HOUSE OF REPRESENTATIVES

Wednesday, July 16, 2003

The House met at 1.33 p.m.

PRAYERS

Madam Clerk: Hon. Members, under Standing Order 5, and during the absence of the Speaker, I announce that the Deputy Speaker will preside.

[MR. DEPUTY SPEAKER *in the Chair*]

KIDNAPPING BILL

Senate Amendments

The Attorney General (Sen. The Hon. Glenda Morean): Mr. Deputy Speaker, I beg to move the following Motion standing in my name:

Be it resolved that the Senate amendments to the Kidnapping Bill, 2003 listed in Appendix II be now considered.

Mr. Deputy Speaker: Before we proceed to the consideration of these amendments, I would like to make the following ruling.

As you are aware, there are no less than 13 amendments to this Bill to be considered this afternoon. Mindful of this and having regard to the rules related to this particular proceeding both here and in other Parliaments, Members wishing to speak on the amendments, including the Minister, shall be limited to 10 minutes per amendment.

In presenting your explanation to the amendment, please bear in mind not only the time limit, but the rules of relevance which would be strictly enforced.

Mr. Ramnath: Is that in accordance with the Standing Orders?

Question proposed.

Question put and agreed to.

Clause 2

Senate amendment read as follows:

A. In the definition of “child” insert after the words “adopted daughter” the words “step son or step daughter”.

B. In the definition of “financial institution” delete the words “established under” and substitute the words “defined in” and add the words “or a

society as defined in the Cooperative Societies Act" after the word "1993".

C. In the definition of "judge" delete the words "Supreme Court of Judicature" and substitute the words "High Court".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. S. Panday: Mr. Deputy Speaker, all of us are new in this practice today and I would like some clarification. Does the mover of the motion have 10 minutes and each speaker has 10 minutes for each clause?

Mr. Deputy Speaker: Yes.

Mr. S. Panday: Thank you. Mr. Deputy Speaker, the first amendment the "child", the Act says:

'child' means a son, daughter, adopted son or adopted daughter;"

That was the definition of "child". The amendment before us today says:

"…insert after the words "adopted daughter" the words "step son or step daughter".

Mr. Deputy Speaker, instead of going through that long rigmarole of definitions it could have said, "a child of the family", because adopted in these circumstances means that some legal process has to take place. In adoption for example, you are going through the adoption board or some legal process to be qualified as an adopted child.

However, a child of the family is any child you may have whom you may bring into your home and treat as a member of your family. You are not constricted by the legal definition. So if one wants to open the definition of child, instead of trying to find individual words by saying adopted stepson or stepdaughter, it would have been better to indicate any child of the family.

We also go back to our formal argument and when one looks at the Bill clause 8(1) says:

"…the Director of Public Prosecutions may apply to a judge in chambers for an order requiring-

(a) the person to furnish a sworn statement in writing enumerating all moveable or immovable property belonging to or possessed by that

person and by the spouse and children of that person, and specifying the date on which each of the properties enumerated was acquired and whether it was acquired by way of purchase, gift, bequest, inheritance or otherwise;"

Mr. Deputy Speaker, I humbly submit that the definition of "child" in these circumstances will be putting an onerous burden on the head of the family to give this sort of information because it seems to me that the definition we are using—

Mr. Deputy Speaker: Hon. Member, are you dealing with clause 8? I want you to deal with the definition of the word "child".

Mr. S. Panday: I am trying to show you that the word "child" in this Bill is found in the interpretation section and the definition of child is being used in other parts of the Bill, and I am showing you the cross-referencing and the importance of the definition and why it should be changed.

Mr. Deputy Speaker, the point I am making is that it is putting an extra burden on the head of the household or person who is obliged to furnish this one statement because it seems that the definition of the word "child" in clause 2 speaks about a biological child, or adopted or step as the case may be, and regardless of the age of that person whether the person is 14, 16, 18, 50 or 60 years, that person falls under the definition of child.

When one looks at the various definitions in the various Acts in our statute books for example, the Matrimonial Proceedings Act, Chap. 45:51, the Status of Children Act—even as late as 1996 the Administration of Justice Act puts an age for the definition of a child. In some of the Acts, I think it implies that there is responsibility of the adult for that child, but in this case, when we speak about a child we are speaking about someone 30 or 40 years who is on his/her own, conducting his own business upon whom the parent may have no control, and we are calling upon that person here to produce a sworn statement in writing enumerating all moveable or immovable property belonging to or possessed by that person and by the spouse and children of that person. You may not be in control of that person, you may not be on good terms with that person and you still have to produce this sworn statement.

Mr. Deputy Speaker, what would have been a better proposition was to have included a child 18 or above 18 and his dependence on the person who is supposed to make the declaration. The mischief which we are trying to solve is that the person who receives that ransom or who has benefited in any way from that ransom as a result of kidnapping, we must ensure that the net is such that we

will not put an extra burden on the person who is supposed to furnish that statement.

Mr. Deputy Speaker, my two suggestions on the definition of the word "child" are that instead of saying stepson or stepdaughter to be included after the word "adopted daughter", say "and/or a child of the family". And further, in the definition of child we can say a child under or up to the age of 18, or any child above that age who is dependent on the person who is furnishing the statement.

If the court is making an order for the maintenance of a child, it usually says the maintenance of this child should be until the age of 18, or until the child completes his/her education. So there is provision and a precedent in our law where we have that definition where you catch people who are dependent on the person who is making the statement and not every Tom, Dick and Harry.

Thank you.

Sen. Morean: The word "child" here is defined as we have defined it to mean son, daughter, adopted son, adopted daughter, stepson or stepdaughter. This is different from child of the family which was referred to by the hon. Member. Child of the family in family proceedings has a specific meaning and that may mean any child whether biological or otherwise. But this is not what we want to capture, we want to capture the case where a person puts money into the name of the child, whether it be adopted, step, or biological. So that for clarity we have also included stepson, stepdaughter, as that person may be taken to be a child within that particular family, so we have widened the net in case you want to put money on stepdaughter, stepson, and so on, we will be able to check that account. This is as defined in clause 7 of the Bill because clause 8 has been amended to delete (1)(a), (b) and (c).

Question put and agreed to.

Clause 3.

Senate amendment read as follows:

A. In subclause (1)—

Delete and substitute the following new subclause:

"(1) A person who, for ransom, reward, or for any similar consideration unlawfully leads, takes, entices away, abducts, seizes or detains any person without his consent or with his consent obtained by fraud or duress and without lawful excuse such that the person (hereinafter in this Act

referred to as the 'kidnapped person') is held, confined, restricted, imprisoned or prevented from returning to his normal place of abode or sent or taken out of Trinidad and Tobago, commits an offence and is liable to imprisonment for not less than twenty-five years".

B. In subclause 2—

(a) Delete the word "eighteen" and substitute therefor the word "sixteen".

(b) Delete the words, "decoyed, inveigled or", appearing in line 3 and the words "carried off" occurring in line 4 and insert the word "(,)" after the word "confined" in the penultimate line.

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Miss Lucky: Mr. Deputy Speaker, in dealing with this particular amendment I do not intend to deal with the amendment that says: (a) Delete the word "eighteen" and substitute therefor the word "sixteen" because that was a point made by my colleague, the Member for Princes Town, and even though the Bill had to go upstairs to come back downstairs for him to get that academic endorsement it seems at the end of the day good sense has prevailed. [*Desk thumping*]

Mr. Deputy Speaker, I can only hope that I would be able in my now less than 10 minutes to convince the hon. Attorney General of the merit in the contribution I am about to make with respect to the amendment as it deals with the offence-creating section, more specifically section 3(1).

Once again I am very glad to see that the point I so strenuously made in the Lower House with respect to the removal of the phrase "to the intent" because that phrase actually formed a combination of offences, more specifically, kidnapping and also false imprisonment has also been amended now so that the proposed amendment reads as follows:

"such that the person… is held, confined, restricted…"

Mr. Deputy Speaker, I wish to point out that in our Interpretation Act of Trinidad and Tobago, it is stated that every offence-creating section also includes an offence for an attempt of that particular offence. There is a problem that is still existent in the proposed amendment because what it does by its wording is create the offence of kidnapping whether for ransom or not, but the use of the phrase;

"such that the person is held, confined", et cetera, means that you are saying that a person must be kidnapped—that is kidnapping—such that the person is held. So you are saying that the person must be kidnapped and also falsely imprisoned.

