brought by the Member for Couva South for many reasons. Some of them are not interested; some of them are afraid; some of them do not want to raise objections because they may get their heads cut off. They could snicker and laugh all they want, but the points that we make on this side are serious and I would ask them on the next occasion that a piece of legislation like this is brought which introduces confusion into the law, that they challenge the Member for Couva South and make him justify these types of provisions.

I cannot support the use of computer records and I cannot support the use of video records. Of course, the Attorney General in his usual way would railroad it through, and years from now or even months from now, we will see a trial where this piece of legislation will be used where there will either be a mistrial or a delay for years; where the authenticity of the information would be successfully challenged; where it will be proven that we do not have the competence in Trinidad and Tobago to establish the authenticity of computers; where the hardware is changing almost on a daily basis; where software can be infected by computer viruses; where there are bugs in software which lead to defective information. It will be established that we do not have the competence at this point in time in Trinidad and Tobago to conclude in a forensic manner on the authenticity of computer information.

I hope that the other side is listening. I heard something during the introduction of this Bill about delaying the implementation of certain parts of this Bill, and I would ask them with regard to these two areas, video recording and computer records, that they delay the introduction of these parts of the Bill until

they get the infrastructure in place in Trinidad and Tobago, the human resources, the material resources to deal with authenticity of video and computer records.

I thank you, Mr. Speaker.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, as I sat and listened to Members on the other side, I think we can begin to understand why *rigor mortis* had set in on the PNM, so that they were unable to bring any legislation to this Parliament to deal with the administration of justice in this country. Because both the Members for Arouca South and Diego Martin East seem to be making the point that one has to be dead certain, that there must not be any flexibility within the legislation that is being brought. We ask the question, because the Member for Arouca South wanted to ask questions, and I want to ask the question: What is parliamentary democracy all about? What is it that we come to this Parliament to do?

The Parliament, we have always said and we all know, is about the business of making law in this country. It is to make law! We all agree with that. When a bill is brought to the Parliament, what do we debate about? We take the collective debate to make good law of it. The concept that the PNM had is a resistance that whatever it brought was not subject to change. This is why they would stand there today and say that when we brought bills to the Parliament they made suggestions and recommendations. What is wrong with that? That is what the system of Parliament and parliamentary debate is about, that when the bills are brought they are not to be perfect in that sense that the Member for Diego Martin East seems to imply; that there must not be anything in it that is subject to debate. If that were the case then there would be no need for the parliamentary debate. It is the purpose of the debate in the Parliament to thrash out and give at the end of the debate, what is good law for this country.

Mr. Speaker, I am saying that we can understand the *rigor mortis* in the PNM because that is why they failed to bring legislation to deal with the problems that we were experiencing in the administration of justice in this country. I would come back to that point.

I want to make it very clear that I am very pleased, and I believe, as the hon. Attorney General said, that any right-thinking citizen in this country should be very pleased to support this Bill before the House today, because what it seeks to do is to effect reforms in the law in Trinidad and Tobago that are long overdue.

The existing laws have resulted in many cases of injustices, both to the victims of crimes and the families of the victims of crimes, as well as to the alleged perpetrators of the crime, because the existing laws have contributed to and have assisted in the court processes.

I have no difficulty in supporting this Bill, and I believe every practising lawyer in this country would welcome the provisions in this Bill because they seek to reform, as I said, laws that are no longer serving the interests of this country.

Mr. Speaker, one would recall that this Government, when it sought to win the election, was very clear about what it wanted to do in its manifesto with respect to the administration of justice. It said in its manifesto, that it would want to reform the procedures which now exist in the courts so that quicker and more affordable justice can be available. With this Bill, about 13 such reforms on different aspects of court proceedings are to be effected. The purpose and the effect of these reforms include improving the delivery of justice to citizens of this country. It includes making reforms to laws so that there will be quicker and more affordable justice and we will come to the clauses to show how this will be done.

5.50 p.m.

These provisions improve delivery of justice to the victims of crime and the families of the victims of crime. It is a total paradigm shift when I hear Members on the other side preaching the cause of the perpetrators of crime. I ask them: What about the victims of the crime? Should we then allow the accused to go, keep out the records and keep out the evidence because one sees some woolly area in the law? What about the victims of the crime? That is what we need to ask them.

I cannot see how anyone in this House who is right-thinking can object to this legislation on the basis of consultation. I will come to that point of consultation, because both Members on the other side who have spoken mentioned this issue of consultation. I cannot see how they can use that as an avenue for obstructing the passage of this Bill. I cannot, with the greatest of respect, understand how the Member for Arouca South can stand today and say that the PNM acted responsibly in every instance. This is what she said and I was totally surprised.

I have with me the PNM Election Manifesto, 1991, and I have mentioned our election promise on the basis of the administration of justice. In 1991, the PNM, in its manifesto, at page 42, promised as follows:

> "The PNM is determined to promote greater efficiency in the legal system and to give priority to the maintenance of law and order. The judiciary, the magistracy, the police, prison and fire services will all be strengthened, so citizens will be assured of a greater sense of security and will feel confident in the judicial and legal system."

[Interruption] Those who have patience will learn, so if Members opposite listen they will find out the point.

At page 42 was the general promise, but they promised specific things. They promised to increase the number of judicial officers—magistracy and the judiciary. Mr. Speaker, as you would know, nothing happened. They spoke about renovating and refurbishing the existing Magistrates' Courts. They spoke about establishing a family court. They spoke about increasing the jurisdiction of magistrates in the Petty Civil Courts to a more appropriate financial limit.

In addition to those promises, they went on to say that the Law Commission will be mandated to examine all existing criminal laws and update same when necessary with a view to making them more relevant to today's society. That was a 1991 promise of the PNM. They stand here and say that they acted responsibly.

Those promises were made about five years ago and, as a result of those promises they formed the government of the day. From then until November 1995, they were in a position to deliver those promises because they were in government. They were in a position to implement those promises. It is a tragedy for the people of Trinidad and Tobago, that the PNM, instead of keeping those promises whilst in office, instead of promoting greater efficiency in the legal system, instead of giving priority to the maintenance of law and order as it had promised, instead of uplifting this nation, was determined to drag us down the road with it, until the population rejected it and left it to go down the road alone. It seemed hell bent on this route because it continued to go further and further down the road. We must make it very clear to them that they will continue to follow that route alone. We will not go down together with them.

On the question of the administration of justice, to illustrate how far down the road the PNM had gone and was attempting to take this country, one needs only to be reminded of the newspaper reports which were typical in 1994 and 1995, the gist of all of which was to deal with the delays and the difficulties that citizens were experiencing with respect to the administration of justice. This is after 1991 when it made its promises. We were down the road in 1994 and 1995 and the problems had not been dealt with.