The problem that would be faced is that if as is happening right now, persons recognize that enough resources are not being given to the police so persons literally have to try to save their own lives, they actually foil a kidnapping meaning that they are actually able for some reason to ward off the person or make an escape as the person is about to take them, the attempt of that offence would be under the common law which is attempted kidnapping at common law. Therefore, this particular section which is meant to send the very strong message to kidnappers that they ought not to kidnap would have failed in its ability to allow the police or even the Director of Public Prosecutions (DPP) to charge for an attempt because the person who is able to ward off his kidnappers would not have gone through that aspect of the section which is the false imprisonment.

And, therefore, I wish to respectfully reiterate that we ought to follow the United Kingdom which has not statutorized kidnapping, but has left it at the common law because it already caters for kidnapping for ransom, or without ransom in the definition of kidnapping of the common law. What we ought to be doing in this clause—and I was very disappointed when I did not see it—is increasing the penalty for kidnapping and false imprisonment at common law, both offences carrying 15 years.

Mr. Deputy Speaker, let us not send a wrong message to the population, let us not let them believe that this section is so powerful because it increases kidnapping for ransom when there is false imprisonment also to 25 years, and that is sending a message. The message you are sending is if the police unfortunately charges under the wrong section—meaning this section—a person will get off on a legal technicality. Do not let victims go under that trauma. It is bad to be kidnapped, it is worse to see the offenders get away on a legal technicality.

Thank you, Mr. Deputy Speaker.

Mr. S. Panday: Mr. Deputy Speaker, as my learned friend has indicated, clause 3 is still a rolled-up offence including kidnapping and false imprisonment, and as my learned friend, the Member for Pointe-a-Pierre, had indicated on a previous occasion, under the common law there is one set of penalty for kidnapping and another set of penalty for false imprisonment, and although they could be done by different persons, they could be caught.

In this clause it appears to me that the same problem occurred in the original bill where the same person needs to be the kidnapper and the person who is

committing the false imprisonment. If by some mechanism, that link is broken between the kidnapper and the person who is exercising the false imprisonment it would appear to me that since both elements constitute the *mens rea* and the *actus reus*, that is the intent and the actual act. If separate persons conduct it then you may not be able to catch either of them, and we would have to go back to the common law, which is what the Member for Pointe-a-Pierre has indicated; that the penalty under kidnapping, simpliciter, should be increased.

Further, I am happy to see that we have made recommendations that the age should be reduced to 16 years because of the Sexual Offences Act. I wish to state that since the last occasion when I looked at it, it would appear that it should be reduced to 14 years because there is still defence for rape with consent between the ages of 14 and 16 and I think section 7(1), or section 4 of the Sexual Offences Act says that you have a defence in that matter if you can prove that the person who has been allegedly raped, was one of the major players in the proceedings. Therefore, if you are going for a pure statutory definition we should have reduced it to 14 years.

Mr. Deputy Speaker, there appears to have been an intention to tighten up the law when it says in section 3 where the sentencing was liable to 25 years imprisonment and we have now gone to not less than 25 years. The argument which we advanced on the previous occasion was that there are three arms of Government and the Judiciary, the people who are trained there, should be given that discretion in sentencing. One may argue and say they have a discretion above 25 years, but if it is a message they want to send we could have said, "is liable to life imprisonment". So if that is the message that you want to send to the kidnappers, instead of 25 years say, "you are liable on conviction to life imprisonment", so it gives a judge the power to say that life imprisonment can mean life, or not to be released before 35 years, as happens in certain heinous crimes. [*Interruption*]

Mr. Deputy Speaker: Hon. Members, could you please be quiet? The Hansard Reporter is not hearing properly.

2.00 p.m.

Mr. S. Panday: So what would happen is, we would be killing two birds with one stone. You could send that message to kidnappers that they could get life imprisonment and that means to the end of your life, but at the same time giving people who are trained in sentencing the discretion to vary the sentencing. I humbly submit that we should go that way. Those are my comments on that section.

Sen. Morean: Mr. Deputy Speaker, first of all, this Bill is in response to a particular problem. The problem that we have been dealing with, really, is kidnapping for ransom. So what we have sought to codify here is the offence of kidnapping for ransom. As I said previously, we have not repealed or replaced the common law offences. They still remain and they are still punishable in the same way that they were before.

In addition to that, section 65 of the Interpretation Act provides—and this is in response to the hon. Member for Pointe-a-Pierre:

> "Where a written law creates an offence, the written law shall be deemed to provide also that an attempt to commit that offence is an offence under the written law and that such attempt is punishable, as in the case of a capital offence, with imprisonment for life and, in the case of any other offence, with the same penalty as if the offence had been committed."

So this should answer the Member's question as to whether the person who is apprehended for attempting to commit the offence would get away scot-free or simply be dealt with under the common law. In any event, we should have some confidence in the competence of the police.

Miss Lucky: Would the Attorney General give way? I thank the Attorney General sincerely for giving way. Through you, Mr. Deputy Speaker, that is not the particular problem. That is the point I had made, that the Interpretation Act does allow a person to be charged for an attempt of any offence, whether at the common law or in statute. The problem you face is that you have made the *actus reus* of this particular offence not only kidnapping but also false imprisonment. So if it is that a person is able to ward off his kidnappers, you would have to charge those persons with attempt. [*Interruption*] That was my point. You are sending the message to all kidnappers, not only those who would get away. Therefore what you ought to be doing is dealing with kidnapping at the common law and not holding yourself in this constricted way. Because what is happening is, people are taking the law—they have to protect themselves. So they are able then, to foil off the many attempts. That was the concern which the Attorney General had not really addressed.

Sen. Morean: To my mind, the common law adequately deals with it and there is provision for the penalties to be applied, so we did not deal with that and the common law position remains.

With respect to the question of the discretion of the court in terms of the sentencing, as I stated before, what we are looking at is sending a message and the

message is in the penalty. The penalty is not less than 25 years. So that the court has a discretion to impose more than 25 years but not less than the 25 years. This is the purpose of "not less than" in conjunction with clause 13 of the Bill.

Mrs. Persad-Bissessar: Would the hon. Attorney General give way? What would be the penalty then if you are leaving attempts under the common law? You have created a statutory offence for the completed offence but from what I understand, you are leaving the attempted kidnapping under the common law. What would be the penalty then under the common law?

Sen. Morean: Whatever penalty is stipulated, that is the penalty that it would be.

Mrs. Persad-Bissessar: But it is not here.

Sen. Morean: No, the penalty is not stipulated here because what we are dealing with, as I indicated earlier, is kidnapping for ransom. That is the thrust of our action, to deal with kidnapping for ransom. If there are other offences that have been committed for which there are provisions under the law, the other law would be applicable. That has been what I have said from day one. Because we are putting a stiff penalty; we are saying 25 years, "not less than" and we do not want that to apply across the board because there may very well be cases where you do not want to impose that penalty. So we have dealt solely with the question of kidnapping for ransom. Were it not for that, we do not have to amend this aspect of the law at all because it is already covered.

So, Mr. Deputy Speaker, I beg to move.

Question put and agreed to.

Clause 4.

Senate amendment read as follows:

A. Delete the words "at any time" occurring in line 3 and substitute the word "previously".

B. Delete the word "4" occurring in line 5 and substitute the word "3".

C. Delete the words "or any proceeds thereof has" occurring in line 6 and substitute the word "had".

D. Insert after the word "for" occurring in the last line the words "not less than".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. S. Panday: Mr. Deputy Speaker, clause 4 really reads like this now:

> "A person who receives, has possession of or disposes of any money or property or any proceeds thereof, which has previously been delivered as ransom in connection with an offence punishable under section 3, knowing or having reason to believe that the money or other property had at any time, been delivered as such ransom, commits an offence and is liable to imprisonment of not less than fifteen years."

It would appear to me at this stage that this person is, what used to be called, an accessory after the fact. He might not have been part of the original kidnapping as envisaged under clause 3 of the Bill, but after the event he got the proceeds from the ransom. When we say that person who commits such an offence is liable to imprisonment of not less than 15 years, what we are actually doing is closing the door to plea-bargaining. It would appear to me that if you have this section as it stands here, it means that you would have to exonerate him completely, that is, withdraw the charge against him; somebody who would have been culpable, if it is even after the event. Let him go free in order to catch the principal offender.

I humbly submit that if somebody is of such character and nature, although it is the intention of the State to catch the principal offender, the State must not put itself in a position where it would have to let the accessory go free. We must still be able to catch him. If you had left that one to say "liable to imprisonment for fifteen years" then you would have given the Director of Public Prosecutions (DPP) and the State the opportunity to bargain with him. Let him plead guilty and give him either five or two years. Then you could use his evidence to catch the principal offender. But in so doing, when we try to tighten the noose so tightly, the accessories may not want to assist the State and this might be one of the ways of collecting evidence. With kidnapping being so professionalized, it might be difficult to make a breakthrough.

When one looks at gang kidnappings and gang murders, one sees that in order for the State to proceed with those matters, they must be able to find an accomplice. I wish to refer to the matter of Levi Morris, who was there in the middle of it. He pleaded guilty for murder and his sentence was commuted to life imprisonment. Having had that opportunity to save his life, which is the maximum penalty, Levi Morris bargained with the State and became a State witness, and by giving him that sort of amnesty they were able to catch all the persons and break the whole ring.

If they allow this clause to be enacted in the manner in which it is, we may not be able to use that strategy to obtain evidence because evidence-gathering starts

before you charge and it could be obtained even after you charge and even at the stage of trial. So we might be closing ourselves off from a system of gathering evidence.

I humbly submit that in clauses 3 and 4, "not less than" should have been removed and insert instead "liable to" in order to give the State an opportunity to access information which it may not be able to gather even with all the resources at its disposal.

Thank you, Mr. Deputy Speaker.

Sen. Morean: Mr. Deputy Speaker, I have one short answer to that. The position still remains the same as with the example given and with the Levi Morris example, because you still have the Constitution under section 87 where the person could be dealt with as the President sees fit. So that, really, I do not agree with what the hon. Member has said with respect to letting the accomplice go free altogether, because there is a provision in the Constitution. There was always that provision to deal with it and this does not gainsay that; this does not negate that provision.

So I beg to move.

Question put and agreed to.

Clause 5.

Senate amendment read as follows:

A. In subsection (1)—

(a) Delete the words "knowingly negotiates or assists in any negotiation to obtain" and substitute the words "demands or pursues, by negotiation, a demand for".

(b) Insert after the word "ransom" occurring in line 2 the words "reward or other benefit".

(c) Delete the words "a person who has been wrongly restrained or wrongfully confined" and substitute the words "a kidnapped person".

(d) Insert after the word "for" occurring in line 5 the words "not less than.

B. Delete subclause (2)."

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Miss Lucky: Mr. Deputy Speaker, first of all, when this Bill was first presented in the lower House the concern that had been raised by us on this side was that there appeared to be, and there certainly was, no protection for family members or other persons—relatives or religious leaders—who might have gotten involved in trying to negotiate with those responsible for the kidnapping or for the false imprisonment in order to ensure the quick and rapid release of their relatives or friends or the person on whose behalf they were, in fact, negotiating. What had therefore been done was that there was a subsection that was introduced to ensure that no family member or no person who was negotiating on behalf of the kidnapped person would, in fact, be liable for the offence being created, or that was created, in what is now clause 5. With this proposed amendment, it means that protection has been removed because what the relevant aspect of that clause 5 would now say is this:

> "A person who demands or pursues, by negotiation, a demand for the release of a person…"

It means that even a family member who is trying to ensure the release of their relative—for example, let us take the situation recently with Mr. Jai Ramkissoon. Unfortunately for Mr. Ramkissoon, with this particular subsection being removed and with the rephrasing of the section as is proposed in the amendment, it means that a person who is negotiating or who is demanding "or pursues, by negotiation, a demand for the release". In other words, a family member is actually negotiating or pursuing by way of negotiating, the "demand for the release of". I know what the intention is. The intention is to use phraseology that would ensure that such persons who are trying to negotiate with kidnappers would not come within the ambit of the offence, but I am saying that even with the amended phraseology, it does not give the required protection.

So no doubt there were persons who were hoping that by using those words "a demand for the release of" that they would have applied only to kidnappers who were demanding money, reward or benefit for the release. But it could be a family member, a relative or an innocent person who is so anxious, because the police do not have the resources, technology or personnel—and there are allegations that even police officers are involved; I am just saying; I am not going out of the relevance. I am saying there are family members who are saying, clearly, that because kidnapped persons are turning up as corpses rather than as bodies that are breathing, they are taking matters in their own hands and as a result, the family members are still demanding for "the release of", and therefore they would still be incorporated with respect to the proposed phraseology that is used. That is why it was important to have that particular subclause.

I want to urge the hon. Attorney General once again to reconsider the phraseology and read it again, and certainly when she responds, indicate how a family member would be exonerated from being charged under this particular offence, bearing in mind the immunity that was given by subclause (2) has now been deleted.

I thank you, Mr. Deputy Speaker.

Mr. S. Panday: Mr. Deputy Speaker, I rise to endorse the comments made by my colleague, the Member for Pointe-a-Pierre, with respect to the amendment to this clause which states: "demands or pursues, by negotiation". It would appear, from what I heard, they were trying to apply the *ejusdem generis* rule, in which they give a number of words and hope that the subsequent words would fall in line. It says:

> "A person who demands or pursues, by negotiation, a demand for a ransom for the release of a person…"

I humbly submit that when one looks at the phraseology here, one would see that it is not conjunctive but disjunctive, in that you demand a ransom, or you pursue a ransom or you negotiate a ransom. That was what my friend from Pointe-a-Pierre was saying. When you say you negotiate a ransom, that could be done by the family of the kidnapped person, and that is why we were asking that subclause (2) be reintroduced. If you do not want to introduce that, then the comma which comes between "pursues" and "by negotiation" should be removed, so it goes like this:

> "demands or pursues by negotiation,"

And you could put the comma there. Then you could put the two words in a conjunctive manner. In those circumstances, we ask the hon. Attorney General to have a review of clause 5.

Mr. Imbert: Mr. Deputy Speaker, it would help if the Members opposite would read the parent Act and the amendments before us. This has nothing to do with the release of the person. The way this would read is to demand a ransom, and it also deals with someone who is negotiating a ransom. A family member is not going to be negotiating a demand for a ransom. The family member is not demanding the ransom. They need to read! I would now read it for them. We are deleting "knowingly negotiates or assists in any negotiation to obtain". Clause 5 would read as follows.

> "A person who demands…a ransom for the release…"

A family member cannot demand a ransom for the release of a family member. The other part would read:

"or pursues, by negotiation, a demand for ransom…"

A family member is not pursuing a demand for ransom. Why would a family member be demanding a ransom for the release of a family member? The Members opposite are a bit confused. They are a little addled from what happened on Monday night. If the hon. Members truly believe that a family member would demand a ransom—

Mr. Deputy Speaker: Hon. Member, the rules were set very early. Let us stick to the relevance and avoid the other talk. That is only going to cause problems.

Mr. Imbert: I was simply trying to elucidate a reason that they are so confused. Let me go through again. Clause 5(1) would now read as follows.

"A person who demands or pursues, by negotiation, a demand for a ransom for the release of a person who has been wrongfully restrained…"

commits an offence. Let me read it again:

"A person who demands or pursues, by negotiation, a demand for a ransom…"

is guilty of an offence. A family member cannot demand a ransom and a family member cannot pursue a demand for ransom.

Mr. S. Panday: What about "negotiation"? He left out half of the sentence.

Mrs. Persad-Bissessar: Mr. Deputy Speaker, this is what happens when constructors of walls that fall down put their mouths into the business of lawyers. I think the hon. Attorney General would well appreciate the point. It is clear that the Member for Diego Martin East is misreading clause 5. My colleague from Princes Town made it very clear that those words that are there are disjunctive because they are not conjoined with the word "and". They are disjunctive by the word "or". Therefore if we read it properly—you see the Member just read part of it and did not continue. The proposed amendment reads:

"A person who demands a ransom…"

He is correct. We go back up:

"A person who negotiates a ransom…" [*Crosstalk*]

The Member had his chance—

Mr. Deputy Speaker: Hon. Members, we have been going fine so far. Each Member would have his or her ten minutes. Please cut the crosstalk and let the hon. Member continue.

Mrs. Persad-Bissessar: Thank you, Mr. Deputy Speaker. Clause (5)(1) now reads with the proposed amendment:

"A person who demands or pursues, by negotiation, a demand for a ransom."