I can refer to an article in the *TnT Mirror* dated May 12, 1995, after 3 1/2 years of PNM promises and non-delivery of those promises. The article was entitled "Court case calls 60 times, awaiting for justice." In this case, the witness who had lived in Palmiste had travelled to the Chaguanas Magistrates' Court on no fewer than 60 occasions only to be told that the prosecution witnesses were missing and they could not deal with the case. The important point is, at the end of the article, it is reported that the gentleman asked: "Is this the kind of justice we have in Trinidad and Tobago?" That is what was happening under the PNM administration.

When they stand and tell us that they acted responsibly, it is a total shame that they could stand in this Parliament and attempt to fool people with that kind of language—they acted responsibly at all times. These words reflect what was happening in 1994 and 1995 and I am spending some time on it because each time the Attorney General comes to the Parliament with laws with respect to reforming the administration of justice, Members on the other side get up with every reason to obstruct the legislation, but yet they did nothing about it until the situation had reached a state of collapse.

I refer to an article of November 6, 1994 at page 8 in the *Sunday Guardian* where the following words were reported:

> "An urgent inquiry into the operations of the legal system is needed. I think it's chaotic. Any stranger should be forgiven if he were to walk into the criminal courts and have the feeling that he were attending some pantomime."

These were the words of a Mr. Len Woodly in an article by Vaneisa Baksh. That same article continues:

> "The shabbiness cloaking the profession was not all that caught his attention; he was horrified at the long delays between arrests and trials. These long backlogs of cases, he says, amount to a denial of justice.
>
> The flaws in the system point to an eventual collapse of law and order in the country, he says. 'That's why an urgent inquiry is needed.'"

In terms of the delays in hearing and resolution of both civil and criminal matters and miscarriages of justice, the situation seemed to have worsened during those years of the PNM, 1991—1995. There were constant complaints about the

quality of the magistracy and of the judiciary. The police had been called into question on many occasions with allegations of corruption and incompetence in processing cases. There were complaints of a cavalier attitude on the part of attorneys, both prosecuting and otherwise, with respect to the repeated adjournment of cases.

A sampling of the press clippings on this topic during those years will show that the PNM, instead of filling the election promises to deal with the administration of justice, took no step so to do and the situation was one of total chaos.

If we look at the *Sunday Guardian* of April 17, 1994, the newspaper spoke about waiting for justice and described how three men were charged with shop breaking and using a firearm in 1975. This is a 1994 article. The preliminary inquiry took about two years and the matter was listed for hearing on June 2, 1982. It was adjourned eight times until 1987, and was not listed again until 1994 and, in response to a motion from the defendants for dismissal of the proceedings, the state prosecutor indicated that the victim, the identifying witness and other witnesses had died or were incapacitated, and in the circumstances, the prosecution could not proceed.

6.00 p.m.

From 1975 to 1994—we are talking about a period of 19 years—waiting for justice. What may be a contender for the Guinness Book of Records again in 1994 was a story: "Man freed after matter was called 38 times in Court." *[Interruption]* Mr. Speaker, the truth sometimes offends. The sampling of what has happened during that time shows, obviously, that the PNM failed to act on its election promises. That was the situation when this administration came into office in November 1995 and it was this administration that took steps to deal with the administration of justice. This Bill is another illustration of the commitment of this administration to its election pledge as set out in our manifesto with respect to dealing with reforms in the law relating to the administration of justice.

Unlike the PNM, this administration moved with alacrity to fulfill and implement that promise which was PNM's promise No. 1 to which I referred on page 42 of its Manifesto—a 1991 promise to increase the number of judicial officers. In November of 1995, within weeks of taking office, we sought to implement the Gurley Report recommendation. The Cabinet of this administration approved the creation of a new division of the Court of Appeal, four more high court judges and twelve more magistrates. Those were recommendations from the

Gurley Report which had been commissioned by the PNM but it failed to implement any of the recommendations. So it was left to this UNC/NAR administration to take that first step in terms of increasing the number of judicial officers.

We did not just make that commitment in terms of approving it in Cabinet. In our budget, the moneys were allocated for the increases in the judiciary and the magistracy; thereafter, the hon. Attorney General brought the Supreme Court of Judicature Act to change the legislation to allow for those increases in the judiciary and the magistracy; so that the executive had taken the steps in terms of monetary as well as legislative provisions to deal with those increases. These positions are to be filled by the Judicial and Legal Service Commissions. Some of the magistracy positions have been filled and the Commission is working on the remaining positions.

The second promise in terms of the administration of justice, the PNM's promise No. 2, was to renovate and refurbish existing Magistrates' Courts. I am very happy to report that on Tuesday of next week, the new Scarborough Magistrates' Court would be opened, again thanks to this UNC/NAR administration. *[Desk thumping]* This Government ensured refurbishment and alteration of the Chaguaramas Centre where the court is now sitting. Work is also on-going on the Tunapuna Magistrates' Court and also the Arima Magistrates' Court. Again, the PNM administration failed to carry on with its promise.

Mr. Speaker, the PNM's promise No. 3—the establishment of a family court. The UNC/NAR administration has given its commitment to the setting up of a family court. In November 1995, Cabinet agreed to have moneys allocated in the 1996 budget for the establishment of this court. In January, when the Minister of Finance came to the Parliament, he did indicate that moneys had been allocated for it. The PNM has been speaking about a family court since 1986 and by 1995 when we came into office, it had done nothing with respect to the family court.

Prior to the 1986 general election, the PNM published a draft family court bill for comment on the basis that the election would be held. It is history that it lost that election and, to date, despite its 1991 election promise on page 42 of its Manifesto, there is no family court. So that the budget of this Government has allocated moneys for the establishment of that family court and the legal drafting department of the Office of the Attorney General has drafted a bill which is at present before the Law Review Commission.

There is another more specialized court which I should mention and that is the remand court near to, or adjacent to the prisons. Again, the importance of such a court was well set out in the recommendation of the Gurley Report, that is to say, that the reason for establishing such a court was to save time and money that would be expended with prisoners being transported all over the country as far as Point Fortin, Sangre Grande, or wherever it may be. In January of this year, the Cabinet of this Government approved the establishment of remand courts near to, or adjacent to prisons.

The PNM's specific promise No. 4 was to increase the jurisdiction of the magistrates in Petty Civil Court matters to a more appropriate financial limit. Again, despite this promise and the recommendation of the Gurley Report, the PNM administration failed to take into account the recommendation.

One of the provisions of the Bill that is before this House deals squarely with increasing the jurisdiction of the magistrates in Petty Civil Court matters and the hon. Attorney General has already indicated that clause 19 of the Bill before the House seeks to raise the jurisdiction of the Petty Civil Court judges in matters from $5,000 to $15,000.

Mr. Speaker, as you would well know, the laws that exist are that any claim, debt, or demand in the Petty Civil Court and Magistrates' Court, for civil matters are limited to claims of $5,000 or less. Obviously that figure is no longer realistic in terms of what is happening in the country. This provision clearly seeks to increase that limit to $15,000 so that all matters that are below the $15,000 limit can be dealt with in the Petty Civil Courts of this country. In that way, justice would be made more affordable for those relatively small claims that are below $15,000. One would not have to go to the High Court in order to deal with a claim between $5,000 and $15,000 which is what pertains today under the existing law. Now it can go to the Magistrates' Court and it is noteworthy that a date of hearing can be obtained much earlier in the Magistrates' Court. When a Petty Civil Court matter is filed, one could get a date of hearing within two to three months whereas, if one files the same action in the High Court, one would have a much lengthier time waiting to get one's matter heard. So that in raising this jurisdiction in the Petty Civil Courts, it is both to make justice more accessible to the smaller income citizens in the country, whilst at the same time to make it faster because it takes that backlog of cases in that range out of the High Court.

There was another provision within this Bill which deals again with the Petty Civil Courts and that is on the interest on judgment debts and claims. It has

always been a grey area of the law that whilst the High Court had the jurisdiction to award interest on damages claims or debt claims, the Petty Civil Court did not have that jurisdiction. On many occasions persons obviously preferred to go into the High Court to file their matters, contributing to the backlog of cases within the High Court, because they were unable to get interest in the Petty Civil Court.

6.10 p.m.

This provision in clause 19 deals with that question of interest and, again, should serve to expedite the justice system, because it is obvious that persons knowing there was no interest on the claim, could delay their claim—in fact, they have been delaying their claims over years, because they know, at the end of the day, the money paid would be far less a few years down the road than if it were to be paid at the present time.

The interest provision, therefore, would enable the litigant to be compensated, as it were, for the delay in obtaining the justice which would come down the road. The provision could also act as a deterrent on those litigants who would have been prepared to delay the matter as far as possible, with the view that they would not have had any interest awarded against them for the judgment. Clearly, these provisions in clause 19, will assist in speeding up the system of justice, in making it more affordable and more accessible to citizens of this country.

Mr. Speaker, the hon. Member for Arouca South *[Interruption]* seemed to be saying that the hon. Attorney General had brought to the Parliament one provision in the Bill with a different intent, and it was only when the suggestion was made by Members of the Senate that he changed his intent and intended to interfere with a jury in terms of a verdict of guilty or not guilty. That is provision 65E, Mr. Speaker, which gave the state the right of appeal against a judgment or verdict. *[Interruption]*

The original Bill that was circulated—*[Interruption]*

Mr. Speaker: Please.

Hon. K. Persad-Bissessar: Thank you, Mr. Speaker.

The original Bill that was circulated, as well as the one that has been circulated for this debate, makes it very clear that—even before the amendment, the original clause made it very clear that the appeal was only possible if there was an error of law, and it was never the intention, even prior to the amendment, that we would be interfering, or seeking to appeal against an issue dealing with a verdict of a jury. So the statement which was made by the Member for Arouca

South was totally erroneous, when she sought to indicate that the hon. Attorney General intended to interfere with verdicts of guilty and, therefore, with the finding of a jury. That was totally erroneous, in my respectful view, when one looks at the original Bill which was circulated prior to the amendment.

The issue of consultation was one mentioned by both Members who spoke on the other side. It was obvious, Mr. Speaker, that either the hon. Member for Arouca South was, perhaps, not listening, or was distracted because she was probably missing her absent leader from the House. *[Interruption]* I really do not know what it was.

The Member for Diego Martin East, I believe, was not even in the House. Perhaps, if he had come to the House on time, he would have heard what the hon. Attorney General said with respect to consultation. Both Members on the other side made a lot of fuss about consultation. Again, I can talk about paradigm shifts—very clear on the other side, persons who never consulted are now spending so much time talking about consultation. The hon. Attorney General, in his opening remarks, made it very clear that for over two years—and if the PNM listens, they will learn and could probably try to take some credit—prior to this administration coming into office, the Law Commission had been holding consultations and dealing with the Bill that is before the House.

That Law Commission, the hon. Attorney General, again, was at pains to point out, is headed by Mr. Justice Guya Persaud, but it is also comprised of practising attorneys-at-law.

Mr. Imbert: So what?

Hon. K. Persad-Bissessar: They are members of that Law Commission. They studied, discussed and dealt with the Bill that is before this House. So to give the impression from the other side that there was no consultation—

Mr. Imbert: There was none.

Hon. K. Persad-Bissessar: Ms. Stephanie Daly, who is a member of the Law Association, is also a member of the Law Commission, so it is totally erroneous for the Members on the other side to indicate that there was no consultation; and again, I say to the hon. Member for Diego Martin East, through you, Mr. Speaker, that perhaps, if he had come to the House on time, he would have heard the remarks of the hon. Attorney General with respect to consultation.

Mr. Imbert: Inaccurate.

Mr. Assam: He was organizing Rowley's campaign.

Mr. Sudama: He used to be the eyes and ears of Manning.

Hon. K. Persad-Bissessar: Mr. Speaker, the hon. Member for Diego Martin East accused the Attorney General of copying legislation wholesale from other jurisdictions, without seeing whether such legislation was applicable to Trinidad and Tobago. *[Interruption]* In his contribution he could not deal with any specific clauses. He said, and again, this is typical of the Member for Diego Martin East, his entire contribution—*[Interruption]*

Mr. Speaker: I do not know, hon. Members, that it is really necessary for me to deal individually with hon. Members, to draw to their notice that it is not the done thing. I do not think that is necessary. Please.

Hon. K. Persad-Bissessar: Thank you very much, Mr. Speaker.

The Member for Diego Martin East, I am saying, accused the hon. Attorney General of lifting provisions wholesale from other jurisdictions without seeing if they were applicable to Trinidad and Tobago. When one looks at this Bill, it is very clear that there has not been wholesale copying of any legislation. In fact, in the provisions dealing with appeals for the Director of Public Prosecutions, the law in the United Kingdom, by sections 35 and 36 of the United Kingdom Criminal Justice Act, 1988, where the state is given the right of appeal, is very different from what we see in our provisions, in some regard. That is to say, in the British provision, it is where the Attorney General considers that an offender was sentenced unduly leniently in the proceedings, the Attorney General may refer the case to the Court of Appeal. That referral by the Attorney General is not what is happening in our law. There is the right of appeal against sentencing, but it is not couched in the terms of the British legislation; and obviously, there were reasons for that. So that, to say that we have copied wholesale is totally false. *[Interruption]*

Mr. Speaker, I remember last year when we were debating the Immigration (Amdt.) Bill, there were certain sentences that had been imposed in a particular case.

6.20 p.m.

There was a particular case in Trinidad and Tobago at that time that was taking place and the voices of the women in this country were raised, clearly, against what they perceived to be inconsistency in sentences, and they wrote to us. The Coalition Against Domestic Violence Against Women and several other

women's groups wrote to us. I was then in the office of the Attorney General. They wrote to us; we came to this House; stirring appeals were made by Members. I remember Sen. Diana Mahabir-Wyatt with respect to appeals against sentencing. When we act upon those appeals made by citizens of this country, those on the other side get up and say we are copying legislation wholesale; we are not tailoring it to the needs of this country. That provision against sentencing, Mr. Speaker, is a clear response to the demands made by women of this country and a clear response made by citizens of this country with respect to what they saw to be inconsistency in sentences.