So a person who demands would be guilty of the offence; a person who pursues by negotiation, a demand for a ransom—pursues. When Mr. Jai Ramkissoon negotiated with the kidnappers for the release of his son, that was pursuing by negotiation; that was not a demand. The kidnappers were demanding the ransom so they would be guilty under the offence being created. But when a family member like Mr. Jai Ramkissoon, or any family member, pursues negotiations for the release of that person, then they are always caught within this. The "or" is very clear and I think you would fully appreciate when you read "a person who demands or"; it is not a person who demands "and", you know; it is a person who demands. That is one category of offenders; "or pursues", another category of person; "or pursues or demand".

So the demand has been made by the kidnapper and the family member then pursues that by negotiation. That is another category of person: "by negotiation". In other words, out of an abundance of caution, if there are two ways of interpreting, this is the second argument. My first argument is that you are here with two categories of offenders and the second would catch the family member within its ambit and create an offence against the family member. I am saying that even if the Attorney General is not convinced of that, the fact is that we are both here arguing on both sides that out of an abundance of caution we must release and make sure that no family member is caught within the ambit of the provisions here proposed for clause 5.

I thank you.

Sen. Morean: Mr. Deputy Speaker, out of an abundance of caution, the particular paragraph was amended to avoid any possible interpretation that we are dealing with a family member. I think the wording is quite clear. I think the hon. Members on the other side are reading the section in a disjointed way. Now the person who would be pursuing or demanding the ransom must be the kidnapper or the accomplice; it would not be the family member. So that the words used exclude family member from the section. What it is really saying is:

"A person who demands…"

Now family members are not going to demand a ransom.

Mrs. Persad-Bissessar: That is right. So they are not caught—

Sen. Morean: They are not caught:

"…or pursues, by negotiation, a demand…"

"Demand" is the operative word, not the pursuing. It is pursuing, by negotiation, a demand for a ransom for the release of a kidnapped person.

Miss Lucky: Would the Attorney General give way? [*Crosstalk*]

Mr. Deputy Speaker: Hon. Members, please. Proceed, hon. Attorney General.

Sen. Morean: So the amendment captures quite clearly what is intended to be the offence. So I beg to move.

Question put and agreed to.

2.30 p.m.

Clause 6.

Senate amendment read as follows:

A. Delete clause 6 and substitute the following new clause-

"Disclosure of Information	6. A person, who, without reasonable excuse, the burden of proving which shall be on the person relying on it, discloses either orally or in writing or in any other medium to another person, information relating to the accounts held in financial institutions, money or property owned by a third person which the person providing the information knows or ought to know may be used in connection with the kidnapping of that third person or some relative or friend of his, commits an offence and is liable

to imprisonment for not less than five years."

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. S. Panday: Mr. Deputy Speaker, this clause deals with disclosure of information and it says:

> "A person, who, without reasonable excuse, the burden of proving which shall be on the person relying on it, discloses either orally or in writing or in any other medium to another person, information relating to the accounts held in financial institutions, money or property owned by a third person which the person providing the information knows or ought to know may be used in connection with the kidnapping of that third person or some relative or friend of his, commits an offence and is liable to imprisonment for not less than five years."

First of all, I want to congratulate the other place for having this amendment where it said, in the first incarnation, "discloses either by word of mouth", now the word "orally" has been included. Congratulations. The point I want to make, however, Mr. Deputy Speaker, is that this clause 6 creates a situation of strict liability, which you know; which you ought to know, Mr. Deputy Speaker, the person relying, the burden is on him. I humbly submit that when one is placing strict liability on persons like this, one must be careful how that heavy burden is put on the person. If this person, in the bank or in the financial institution, releases information about a third person—his children, his family—that is okay but when you say "…friend of his…" how could you open the net so wide? How could you define what is "friend"? We could categorize and define members of one's family and relatives but, Mr. Deputy Speaker, I humbly submit that to include the word "friend" of that third person is carrying it too far. The burden is too heavy on the person at the financial institution and many innocent persons could get into trouble.

Miss Lucky: Mr. Deputy Speaker, in addition to what my friend, the Member for Princes Town has said, I wish, through you, to draw to the hon. Attorney General's attention that in the new clause, as proposed, it is stated, and I am quoting now five lines from the end of the proposed amendment, "…may be used in connection with the kidnapping of that third person…". Mr. Deputy Speaker, bearing in mind that we recognize that it is kidnapping as defined in the common law, which admitted by the Attorney General, has a different component to that as

created in what would be clause 3 of the amended Bill, it means that there would be a need for clarification of the word "kidnapping" as it is used in the proposed new clause 6.

When you say that it would be used in connection with kidnapping of that third person, that would be kidnapping of the common law or what is now a statutory offence, which I maintain, Mr. Deputy Speaker, has the kidnapping of a person such that the person is held. So that if there is not that component of the *actus reus*, which is not just the *actus reus* of kidnapping—meaning the elements of the kidnapping offence—but also the *actus reus* of the false imprisonment, it means that this clause would not apply. So it is either that kidnapping has to be changed for any offence under the Bill or the offence as created by clause 3 of the Act or it has to be kidnapping at the common law, if not, you are going to run into statutory interpretation problems here and the very people who you may want to capture or charge would find themselves outside of the net.

Mr. Deputy Speaker, I end by saying that the purpose of this legislation, according to the Attorney General, is to send a message. So far, with the greatest of respect, we are sending a message to the population that kidnappers and all others concerned with those kinds of offences are going to get off on legal technicalities or the courts would be tied up with interpreting sections which were not clarified or were not amended here in the Lower House.

Thank you very much.

Mr. Imbert: Mr. Deputy Speaker, I just wish to assist the hon. Member for Princes Town. I think he does not understand the English meaning of the amendment. The clause does not refer to information on a relative or friend of the third party; it refers to the information on the third party, only. However, that information could then be used to kidnap a relative or friend and demand the ransom from the third party. If the hon. Member reads it carefully, what it says is that:

> "A person who, without reasonable excuse…discloses either orally or in writing to another person, information relating to the accounts…by a third person which the person providing the information knows or ought to know may be used in…kidnapping of that third person or some relative or friend of his, commits an offence…"

The reference to "relative or friend" is with regard to the possible kidnapping of the relative or friend and then the demand for ransom from the person whose bank account has been disclosed.

I hope this clarifies the issue for the Member for Princes Town.

Sen. Morean: Mr. Deputy Speaker, with respect to the point raised by the hon. Member for Pointe-a-Pierre, the fact is that if the person were charged, the person would be charged under this Act. If you were being charged under this Act, whatever follows would flow from the penalties provided under this Act. As I was at pains to indicate, the common law offences remain on their own; we are not mixing it as such. If the person is charged under the Act for kidnapping or disclosure of information for kidnapping a person, this is what will apply. I do not see that there is really any ambiguity or any loophole for people to escape being brought to justice. So that I do not see the need to use the additional words under this Act.

Miss Lucky: Would you give way, Attorney General?

Sen. Morean: Sure. [*Crosstalk*] We listen.

Miss Lucky: Hon. Attorney General, once again, through you, Mr. Deputy Speaker, we are, as we say in law *ad idem*, but then the strength of this Act that has already been indicated by you, is weakened by your own drafting deficiency. I am asking, through you, Mr. Deputy Speaker, certainly, you would want such information on this particular clause dealing with the disclosure of information; not only to deal with kidnapping when it takes place in this particular context. In any event, Madam Attorney General, if you look at the parent Act what you would see, in the side note, is that the definition of the very offence being created by clause 3 is kidnapping for ransom. So that when, in this clause, the use of the word is simply kidnapping, you are raising concerns: Is it kidnapping of the common law? Or, is it kidnapping under the legislation?

All I am pointing out to you, Madam Attorney General, is that certainly you would want such a powerful clause, not only to apply for the statutory offence but generally speaking. It is a simple amendment. Do not let the fact that you would have to commend us for making such a good suggestion come in the way of doing what is in the best interest of the people of Trinidad and Tobago; I beg you. [*Desk thumping*]

Sen. Morean: Mr. Deputy Speaker, the fact is that when this Bill came before the House, between the time when it was passed in the House and when it was debated in the Senate, amendments were made. When we made those amendments we took into consideration not only the comments from different interest groups, newspaper articles by concerned citizens, but also the contributions made here. We took all those things into consideration because of the fact that we are not here to score points; we are here to do the people's business. We did, in fact, take all the comments that the hon. Member made.