Again, I beg to differ with the Member for Diego Martin East when he says that we do not take the issues in the country into concern. It was they, as I have attempted to show earlier on, who failed to deal with the issues of the country. So that clause 4, new section 65F of the Supreme Court of Judicature Act attempts to address that kind of situation. This is very important because the whole purpose of what sentencing is about, is to deter would-be criminals. If potential criminals and particularly those who are alleged rapists or child molesters, think that from what they read they can get away with a very light sentence depending on which judge they appear before, if there is inconsistency in sentencing, then what kind of deterrent are we providing?

The dangers of not having clear sentencing policies and guidelines were well illustrated in December 1995, as I said, when the judge in that particular case—a case for rape of an 11-year-old girl—gave the man six years imprisonment and he expressed sympathy for the perpetrator. Two weeks after that, another man was sentenced to life imprisonment with a recommendation that he serve at least 20 years and get 20 strokes for raping a 16-year-old tourist in Tobago. In these two cases, even though the state felt that there was inconsistency in the sentencing, as the law stands today, there is nothing that can be done in terms of appealing against those inconsistent sentences. The new provision would allow us to deal with that kind of situation where sentences are obviously unduly lenient or otherwise.

Mr. Speaker, the Member for Diego Martin East talked about the sanctity of marriage, religious traditions, religious cultures and so forth. He has become very, very religious in the past couple of months and perhaps it is the circumstances in which he now finds himself, but he was very concerned about religious traditions and the sanctity of marriage. Every Member on this side, and I am sure every Member on that side, totally agreed with the hon. Member when he talked about

the sanctity of marriage, but we must understand when we talk about marriage, what we mean by marriage.

If the hon. Member is speaking about a marriage where there is mutual trust and mutual respect, then we will agree with him that the spouse may not want to give evidence in such cases. But if it is a marriage where a spouse, a wife, is battered and abused, then what kind of marriage is he talking about? That marriage is not real, so that if a wife is party to, in a home, and sees a child battered, brutalised or murdered by a husband in that home, the law says that she cannot give evidence against that. That is the existing law and they have to understand when they want to stand and talk about religion, marriage and the sanctity of marriage, that as the law stands, as a mother, if I stand and see that happening, if I see a child brutally murdered before my eyes, I cannot give evidence against the husband. That is the law.

In cases of domestic violence where I go for a domestic violence order against a spouse, yes, I can give evidence in those cases. I agree with him. That is a situation in specific domestic violence cases, but in any other case where there is not a list between the spouse and myself, that is to say, that there is not a domestic violence situation between us, then I cannot give evidence. So that if I see a murder perpetrated before my eyes, I cannot give that evidence. This is why we need to change the law. This is why this provision is here.

As it is now, it goes further when we look at the law relating to the evidence of children.

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

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

Question put and agreed to.

Hon. K. Persad-Bissessar: Thank you, Mr. Speaker, and I thank hon. Members for the extension of time.

By clause 11 of this Bill, the new section 15A is inserted in the Evidence Act. The effect of this is to abolish the outdated common law rule that the evidence of an alleged accomplice, or of a person alleging the commission of a sexual offence, must be corroborated by other evidence. In recent years the requirement for corroboration of evidence of a woman or child who has been the victim of a sexual offence is obviously very distasteful. In fact, it seems to be more of a medieval concept that grown women could not be relied upon to give true

evidence in a court of law, could not be relied upon to speak the truth. That is the kind of outdated common law rule that we have, that there would need to be corroboration in those cases.

Part IV of the Bill deals with the giving of evidence by children and section 19 of the Children Act which deals with the evidence of young children is now repealed and replaced with a new section 19. This new section 19 provides that where the court is satisfied that the child is of sufficient intelligence and understands the need to tell the truth, the child's evidence can be taken as a deposition and may be corroborated by other material evidence implicating the accused. In addition, as long as the jury is warned of the danger of convicting on the uncorroborated evidence of a child, it may do so.

The virtue of this amendment lies in the fact that so many rapists and child molesters have escaped justice because they really commit such heinous acts but do not do it when other adult persons are present, because obviously the adults will stop them. So that in the past, the need for adult verbal evidence in addition to that of the child meant that sometimes the police would not even bother to persecute and so child molesters would walk free to commit further crimes against the innocent and unprotected children.

This amendment, the new section 19A of the Children Act goes even further. First of all, it allows for that evidence to be taken. I am saying that the situation where the child's evidence had to be corroborated by adult evidence, obviously militated against the perpetrators of crimes against children being brought to justice, because if there was no adult present, which would most likely be a situation where there is a child molester—such molesting would not take place in front of the adult person—that corroborating adult evidence would not be there. The change in the law, we hope, would bring those child molesters to justice.

This section goes even further because it also seeks to protect a child from further stress and trauma in the court after that child would have been the victim of a sex attack. Section 19A provides that where the child's evidence is given by way of a video taped interview and has been admitted into evidence by virtue of the new section 19B, then the accused person can only cross-examine that child by way of an electronic device.

6.30 p.m.

The Member for Diego Martin East spent much time talking about video tapes, technology, fraud and tampering. I would ask him whether he has any alternative
suggestion. To say that, okay, there will be cases where this may be abused is not sufficient, in my respectful view, to prevent us from bringing legislation like this, where, in the majority of cases, we would be able to get the perpetrators of the crime. So that if he has alternative suggestions for dealing with this, perhaps he should have shared those with us, rather than making general statements that video taping such as these should not be used as evidence.

The Member spoke about the computer records being admitted into evidence, about the video tapes and I am sure the Member for La Brea or the Member for Laventille East/Morvant—the lawyers on the PNM benches—would let him know that because these things are admitted into evidence does not mean that it is gospel truth. We had this debate in the Parliament before. There is the question of the weight to be attached to the evidence; there are matters to deal with in terms of the truth or falsity of whatever evidence that goes in. So having it admitted *per se*, is not to say that it is gospel truth. To question why, then complicate it; the reverse of that question is. Why allow such statements that could come through computer records, through the video tapes to escape from coming into the court?

I am saying, in every situation, if life were 100 per cent perfect, none of us would probably be here, but because there may be a one per cent chance of abuse of any system—*[Crosstalk]*

Mr. Speaker: Gentlemen, once more I appeal to you. I am having difficulty in hearing. Continue, please.

Hon. K. Persad-Bissessar: —should not preclude us from bringing legislation to deal with these deficiencies and weaknesses in the law.

As I said, I am very pleased to support the Bill before the House which seeks to bring into effect some 13 reforms—very simple amendments. Again, I do not know why the other side never took the time or the effort. There were things in here that would have cost absolutely no money; there were suggestions in here, as I said, when we look at the PNM manifesto, it promised the Petty Civil Court limit; clause 19 is a clear PNM promise. So that I do not know why, when these provisions are now before the House—as I say, provisions which were engaging the attention of the Law Commission prior to this administration coming into office—Members on the opposite side find so much difficulty in supporting this legislation?

With those words, I commend this Bill to this honourable House.

Thank you, Mr. Speaker.

Mr. Fitzgerald Hinds *(Laventille East/Morvant)*: Mr. Speaker, it is with great pleasure that I enter into this rather interesting debate to make but a few comments. I was hoping that one would have been able to confine himself or herself to the specifics of the legislation, but it is quite clear to each and every Member of this House that the debate has been so widely opened that I am left with little choice but to respond to some of the suggestions that came to us from the other side.

Before I venture, let me deal with some of the technical aspects of the Bill, much of which have been examined, analysed and spoken of in this debate before. The Member for Siparia, in a very wide-ranging contribution from obviously a prepared text—*[Interruption]* Mr. Speaker, it is good and well to be prepared, but it became quite clear to me as the Member for Siparia went on, that she was unmoved and undeterred by the fact that many of the things that she said from the prepared text had little or no relevance to the debate as it unfolded today, in my humble view, and that is the danger of having a prepared text. The lawyers will know, it is much like the debate between certainty and flexibility of the law. There must be a balance, and she fell heavily on the side of prepared certainty and was largely irrelevant to the terms of this debate.

For one thing, the Member for Siparia tried to tell this House, and by extension the nation whom we represent, that the PNM administration did nothing for four years—and you could hear them ignorantly shout, "that is true"—but first of all, she spoke in high praise of the Gurley Report. One would never imagine that it was the Member for Couva South who was scathing in his criticism, not of the work of the Gurley Report, but *Hansard*—yes, I read it—has him on record as being scathing in his criticism of the people who sat on that committee. The records will show. So to hear him and the Member for Siparia speak in praising terms of the Gurley Report and how keen they are to implement its recommendations, comes with quite some degree of surprise. But that is the kind of morality that we have grown accustomed to on this side, Mr. Speaker. *Hansard* will show that. He criticized the very Mr. Gurley, and I say it without remorse or without repentance. It is on the record of this House.

The Member for Siparia spoke about two cases that we well know in Trinidad and Tobago. The outcome of these cases revealed a significant disparity in the

sentencing as dispensed by the respective judges. She sought to use those examples in support of a point that you can have a situation where for two almost identical offences, one man was given six years, yes, and the other was sentenced to life imprisonment, with a recommendation for 20 years.

In the United Kingdom, that was not new. I fortunately happened to have studied there, only recently, and this is why every single issue in this Bill is not at all new to me. I have seen it all; I have heard it all; it is totally familiar to me. The difference is, long before 1992/1993, when these measures were implemented in the United Kingdom where I saw the entire debate unfold until it hardened into legislation, it was truly a national debate; it was a debate that involved all concerned citizens; the Law Society, or solicitors, as we know them; the Bar Association—thorough, total debate—judges; everyone commented; journalists.

This is a point that has been made by the Member for Arouca South, reinforced beautifully by the Member for Diego Martin East. Law cannot and should never be designed in abstract. I must reinforce the point that was well made already by the two Members. The Member for Couva South said it on the record of this House, except, of course, that he said it on one side of his face, with no sensitivity to the true meaning of what he said. Law could never be made in abstract. The law has to conform with the mores, with the growth, with the trends in a particular society.

I will not be incorrect to describe the society in the United Kingdom as multicultural and multiracial. It is a society in many ways far advanced to that of Trinidad and Tobago, and in many ways far out of step with Trinidad and Tobago. There are some facets of the existence in those societies that we may never want to see in Trinidad and Tobago. When there is a situation, as the Member for Diego Martin East pointed out so correctly, where a spouse is now given the right—in the cases that have been properly described—to give evidence—he or she is now competent and compellable to give evidence against another spouse—that must have come out of the mores of a certain kind of society where the question of marriage now could very well and quite easily take in two men, something unknown to Trinidad and Tobago. Those are very liberal western societies that will tolerate things that we, in Trinidad and Tobago, will never dream to welcome. *[Interruption]* Yes, properly described as amoral.

6.40 p.m.

Mr. Speaker, our position is not that these amendments are not entirely relevant. It is not that we feel that they are inherently bad. That cannot be the

case. What we are putting on record is that they are almost wholesale imports from other societies that are in some ways very diverse and departed from ours. That is the point. So that before these measures were instituted in the United Kingdom—a position that the Member for Couva South uses to justify bringing them to the Parliament of Trinidad and Tobago—much debate took place. Sadly, that debate only takes place on the floor of this House when it is very late, and when, because of a more significant number in terms of representation in this House, it will be bullied through anyway. That is the point we are making. That is the concern that one wants to express.

When one has a situation where one finds disparity in sentencing as has been the experience in the United Kingdom, what was done? Not to run to the Parliament immediately. I recall that judges were recalled, taken on weekend retreats and were subjected to training; telling them about the implications. *[Interruption]* I do not know exactly the details of the training, but what I recall reading in the records of the United Kingdom dealt with those matters and the questions of race relations as they sit on the Bench as judges, and that kind of issue; sentencing guidelines issued by the chief justice and I think—if I am wrong I am subject to correction on this—by the attorneys general. *[Interruption]* Well, of course in the particular case in Trinidad and Tobago, I am told that we will never want that. In principle, it is good. So that the solution is not first to run to the Parliament with the kind of measures that we see before us.

Mr. Speaker, that is the point. *[Interruption]* I said sentencing guidelines where judges and magistrates would be told how to dispense sentences given a particular set of facts, so that one would not have that kind of disparity.

We all come to this Parliament with the honourable intention of making laws for a better Trinidad and Tobago; better society.

Mr. Speaker: Hon. Members, it is becoming increasingly difficult for the *Hansard* reporters to record faithfully that which is being said in the Parliament. I appeal to you all, please.

Mr. F. Hinds: I am indeed grateful to you, Mr. Speaker. Now, we can proceed in the way that we prefer to, in a more dignified manner.

Mr. Speaker, talking about a better society, it is only yesterday we saw all over Trinidad and Tobago, the celebration of Emancipation Day, and today we can all proudly boast that Trinidad and Tobago must be a better society. I participated in and saw for myself, the dignified way in which members of our

society acquitted themselves, as they celebrated that rather noteworthy occasion. Talking about the society and the betterment of it, the theme of it was to rekindle the African spirit.

Dr. Mohammed: I saw you in church.

Mr. F. Hinds: Yes, of course. I did go to that service, and I prayed sincerely. I did not go to see who was not there. *[Laughter]* Yes, to run like a Scribe and Pharisee across the country like the Member for Tobago East did today.

Mr. Speaker, as I was indicating, I felt my African spirit certainly rekindled, and I am sure I speak on behalf of all Trinidad and Tobago, as we felt pride about being African and being emancipated, with a firmer respect for all the other races as they exist in Trinidad and Tobago, so Trinidad and Tobago must indeed be a better society today. *[Desk thumping]*

Mr. Speaker, I want to turn my attention to the question of Part III of this Bill which deals in general with the question of corroboration. I need not explain what corroboration means because it was explained by the Member for Couva South. My concern—a concern that has already been mooted by both the Members for Arouca South and Diego Martin East—is that in clause 11, new section 15A(3) says:

> "Nothing in this section shall prevent a judge from exercising his discretion to advise a jury of the need for corroboration."