Unfortunately, I disagree with the hon. Member on her possible interpretations of kidnapping in this section. If the person is charged under this Act, it will be with kidnapping for ransom and that is what we are dealing with here.

Question put and agreed to.

Clause 7.

Senate amendment read as follows:

A. In subclause (1)-

(a) Delete the words "or of a conspiracy to commit or an attempt to commit, or an abetment of the offence by a person";

(b) Insert after the word "document" occurring in line 7 the words "whether in electronic form or otherwise,".

(c) Delete the word "requiring" occurring in line 13 and substitute the word "authorizing".

B. Delete subclause (4).

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 8.

Senate amendment read as follows:

A. In subclause (1)-

(a) Delete the words "into or" occurring in line 2.

(b) Delete the words "under this Act" occurring in line 2 and substitute the words "suspected of having committed or charged with the commission of".

(c) Delete the words "or of a conspiracy to commit or an attempt to commit or an abetment of".

(d) Insert the words "under this Act" after the word "offence" occurring in line 2.

(e) Delete the dash after the word "requiring" in line 6 and delete paragraphs (a), (b) and (c) and substitute the words "the manager of

a financial institution to give copies of the accounts of, or under the control of, such person or of the spouse or dependent child of such person at the financial institution, where the Director of Public Prosecutions has reason to believe that, that information may be relevant to the investigation or proceedings".

B. In subclause (2) delete the word "ordered" occurring in line 1 and substitute the words "against whom an order is made".

C. In subclause (3) insert after the words "subsection (2)" occurring in line 2, the words "or willfully provides false information with respect to the order referred to in subsection (1)".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. S. Panday: Mr. Deputy Speaker, I wish to draw your attention to (e) in which it says:

"Delete the dash after the word 'requiring' in line 6 and delete paragraphs (a), (b) and (c) and substitute the words 'the manager of a financial institution to give copies of the accounts of, or under the control of, such person or of the spouse or dependent child of such person at the financial institution".

This was the point we were making for the earlier stage of the Bill and that is why we thought for uniformity, that section—I think it was section 3 or 4—should carry that same definition."

Thank you, Mr. Deputy Speaker.

Sen. Morean: Mr. Deputy Speaker, I think the hon. Member is just commending us for being good citizens.

Question put and agreed to.

Clause 9.

Senate amendment read as follows:

A. In subclause (2)-

(a) Insert after the word "liable" occurring in line 3, the words "on summary conviction".

(b) Delete the words "fifty thousand" occurring in line 4 and substitute the words "one hundred thousand".

(c) Delete the words “six months” occurring in line 5 and substitute the words “two years”.

B. Insert after subclause (3) the following new subclause:

“(4) A police officer who receives information pursuant to subsection (1) and does not investigate it or cause it to be investigated in accordance with proper police procedure commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years”

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. S. Panday: Mr. Deputy Speaker, the amendment that comes after clause 4, which says:

> “A police officer who receives information pursuant to subsection (1) and does not investigate it or cause it to be investigated in accordance with proper police procedure commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for two years”.

Mr. Deputy Speaker, this is a very dangerous section. A police officer who receives information—what does “receives information” mean; by the grapevine? You are telling me this at a social function or if a report is made in writing at the police station and the police officer then does not investigate it, then I say we could put some strictures on the police officer? As it stands however, Mr. Deputy Speaker, this might be a case where wicked persons could set up police officers quite easily. The way the clause is drafted is too wide when it says: “receives information”. I humbly submit that this clause should be looked at and probably read like this: “If a report is made at a police station, in writing, it should be taken down in writing and be pursued.”

Another point, Mr. Deputy Speaker, the police officer who merely receives the information and passes it on to the other investigating officer, how would you determine which officer is guilty if it is not pursued? If I heard something and I merely pass it on to another officer; or somebody tells me and I tell the officer but he did not follow it up, the innocent officer at the bottom of the chain might find himself in trouble and at the top levels there might be cover up.

Mr. Deputy Speaker, what is proper police procedure? I humbly submit that since we are getting definitions, we should have definitions in this situation

especially when people who hold office of trust, and where we should be paying them a higher salary to ensure—we humbly submit that police should be de-linked from the public service and should be placed in a special category and police officer should—

Mr. Deputy Speaker: Hon. Member, let us deal with the Bill.

Mr. S. Panday: Yes, they should be paid proper wages and the method of recruitment in the police service should be such, Mr. Deputy Speaker, to ensure that the right persons are recruited in the police service so that you would not have to put a clause like this in law to ensure that police perform their functions. To say that we want the Police Service Bill or the Constitution (Amdt.) Bill to deal with this, I humbly wish to draw your attention to the report on the Police Service Commission (2002) in which it says:

> "The Police Service Commission has delegated to the Commissioner of Police the power to recruit trainee constables, however, there is still prevailing perception that the Commissioner of Police has no say in recruitment."

What is happening, Mr. Deputy Speaker, the Police Service Commission has delegated to the Commissioner of Police, the powers to recruit; the powers to promote first division officers and also the powers to discipline. So instead of having to put a section here, it may be necessary to re-look at the method of recruitment, promotion and discipline in the police service.

Miss Lucky: Mr. Deputy Speaker, I rise to endorse the point being made by the hon. Member for Princes Town but not to repeat exactly what he has said. The concern that I have is that whereas the justification for this new subsection, that is (4), is that the police must be made to be accountable and must be made to do that which is their duty, there is a concern being expressed that reference in the new subsection is made in relation to what is stated in 9(1). That subclause deals with the duty of a person who may be aware that an offence is being committed or has reason and/or in the absence of reasonable excuse does not give that information to police officer.

First of all, Mr. Deputy Speaker, I think just to be grammatically correct, there is an "a" that is needed before the words "police officer". In any event it does not say in that subclause—that is 9(1)—that when a police officer receives the information, which could be by way of an oral report, what he has to do with that information and, therefore, when one comes to new subsection 4, it means that what is needed is, perhaps, after the words "…pursuant to subsection (1)…", it should read "a police officer who receives information pursuant to subsection (1)"

or words to the effect, this is my suggestion, humble as it is, "should commit such information in writing", so that it starts the chain of accountability. What would happen, Mr. Deputy Speaker, it is very easy for persons to say that they gave the information but if that police officer does not commit it in writing, he might find himself being charged without having proof to defend himself or he may be a person who may want to show that, listen, I got the information and I passed it on to the relevant officer because I was merely the sentry on duty or I was merely in the charge room and you would not have that necessary chain or paper trail to the information given.

Bearing in mind that when the phrase is used, proper police procedure—what is being relied upon is, in fact, those extracts—that would be made in station diary records. The benefit that would be obtained, if the suggestion is taken to stipulate that such information received in accordance with 9(1) be put in writing, is that it would make police officers now understand the importance of having proper record. It would mean that from the very start there would be a way of tracing how the report went; when it was investigated, and most importantly, it would prevent persons from trying to throw the blame or pass the buck. It is just a suggestion but it is very important because it is necessary if subclause (4) is to work. Without that, Mr. Deputy Speaker, it would merely be a subclause that appears to do a lot but, in reality, it would do nothing.

Sen. Morean: Mr. Deputy Speaker, I share the concerns being expressed by both Members on the other side. However, if you note we have the words "in accordance with proper police procedure" and there are already procedures set out for the manner in which they should carry out their investigations and how they should minute their investigations and what notes they should take and how they should proceed. So that rather than repeat those procedures that are already contained in other legislation, they are simply to follow the procedure. So as long as they act in accordance with proper police procedure then the fears of the hon. Members need not be realized.

In those circumstances, I do not think we need to repeat it in this particular clause. It is certainly not necessary and when you put things that you do not need you may very well cause confusion. We may very well now go contrary to what is contained elsewhere in the Police Service Regulations and I think that is really the only thing.

Question put and agreed to.

Clause 10.

Senate amendment read as follows:

Delete Clause 10.

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 11.

Senate amendment read as follows:

Renumbered 10

A. In subclause (1) delete the word "discovery" and substitute the word "identification" occurring in the last line.

B. In subclause (2) delete the words "protect the informer from discovery" and substitute the words "prevent the informer from being identified".