Again, this demonstrates to some extent our keenness, our honourable intentions. I have no doubt that the Member for Couva South is filled with honourable intentions. I have no doubt in my mind about that, except of course, old habits die hard. Before the amendments that we see in Trinidad and Tobago were implemented in the United Kingdom, the position was patent and quite clear. Whenever the evidence of an accomplice in the circumstances, or of a person in the matter against whom some sexual offence was committed was given, the judge in his summing up had, by law, to make it abundantly clear to the jury, or the magistrate—in the United Kingdom, three magistrates sit if it were not a stipend to the magistracy—it had to be made quite clear from the notes, so that any reviewing court would see that a corroboration warning was delivered. That is to say that such evidence was inherently unstable and the warning should be put on the record.

The United Kingdom, because of its experience moved away from that. The Attorney General quoted, I think it is Lord Taylor, describing that position as

archaic and outmoded. The position is now that such warnings are no longer necessary. Trinidad and Tobago's Attorney General, the Member for Couva South,
I am not sure where he got the drive or impetus, but he would probably make it clear in his summation.

We have chosen, and he brings before this Parliament, what he describes as a half-way house, sitting on the fence. It is neither black nor white. It is some position down the middle. So that the judge may, if he thinks it fit, deliver such a warning to the jury. What we would have done is to avail an opportunity for the opening of a can of worms. Because one would find that when the judge decides that he would not give such a warning, an attorney or the convicted person will lodge an appeal stating that he should have given the warning. One would find, as a consequence, judges tending to be as conservative as they can in some circumstances. They may, as a result of that possibility, become a bit cautious and one may find that in all cases, or at least most, he or she will deliver the warning anyway. It puts the Bench in a very uncomfortable position and it opens up the opportunity for many more appeals. It is counter-productive. It calls for more time, money and for all of the problems that we are trying to solve in the first place. I suggest to the Member for Couva South that he reconsiders that particular proposal and be strong and brave. It is either this or that.

6.50 p.m.

I am reminded of the anecdote if I may, of the person who wanted the services of a lawyer and insisted that she must find a one-armed lawyer. When told of the difficulty of that in the particular jurisdiction, and asked: "Why do you want a one-armed lawyer?" She said she was tired of hearing on the one hand one had this and on the other hand one had that. She wanted a straight answer once and for all.

The Member for Couva South is accustomed to two-facedness and now he brings to us that kind of predicament. I urge him to consider this kind of proposal for the benefit of the people of Trinidad and Tobago.

What really affects me and, sadly, is that I had heard—I do not want to become personal. I am proud of our society, Trinidad and Tobago. We have produced "greats" in every field of endeavour. I want to see some originality of thought. We are accused by the Member for Siparia of not doing anything in respect of the administration of justice and yet this is all they do, look to the

United Kingdom as typical colonials and bring what they have almost lock, stock and barrel before this Parliament.

I would have been proud of my Attorney General if he had demonstrated the capacity for original thought as we did between the years 1991—1995. Mr. Speaker, I am getting asides and I would like to continue my deliberations in peace.

Mr. Speaker: Gentlemen, it is becoming quite obvious that many Members are becoming very restless and are now at the stage seven months into a Parliament when they do not listen to the "speaker". Quite clearly, whenever we get to that stage we must adopt different measures.

I put Members on notice that if this continues I will be forced to adopt different measures. We have to be serious. Nothing is wrong with a little aside but when it is kept up like that, it defeats the whole purpose of our being here. I appeal to Members, could we have reason prevail?

Mr. F. Hinds: Mr. Speaker**,** again, I am indeed grateful to you. Sadly I have lost my line of thought. This is the difficulty. At least we have demonstrated original thought. We brought before this Parliament during the very years, the Dangerous Drugs Bill, a Constitution (Amdt.) Bill, a Corporal Punishment Bill for which a Member of the then Opposition was cast aside and dumped; threatened to be expelled and what have you.

The records of this House will show that every single attempt that our administration made to rectify the criminal justice system and to deal more forcefully with crime and the perpetrators of crime in our society, was thwarted by the then Opposition, led by the chief cook and bottle washer, the Member for Couva South. The records will show that.

The Member comes today in the office of the Attorney General with a total roundabout face and tries to appear to be the most serious champion of the public interest. He thinks that he can fool the people of Trinidad and Tobago, but as often we do in this House, when we speak here, we speak largely of what is called in jurisprudence "lawyers' law". These are technical aspects of law, the rules of court, the administration of justice—and there is another reality in the society. Few people could tell, after today what we debated here today or the terms of it. The "people's law" is a different law and we cannot fool them when it comes to "people's law." We may fool them with "lawyer's law" and that is why the people of Trinidad and Tobago know full well that he is two-faced, nothing more, nothing less.

Mr. Speaker, I am saddened at the fact that the Member for Tobago East is not with us. My grandparents taught me, and I am appreciative of that learning, that one must speak to a man before his face, but the Member has seen the wisdom in graciously running away for whatever reason. Notwithstanding, I must put on the records of this House a response to some comments made by the Member for Tobago East.

I express as a young Member of this honourable Chamber, that in terms of the Member for Tobago East, because he is many years my senior; because as a parliamentarian he is my senior, and as a politician; and because he was bestowed with the honourable title Chief Olokun Igbaro and especially in the celebration of Emancipation Week, I have always held the highest respect for the man notwithstanding that I have little respect for some of his politics, but as a man and as a person, I am always inclined to respect the Member. For that reason and more, every time I have stood in this House to speak and he had asked that I give way, I did it graciously. I was saddened to hear today that he would not do likewise. My respect for him must have gone down a nudge or two, perhaps, by a mere 30 or 35 per cent. The Member said—and he has widened the debate, so I am fair to comment on it—that the People's National Movement ever since he left, directed vitriol at him and was hateful and so forth. That is his interpretation of the events.

As I walk the streets of Laventille East/Morvant, Laventille West, Naparima and Couva South, because I properly well walk, listening to the little people of this country as they speak, listening to the big people of this country, whether in business or otherwise the people are indicating to me that they are of the firm view that he is the one full of vengeance, he is the one who is embittered, it is he who apparently sees the ghost of Eric Williams every time he comes to this Parliament. He is the one who stood up today to boast that he has seen the back of the PNM to Opposition on two occasions, in 1986 and 1995.

I would like to ask him—sadly enough he is not here—and this is why I was asking him to give way. I want him to tell this nation what is his major claim, what has he really contributed to the politics of Trinidad and Tobago for his 40 years?

I am not saying that he has contributed nothing. Let me make myself quite clear. I want him to tell this nation what is his major claim to fame as a politician for the 40 years, apart from setting one section of the society against the other.