C. In subclause (3) delete the words "after full inquiry into the case" occurring in line 2.

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Miss Lucky: Mr. Deputy Speaker, my concern, once again, is with respect to clause 11(1), more specifically, the use of the words "or permitted" as occurs in the fourth line of that particular subclause. As I said before, and my colleague, the Member for Princes Town also made the point, that relevant part as it reads now says: "no witness should be obliged or permitted to disclose the name or address of an informer".

3.00 p.m.

This kind of phraseology is not of recent vintage, nor is it strange to the law. In the Dangerous Drugs Act, No. 38 of 1991, when a similar protection is given it is actually for the protection of informants. What it says is: "No witness in any proceedings under this Act shall be obliged…" The complaint and the suggestion

is that the words "or permitted" be removed. One does not want to remove the discretion of the court, if it feels that there are circumstances in which the identity of the informer should be given. There are circumstances which will justify such disclosure.

That will explain why in section 54(1) of the Dangerous Drugs Act of 1991, there was great concern that there should be protection of informers. That is why the phrase which is used in the Dangerous Drugs Act is "no witness shall be obliged…" In the same way, the suggestion is that in clause 11(1) it should read "no witness shall be obliged to disclose the name or address…" That way, the court will retain its discretion in circumstances that will justify disclosure of the identity of the informant; especially in light of what is provided for in clause 11(3), where there is provision, and rightly so, for the court—if it is of the opinion that the informer willingly or wilfully made in his statement a material disclosure which turns out to be untrue.

The protection you have given to a person from having his name identified—you are saying "shall not be obliged or permitted…"—actually prevents the operation that you want to give in the balancing exercise; that if a person is wrongly charged, he or she will get the protection. It is a very simple suggestion: remove "or permitted" which does not compromise the legislation in any way and it will ensure the balancing exercise.

With the greatest of respect, what can be used is the same justification and concern that was used in 1991, that informers did not want to be identified. When you give that kind of protection, make sure you give the balancing act to those persons who would be wrongly accused. It is a suggestion that I think would actually allow the enforcement of clause 11(3).

I thank you, Mr. Deputy Speaker.

Mr. S. Panday: Clause 11(2) deals with trying to protect the identity of the informer. Clause 11(2) states:

> "If any books, documents or papers which are in evidence or liable to inspection of any civil or criminal proceedings contain any entry in which an informer is named or described or which might lead to his [discovery] identification, the court before which the proceeding is taking place shall cause information to be concealed from view or to be obliterated so far as is necessary to [protect the informer from discovery] prevent the informer from being identified, but no further."

This usually happens in the criminal court when you are in a trial. What happens before you reach a trial, is that you tend to hide information from members of the jury. In a preliminary enquiry, all that evidence goes downstairs and it is only at the trial stage, you tend to hide it. I wonder how this will have effect.

More importantly, it says "in civil or criminal proceedings…" I think Order 25 of the red book speaks about inspection discovery. An inspection and discovery of documents takes place long before trial, because they need to inspect the documents. At that stage, long before the trial starts, all the documents would be made available. I wonder how much effect this will have if, when we arrive at the stage of the trial, we try to obliterate or conceal the name, when in truth and in fact the proceedings at the High Court, with respect to discovery and inspection, allows all that to be exposed long before the trial?

Sen. Morean: Unfortunately I disagree with the removal of the words "or permitted" because of the fact that what you have given: "the witness shall not be obliged or permitted…" although you may not be obliged, you may still want to disclose. What we are seeking here is to protect the informers from the disclosure.

As far as the discretion of the court goes, subclause (3) does give the court a discretion in certain cases. Some discretion is maintained for the case where a discretion should be exercised. Mr. Deputy Speaker, I do not agree with the removal of those words "or permitted".

Question put and agreed to.

Clause 12.

Senate amendment read as follows:

Renumbered 11

A. Delete the words "for the purposes of a" occurring in line 3 and substitute the words "in any"

B. Insert after the word "to" occurring in line 5, the words "a fine of one hundred thousand dollars and".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Question put and agreed to.

Clause 13

Senate amendment read as follows:

Renumbered 12	Delete the words "and (3)" occurring in line 1 and substitute for the words "4, 5, 6 and 7" the words "3, 4, 5 and 6".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Q*uestion proposed.*

Question put and agreed to.

Clauses 11, 12, 13 and 14.

Senate amendment read as follows:

Renumber clauses 11, 12, 13, 14 as clauses 10, 11, 12, 13 respectively.

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Q*uestion proposed.*

Question put and agreed to.

Clause 14

Senate amendment read as follows:

Renumbered 13	Insert after the word "ten" the words "wherever it occurs".

Sen. Morean: Mr. Deputy Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Q*uestion proposed.*

Miss Lucky: With respect to clause 14, in which there is the amendment that says with respect to section 31 of the Larceny Act, that is a section that deals with demanding money with menaces. After the word "ten" wherever it occurs means that the penalty is being increased from 10 to 15 years. That in fact is commendable.

What I had drawn to the Attorney General's attention on the last occasion, and I wish to do it again, is that there is still a fundamental error being made. I am asking us to keep our minds open at this stage even if it means, once again, conceding that we are right. Hopefully this time we will actually see the

amendment being made. There is a proposal to increase the penalty of section 31 of the Larceny Act. It should either be section 32, or it is important that in this amendment, section 32 of the Larceny Act be addressed. The reason I say that is in the context of kidnapping—whether at common law or this new offence being created—the charge for demanding money with menaces—which will apply either at the common law or it may apply for this particular offence being created in the legislation before us—is that section 32 is the section that a person who demands a ransom is charged under.

In the Bobart matter, five persons were charged for various offences and only one person, Carlos Manickchand, was charged for demanding money with menaces. That was under section 32 of the Larceny Act. Section 31 of the Larceny Act would not be applicable in most instances, especially in the circumstances of kidnapping in this country. Section 31 is specific in its reference to demanding money with menaces when a person utters a written document. If you look at it, section 31 talks about any person who utters knowing the contents thereof or with the intent to extort or gain property by accusing persons that you would charge them for a crime. Section 31 does not encompass demanding money with menaces which, no doubt, was meant to be encompassed in this amendment.

Section 32 of the Larceny Act is the section that says:

> "Any person who, with menaces or by force, demands of any person anything capable of being stolen with intent to steal the same is liable to imprisonment for five years."

That is where you would charge a person who, under the common law—if they are charged for kidnapping under the common law and they made a demand for money for menaces. That is why I would agree that it is necessary to increase the penalties under section 31.

It is also very important in this very document to make sure you address section 32 of the Larceny Act because that is where you would charge persons. If a person was not involved in kidnapping that led to false imprisonment, or was not involved in false imprisonment at all, it means that you cannot charge that person either under the common law or under this legislation for kidnapping and false imprisonment. Let us say the person was only responsible for making the phone call and saying: "I want $1 million for the release of a person", that person has only demanded money with menaces. Section 31 would not capture such a person.

Surely the intention of the legislation is to ensure that the penalties dealing with persons who may only be involved in one aspect of the entire transition of

kidnapping to false imprisonment to the demand of the money and hopefully, subsequent release, would be addressed. In section 32, the penalty is only five years. Even when the Bobart matter was being heard, the point that was being made was that the maximum penalty under section 32 was five years; even though in many instances the actual mastermind might only get involved in demanding the money. We want to make it that such a person is faced with a very stiff penalty.

As I conclude on this particular amendment, it means that you would actually be encouraging more participants in a crime. It would mean a person would say: "Listen, I do not want to be involved in the kidnapping, either at common law or false imprisonment under the common law, or the statutory offence being created in clause 3, I am just going to demand the money with menaces. Do you know why? If I get caught, my maximum penalty is five years. In jail time five years is really three and a half years." It is a very important clause. I am asking the Attorney General to look at it. Everybody charged with demanding money by menaces, is charged under this Larceny Act.

Mr. Deputy Speaker, I could only ask that good sense prevail, as we have been asking on this side.

Sen. Morean: May I assure the Member that her comments and her contribution were taken into account when we were revising the Bill. They were not ignored. The fact is that what you have in section 32 is not just a person who is demanding with menaces, but who is also demanding anything capable of being stolen with intent to steal the same, which is different from the area with which we are dealing: namely, the kidnapping for ransom. Your common law offences remain, as I have said from day one.

Miss Lucky: You keep speaking about the offences of the common law. We understand that principle. I do not want to say it is strike law, but it is. In the context of kidnapping—which is what this whole Bill is about—for ransom and demanding money with menaces, it is under section 32 that persons are charged, because those demands are not made in writing.