Mr. Speaker, every time I listen to my dear Friend, the Member for Siparia, in one sense I feel happy, because she is my political opponent, as I see her weaken and weaken, but as a statesman, as someone who is concerned with the well-being of our country and recognizing that she is making some contribution, I feel sad. I am caught up in a realm of mixed feelings. The Member speaks of PNM *rigor mortis.*

7.00 p.m.

Mrs. Persad-Bissessar: Are you dumbstruck?

Mr. F. Hinds: Dumbstruck, dumbstruck? I want to be as kind as I possibly can. Dumbstruck?

Mr. Speaker, as I was saying in respect of this Bill, I hope that the Member for Siparia will recognize what the Member for Couva South is attempting to do to her. Something that he has done constantly from the very day she was in here as the Attorney General—he was telling the press that she will no longer be the Attorney General, something about which she knew nothing.

I read in today's *Daily Express* that when the Attorney General is out, the goodly lady would not act for him. When one talks about *rigor mortis*, she manifests some element of that but it is obvious that she is not yet aware of it.

As the Member for Diego Martin East properly pointed out for many of the bits of legislation, the proposals have come from the United Kingdom before this Parliament today, and many aspects of those, the jury—and I particularly like the way he puts it—is still out. All of those amendments came after years of pruning and tuning and looking at the situation. A position has since been taken, and knowing the spirit of British flexibility, they will continue to look at it and God knows what they are thinking about those amendments today, yet we run to the Parliament of Trinidad and Tobago to implement them lock, stock and barrel. I have serious concerns about that and I am very sure that the people of Trinidad and Tobago could expect a little more original and intellectual depth from the other side.

What is important to note is that all the legislation that we brought which the Member for Siparia read from the 1991 Manifesto—she did not take time to read the 1995 which any first year politician will understand negates any previous manifesto, but at any rate—*[Interruption]* I am saying that when one has—well

we have had one in 1995 and our programmes are incorporated in this document. As usual they are well out of date.

Mr. Speaker, the measures we brought during that time, between 1991—1995, when we came in 1991 we inherited a sick economy.

Miss Nicholson: When was the foundation laid?

Mr. F. Hinds: The foundation may well have been laid. *[Interruption]* But, Mr. Speaker, inflation was what it was in 1991 and the records will show—*[Interruption]* I think it was in the realm of about 8 per cent. I do not have statistics before me, but by 1995 it had considerably lowered and unemployment, I am told, was close to 98,000 in 1991. By the time we left office, it was something in the realm of—*[Interruption]* Yes, we can boast, and the record supported by Central Bank statistics shows that we created some 33,000 jobs. *[Interruption]* Yes, it was the Member for St. Joseph who, in another debate here only recently—and I forgive him for his forgetfulness, his selective amnesia—said Trinidad was up and running and ready to go. I asked him in this Parliament who was responsible for that and he tried to mislead the nation and say the NAR. On the one hand we have this—he is just like the Member for Couva South.

Mr. Speaker, we created the climate for foreign investment. The Member for Siparia speaks about the opening of a Magistrates' Court in Scarborough and the project in Tunapuna. It is as if people across this country would be foolish enough to think that in the mere eight months of their haphazard Government, they planned, conceptualized, contracted, built and are now ready to open it. No, no, no! When they leave office, they, too, would leave things in the pipeline. I am sure they will all be adverse to Trinidad and Tobago but notwithstanding, they would leave things and we will have to tidy up and shape up, and that we will do as a proud party in Government once again.

Most importantly, we have just come out—and I do not want to get too involved because I must admit that I was not even in Trinidad at the time those events unfolded, but I read like any other reader and I try to garner from persons who were involved, what existed at the time. I venture to say that when we took office in 1991, it was after a period of immense social instability *[Interruption]* and notwithstanding our significant and outstanding performances in terms of the macro economy and in terms of making Trinidad and Tobago attractive to all investors anywhere in the world, notwithstanding that at the social level we had a White Paper on education and after much consultation, it is the basis on which the

present Minister of Education will act for the next few months, or years, or however long he lasts in that position. If there is a reshuffle, I am sure that he would be the first to be moved. He has not only been a cause of concern for the Members of his party, but certainly for every school child across Trinidad and Tobago.

I am saying that there was a White Paper, the basis for all the plans and programmes for the next few years. It dealt with the common entrance reform and the question of book standardization. I have to tell persons in this country that there is nothing new, or original, it is the same horse, just a different rider and in every sphere of governmental activity, in health reforms of no end, and in the administration of government, the Member for Port of Spain, North/St. Ann's West, like a true hero and champion, puts administrative reform—*[Interruption]*

Mr. Speaker, again, I am getting these asides. Please protect me?

As I was indicating, we came into office after a period of immense social instability and for the years 1991—1995 crime always existed. From the garden of Eden crime has existed, and I have said here and I will say again in a spirit of responsibility and consciousness, that no political party should use crime and criminal statistics to buttress its case and to claim fame in the country, but I want to say that between 1991—1995 Trinidad and Tobago experienced—particularly following on the period that went before of the chaos and the confusion which we must not under-estimate—a period of social stability where things settled down again, confidence started to grow again, and people were beginning to forget the pressures that came as a consequence of the social upheaval to which I referred. But now, Mr. Speaker, wherever I walk in this country, people are expressing fears and concerns, once again. It is a reflection of the instability of the Government.

7.10 p.m.

Mr. Sudama: Where do you walk?

Mr. F. Hinds: All over. Oropouche. It is important and I am fair to comment on this. The debate has been opened up really wide, Mr. Speaker. It is the deputy political leader of the NAR who said that the NAR is not in government. It has two Members who are in government, but the NAR is not. So the party is a headless party and the leadership is a "followless" leadership. *[Interruption]* Do not worry about PNM strength. Wait and see.

Mr. Speaker, no wonder the units that form the coalition—well, it is not even a coalition government on that side.

Mr. Assam: Why does he not speak on the Bill? Is he not a lawyer? Are you a social scientist, a criminologist? Speak on the Bill!

Mr. F. Hinds: Mr. Speaker, I said in the budget debate earlier this year—

Hon. Member: Do not tell us what you said.

Mr. Sudama: He has gone to the budget debate now?

Mr. F. Hinds: Yes. It is on the record of this House, Mr. Speaker. *[Interruption]* I said then, and I maintain, that notwithstanding all the efforts that would come from any government, in the end, it is the citizens of Trinidad and Tobago who, in their various capacities, would implement those ideas; make Trinidad and Tobago more efficient, more productive. It frustrates any manager, and all managers would have experienced this, where there are very good ideas for one's establishment and one tries to implement certain programmes and finds that people are lethargic, unresponsive. This is the challenge that faces any government, whether the solid, unified government of the PNM, or a patchwork government of the UNC and the Tobago Members of Parliament.

Miss Nicholson: And your leaders outside are campaigning.