Section 31 of the Larceny Act deals with when you utter in writing. People making demands these days use telephones. If you want to be relevant we should say section 32. You are not answering the question.

Sen. Morean: That is why we do not have to deal with it within this piece of legislation. If we were changing all the common law offences, we would have made different provisions. We have not changed that.

Question put and agreed to.

EXTRADITION (COMMONWEALTH AND FOREIGN TERRITORIES) (EXTRADITABLE OFFENCES) ORDER

The Attorney General (Sen. The Hon. Glenda Morean): Mr. Deputy Speaker, I beg to move:

Whereas section 6(5) of the Extradition (Commonwealth and Foreign Territories) Act, 1985 provides that the Attorney General may by Order, subject to affirmative resolution of Parliament, amend the First Schedule of the said Act;

And whereas the Attorney General for the purpose of amending the said First Schedule has on the 23rd day of June, 2003 made an Order entitled "The Extradition (Commonwealth and Foreign Territories) (Extradition Offences) Order, 2003";

And whereas it is expedient that the Order be now affirmed;

Be it resolved that the Extradition (Commonwealth and Foreign Territories) (Extraditable Offences) Order, 2003 be affirmed.

Question proposed.

Mr. Deputy Speaker, because of the effects of globalization and technological advances, people all around are devising different means of circumventing the law; all of which have contributed to the increasing trans-national criminality. These consequences of globalization have been evident in the expansion of organized crime, in particular, corruption, money laundering and cyber crime.

The Extradition (Commonwealth and Foreign Territories) Act, 1985 of Trinidad and Tobago includes offences such as murder, fraud, rape and drug trafficking as extraditable offences. However, from time to time, the Government has realized the need to include other offences in the First Schedule of the Act as extraditable offences. In 1996, the Schedule was amended to include offences under the Treason Act and any indictable offence under the Firearms Act.

In recent times Trinidad and Tobago has intensified its effort to fight corruption, which it recognizes as a threat to democracy, the economy and the moral fabric of society. On April 15, 1998 Trinidad and Tobago signed and ratified the 1996 Inter-American Convention Against Corruption. In 1997, Trinidad and Tobago joined with 92 other countries in signing the 1997 Lima Declaration on Corruption. These international conventions provide guidelines on the various measures which states can adopt to facilitate better investigation, prosecution and prevention of this most elusive form of criminal activity.

The Prevention of Corruption Act of Trinidad and Tobago, in accordance with the convention, provides a sound legislative framework for the prevention of corruption. Therefore, it has become necessary to amend the First Schedule of the Extradition (Commonwealth and Foreign Territories) Act, 1995 in accordance with Articles 6 and 13 of the convention, to include offences listed in the First Schedule of the Prevention of Corruption Act, 1987 as extraditable offences.

In relation to access to information, it has become easily available over the Internet. Trinidad and Tobago, in its attempt to achieve status in the international market, must keep up with the global pace of information technology and the use of e-commerce. A criminal no longer has to be physically present to commit crimes of such a nature. Concern lies in the fact that offences such as credit card fraud and computer misuse are becoming very popular. Both the Computer Misuse Act, 2000 and the Electronic Transfer of Funds Act, 2000 provide the legislative framework for the prevention of computer crimes as well as credit card fraud. It has therefore become necessary to include the Computer Misuse Act, 2000 and the Electronic Transfer of Funds Act, 2000 as extraditable offences to be listed in the First Schedule of the Extradition (Commonwealth and Foreign Territories) Act, 1985.

Accordingly, under section 6(5) of the Act, I ask that the amendment to the First Schedule be approved by this honourable House.

Question proposed.

Miss Gillian Lucky *(Pointe-a-Pierre)* Mr. Deputy Speaker, it appears that every time that I stand and make good sense I am defined by my friends on the other side as being a nuisance. Since that is their definition, I shall in fact be a nuisance because I intend to ensure that when this type of legislation is being passed, no one can tell me hush.

There is a collective responsibility that we have in this Parliament. As much as they try to shout I shall just shout louder. At the end of the day let it be known that the Members on this side are not irrelevant. I am sure they will hush at this point when they hear that in fact I want to commend this legislation that is before us, in that it seeks to—[*Interruption*]

Mr. Deputy Speaker: Please allow the Member for Pointe-a-Pierre to make her contribution.

Miss G. Lucky: I was one of the persons involved in what might have been the first, if not one of the first, successful extraditions of a Trinidadian resident by the name of Lolita Saroop, to the United States. As far back as my days in the

Office of the Director of Public Prosecutions (DPP), and by that very case, so much had been learnt in terms of what was needed in the legislation at that time, that applied to extradition which dated back to 1985.

In that extradition of Lolita Saroop, it was recognized that our legislation was significantly deficient in terms of the territories with which we had treaties dealing with extradition and the fact that much of our extradition law dated back to 1870. Over time, with successive regimes, what has been done is that there actually has been a strengthening of the legislation that deals with extradition. In this particular instance, no doubt what is being done is an expansion of the number of crimes which will now be susceptible to extradition orders. Persons charged for these crimes now become susceptible to extradition orders.

In my contribution, therefore, that might be quite short—bearing in mind we have been so trained for the evening to be about 10 minutes—I only intend to highlight some of the other things that can be done to ensure that we continue to keep abreast of what is happening on the international scene and also what we can do here to ensure the efficacy of the legislation.

The first point I wish to make is that it is my understanding that when there are extradition proceedings, or when extradition orders have to be made, the particular authority that is responsible for that is the central authority. I am also informed that whereas in my days, the days of Lolita Saroop, extradition orders and proceedings were dealt with by members and state counsels belonging to the Office of the DPP, by the creation of the central authority, which was created under the UNC regime. That central authority is solely responsible for extradition orders that are being made and extradition proceedings.

With the greatest of respect to those on the other side, I would like to suggest this afternoon in my contribution that based on the behaviour of those who seek to interfere in what is not within their portfolio, meaning there is always the need for independence in investigations and proceedings in which persons are deemed to be innocent rather than guilty the first point I want to make is a continued call to have that central authority made a part of the DPP's department. The reason is this: critical in the assessment of whether an extradition order would be made is whether a prima face case—meaning there is on the face of it a case not beyond all reasonable doubt; that is the burden of proof—against the person who would be the subject of the extradition order. That kind of assessment is best done by officers who are trained as prosecutors who are involved in criminal law.

It is therefore very heartening to know that one of the key persons presently operating in the central authority is a person who was a former state prosecutor in the Office of the DPP, that is Mr. David West. Mr. David West will not always be the person there. He may choose for whatever reason to stay or move on. Legislation must never be created for a person(s), but rather to ensure that it can stand the test of time.

3.30 p.m

Mr. Deputy Speaker, instead of using resources in a manner which may have to be divided—that is resources going to the Office of the Attorney General and resources that are already depleted and need to be enhanced in the Office of the Director of Public Prosecutions—it really seems better to have them fit within the Office of the Director of Public Prosecutions. Of course, the immediate rethought that I could predict is that it would be said that when the central authority was created under the UNC, it was the UNC who, in fact, placed them within the portfolio of the Attorney General.

Within recent times there have been allegations of unfair, improper and inappropriate interference with members of the Office of the Attorney General, and there have also been allegations made about the hon. Attorney General—I would leave it in the context of allegations, because on this side we are clear that allegations are not converted by propaganda into convictions, but it reinforces the point as far as we on this side are concerned. When one looks at the way that this regime appears to be operating with respect to the integrity of the office and for those who really want justice—not only to be done but manifestly be seen to be done—reconsideration should be given to placing the central authority within the Office of the Director of Public Prosecutions. Not only would such a move ensure integrity and independence, but it also means that the resources that are presently lacking in the Office of the Director of Public Prosecutions—not only now but over a number of years—could be addressed

Mr. Deputy Speaker, for a long time, I have been one of the strongest advocates for having a special police force attached to the Office of the Director of Public Prosecutions to deal with sensitive matters; to deal with matters in which police officers are the subjects of investigation; and to deal with matters involving extradition in which those officers making the determination—for example, as to whether there is a prima facie case or not—are really trained, not only in the laws that are applicable in Trinidad and Tobago, but also the laws of other territories, especially those territories that are making the extradition order demand.