Mr. F. Hinds: With these very few words, Mr. Speaker, I wish to remind the Attorney General and Member for Couva South, that my only concern—and I accept and understand that nothing is inherently bad about the proposals before this House; we said that—is the penchant for taking it without considering seriously the circumstances as they exist in Trinidad and Tobago and the implications for our society. I must say on that point, that in some societies, it is contemplated that children will be able to bring lawsuits against their parents for alleged cases of abuse and such matters.

Again, in some societies, two males are allowed to marry. We have to be careful about the course we chart for beautiful Trinidad and Tobago as we approach the next millennium, and I urge the Attorney General to take serious views, because it was expressed in another place, and we affirm the position now, that we are particularly concerned about that provision to which I made reference in clause 11, the new section 15A(3).

Mr. Speaker, with these few words, I thank you kindly, and the Members of this honourable House. *[Desk thumping]*

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, it is unfortunate that after the Opposition had this Bill since June 18, 1996, and after the Opposition in the Senate gave support to it, there were people in this House, this afternoon, giving different signals. For example, there was the hon. Member for Arouca South asking for the debate to be postponed so that there could be consultation. There was the Member for Laventille East/Morvant, who did not seem to know what he was saying. As a matter of fact, at the beginning he asked how we could copy these measures from other countries and bring them here; and at the end of the debate, he said he had no problem with the Bill, with the exception of the matter of corroboration.

This reveals a totally irresponsible Opposition. The reason why they behave in this way is because they know that there are certain sections of the media that would report some of the nonsense they say in this House, without dealing with the issues in the debate.

What was the issue in this debate? The issue in this debate: is it right for the state to be denied a right of appeal when a judge makes an error and a man gets away on a criminal charge? This has to do with giving the people justice; giving the state justice. What has the Opposition said about that? They have not supported it, except the Member for Laventille East/Morvant, who said in his last few minutes that he had no objection to it.

Does one need much consultation for that? As a matter of fact, the Law Commission comprises members of the Law Association whose duty under the provisions of the Law Commission Act of Trinidad and Tobago is "to receive and consider suggestions for the reform of the law...; to receive and consider proposals for changes in the law..." and for the last two and a half years there were suggestions on which the Law Association was consulted. The hon. Member has displayed his ignorance of the law.

As a matter of fact a bill has a policy. What is the policy of this Bill? The first policy is a right of appeal of the state. The Opposition does not know if it objects to it, but it supports it. The second policy is, if a judge sentences a man to six months' imprisonment when he should have sentenced the man to ten years for rape, the state is being given a right of appeal to go to the Court of Appeal—and there is all this talk about consultation. They do not understand what this is about, Mr. Speaker, and no aspect of the law ever gives the right of any accused person to be freed because a judge makes an error. It is the duty of the state to correct those situations where people can be freed when judges make errors.

Then he talks about "two-faced". I would have thought that, as a lawyer he would have known that in all countries which have a developed legal system, there are experienced lawyers who occupy certain offices. In the United Kingdom, there would never be an Attorney General who has never practised at the Criminal Bar. In the United States that would never be, nor in countries of the Commonwealth. It is the custom, in societies which are concerned and committed to have serious law reform, to have experienced lawyers to be engaged in it. Therefore, when one gets up to oppose a bill, or to condemn a government, on the basis that the Attorney General at one time appeared for the defence and at another is the Attorney General, that really demonstrates ignorance and total lack of understanding of what they are about.

We also heard—and I must say this because I am going to move the adjournment so we could come back—

Mr. Imbert: Thank you.

7.20 p.m.

Hon. R. L. Maharaj: Mr. Speaker, I must say this. What has surprised me in this debate is that I could have heard Members of Parliament saying that the present law which specifically states—and I will read it for the record—at section 13(1) of the Evidence Act, Chap. 7:02:

> "Subject to section 12, every person charged with an offence, and the wife or husband, of the person so charged, is a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person; but—
>
> *(a)* a person so charged shall not be called as a witness in pursuance of this section except upon his own application;
>
> *(b)* the failure of any person charged with an offence, or of the wife or husband, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;
>
> *(c)* the wife or husband of the person charged shall not, save as in this section mentioned, be called as a witness in pursuance of this section except upon the application of the person so charged."

The law in this country now is that a wife can see a murder being committed, the husband committing the murder and, if the prosecution wants to call the wife,

it cannot call her to give that evidence and the man will go free. It has not only happened in England, it has happened in this country. As a matter of fact, the case of Shabir Ali is the most recent example. The judge decided that he was going to stretch the law to permit the evidence and the Privy Council set aside a conviction on the basis that a wife could not have given evidence against a husband for the death of the child unless the accused called the witness and the accused could not call the witness because it was a prosecution.

Yet this Opposition, with so many lawyers, has come here this afternoon and, Mr. Speaker, do you know what they have said? That one cannot interfere with that law because the whole sanctity of marriage is Christian. I want to say here that if parliamentarians would regard wives as property and chattel and they can regard marriage as a barrier and protector to committing criminal offences and getting immunity from the law, then we are in the wrong place.

This Government has come here in order to change the law. If husbands commit violent acts in the presence of their wives or commit violence against their wives, then evidence could be admissible by the prosecution whether the accused consents or not. I would have thought that a responsible Opposition would have supported it.

Before I move the motion, there is another aspect I want to speak on this evening. The hon. Member for Tobago East, whatever one may criticise him for, one cannot say that he has not made a sterling contribution towards human development in Trinidad and Tobago. *[Desk thumping]* The Member for Tobago East has quite rightly said he was prepared to face imprisonment, jail, death, because of the persecution, harassment and conspiracy of the PNM. He has been able to stand up for democracy. His services and his reputation are known worldwide. He is a credit to Trinidad and Tobago.

Quite recently at the Commonwealth Law Ministers Conference in Malaysia, Attorneys General of the Caribbean got up and said that Mr. Robinson was the man who fought for the International Criminal Court and that has given credibility to the Caribbean, but because of cheap politics, they have decided this afternoon, in effect, to rape the principles of the Parliament to say that the Member for Tobago East has not made any contribution to Trinidad and Tobago. If the politics of Trinidad and Tobago, or if the PNM has been reduced to that kind of politics, one must know. But, Mr. Speaker, I forgive them.

One sees that the Member for San Fernando East does not come here. He does not want to be associated with them. They are people who would mingle with him

and cut his throat, back bite and stab him. They would smile with him and then they would cut his throat.

Mr. Speaker, I would continue my contribution on the next occasion.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I spoke to the Opposition Chief Whip and I beg to move the adjournment of the House to Wednesday, August 7, at 10.30 a.m. May I say that on that date we hope to complete this Bill, the debate on the Land Surveyors Bill, the Marriage (Amdt.) Bill and we hope also to be able to deal with a bill entitled "An Act to require the Central Statistical Office and other public bodies to produce and maintain statistics...", and the bill to amend the Customs Act.

Mr. Speaker, may I give notice that we will probably sit very late on Wednesday and we are also meeting on Thursday at 1.30 p.m. and on Friday at 10.30 a.m.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 7.26 p.m.