Mr. Deputy Speaker, now that the Government is talking about giving police officers more resources, it is also important to talk about the need for highly trained police officers and highly trained prosecutors who should be speciality trained in the entire extradition proceedings. We are now living in a world—in the legal arena—in which there is a move towards specialty and, therefore, there is the speciality in family law and criminal law, in which there are so many areas that have developed such as intellectual property, in which few persons could indicate that they are, in fact, experts in the field.

Another point I wish to raise is the fact that we need to ensure that there is evidential compatibility with the laws of Trinidad and Tobago and the laws of the other territories with which we have this extradition treaty, or with which we have mutual extradition processes. Take for example, the fact that in this particular legislation before us, it is seeking to include offences under the Computer Misuse Act. [*Interruption*] Mr. Deputy Speaker, those who continue to seek to interrupt, obviously do not understand the law of extradition, because it calls for high intelligence.

Mr. Deputy Speaker: Hon. Members, would you please allow the Member for Pointe-a-Pierre to make her contribution without disturbance. Moreover, the Hansard Reporter appears to be indicating that she is having some difficulty in recording the proceedings.

Miss G. Lucky: Mr. Deputy Speaker, I thank you very much for your interjection. I will continue to speak to you, because I know that you are learned in law and surely you will want—like many of us—to understand further, the law of extradition as it relates to Trinidad and Tobago. You see, if like you, Members on the other side would listen and instead of saying "hush", they would understand why, for example, when they are seeking to include—and commendably so—offences under the Computer Misuse Act, 2000, it is important to understand that presently our laws that deal with the admissibility of computer evidence are incompatible with many of the other jurisdictions.

The United Kingdom—by virtue of legislation in the early 1990s—had catered for the admissibility of computer evidence, and a certain flaw was recognized in that legislation. When we passed the Administration of Justice (Miscellaneous Provisions) Act, which also deals with the admissibility of computer evidence, we followed, unfortunately, the flawed legislation, and England has now amended that legislation and removed that lacuna in the law, and that was done after the passage of our legislation. In England, for example—a point I am sure you will appreciate—when one seeks to admit computer evidence,

one of the criteria has to be the satisfaction that the computer was working at the time when the documents were either made or generated.

Mr. Deputy Speaker, the problem recognized in the United Kingdom legislation—which I pointed out earlier that we still have—is that there was no presumption that a computer was working. So that when an accused person was charged for computer misuse, or there was reliance on computer-generated documents, the onus of proving that the computer was working was on the prosecution. There being no presumption that the computer was working, it would mean that evidence could only be obtained from the accused, and no accused is going to give evidence to help the prosecution, which is seeking to convict him. The United Kingdom amended their law to ensure, amongst other things, that there is the presumption that the computer was working. So that is the first point.

It is important to know what are other laws in other jurisdictions, because in order to establish whether there is a prima facie case, that determination—if an extradition order was sought to send a person from Trinidad to the country in which that person had committed the offence—if, for example, a bundle of documents was sent, a magistrate, who has the authority to determine the admissibility of evidence, would strike out such evidence, because in our law such evidence—unless the criteria were met—would be inadmissible. That is perhaps the clearest example that I could give to emphasize the need to ensure that there is compatibility with an important issue such as the admissibility of evidence.

Further, we have to ensure that when we are dealing with extradition matters and extradition proceedings, we keep apace of the receipt of evidence, or the evidential technology in other jurisdictions. For example, I was informed that in the United Kingdom there is provision for a live-court proceeding in the United Courts of England to be transmitted or carried live via video technology. So, in the same way there is what is called, videoconference—which is done in proceedings in England—cross-examinations could actually take place across the seas, because there would be the video of live proceedings in England, and an attorney in Trinidad and Tobago would be able to participate. That kind of legislation is also needed, and surely these matters take time, but at the same time the Government needs to ensure that persons do not fall through the cracks, or are not made subject to extradition orders, because we have not kept our legislation apace.

If we look at the general attitude of those on the other side with respect to suggestions made on how to amend legislation and how legislation could be improved—in the very dismissive way that they deal with it—we are going to

have a problem, and very soon not only will our criminal face be tarnished and tainted on the international scene, but we may find ourselves internationally embarrassed when states of foreign territories with whom we have extradition ties or links will say, "Listen, there is faulty legislation", or there is the need to enhance our legislation and correct it, but the Government is not dealing with those issues.

Mr. Deputy Speaker, another matter that has always been of concern to me is the lack of proper control and monitoring of our borders. Extradition is not only when a person commits a crime in a particular jurisdiction and seeks to run away, or go to a haven where that person cannot be found to be so extradited, it is also the ability to deal with instances in which a person may hear that he will soon be the subject of an extradition order. When those proceedings are being heard, that person may choose to run away and, therefore, if the Government does not have proper control of the borders and proper and effective monitoring of how persons are leaving our jurisdiction—which admittedly we do not have—the reality is we may have an order, or we may be in the process of dealing with an order, and then that person disappears. So that is another matter that we have to look at.

What is very worrying, in this day and age—because of the very dismissive way that the Government of the day is dealing with the fight against crime, and the fact that those who are incompetent to deal with crime are either promoted or patted on the back, because they seem to be part of a whole approach that the fight against crime is not on the front burner—is when a government cannot deal with persons who are residents of its own country and who are committing crimes, would now have to ensure that it could deal efficiently and effectively with persons who may be trying to escape our shores, in order to prevent them from being the subject of extradition. This is something we have to ensure, because I am sure that many of those territories with whom we have extradition links or treaties, control and monitoring processes are much better than what obtains today in Trinidad and Tobago. This brings me to the other point that we really need to make sure that we have a proper computerized database system, because that is something, again, that is lacking in our country, and that is why we continue to fail in the fight against crime.

Mr. Deputy Speaker, countries have computerized and reached the stage where a person's name appears on a computer with a big red flag, a bee, or something that sends the message that there is a problem. We are still trying to fight crime in this country, because the Government wants to associate with those who are involved in criminal activities. [*Interruption*] So not only does it send a

wrong message, but what this means is that we are not spending the state resources in a manner not only to protect our citizens, but also to protect our borders. And that is a very important point. They may laugh and make the most disparaging remarks, but the reality is that we on this side—[*Interruption*]

Mr. Deputy Speaker: Hon Members, will you please allow the Member for Pointe-a-Pierre to make her contribution. I am sure that Members would want to make their contributions shortly after.

Miss. G. Lucky: Thank you very much, Mr. Deputy Speaker. The point that I was making is that it is important that when the Government brings this kind of legislation, in which there is an increase in number, type or kind of offences, the Government must make sure at the same time, it increases our ability to monitor and detect these types of crimes so as to arrest those persons, and where the assessment is necessary—as to whether there has been the commissioning of a prima facie case—there would be officers who are able and competent to make those kinds of decisions.

Mr. Deputy Speaker, that brings me back to the Office of the Director of Public Prosecutions. There is a problem in that department. There are many junior counsels and there are some persons who hold high offices. The problem in the Office of the Director of Public Prosecutions is that there are not enough persons in the middle order and there is where the success of that office is pivoted, because junior counsels, no doubt, could handle the many magisterial districts. I will always say that there is need for more junior counsels. The reality is that counsels who hold high offices should be thinking of appearing in courts, such as the Court of Appeal and the Privy Council, which would be retained unless we could get certain assurances, that there would be no interference.

The reality is that the Office of the Director of Public Prosecutions needs resources and enhanced terms and conditions, because there has been a massive exodus. There are counsels who have left, for whatever reason—maybe to join the political arena, and I hope these persons have no regrets. There are other counsels who have moved on and have gone to much more lucrative jobs, and since those persons have left the Office of the Director of Public Prosecutions, there has been no filling of those vacancies and, therefore, what has happened is that in an area such as extradition that is so complex and specialized, there is not enough personnel to deal with that matter. I could say that from experience, because even in the matter of Lolita Saroop, the reality was that there was much to be learnt. There was the recognition that even in our own performance in that case, there were many things that we have learnt. The day a lawyer or anyone involved in the

law says that he knows everything—just like the Members on other side who seem to think that they know everything—that would be the day that incompetence would rule and the day that independence and integrity would be seriously compromised. That is why we on this side say that our democracy is in big trouble. [*Desk thumping*] [*Interruption*]

Mr. Deputy Speaker, winning or losing is not the issue, but the interest of the people would always reign supreme. [*Interruption*] So, if we have to sit on this side and make our contributions, we will continue to make our contributions, because such accusations that come from that side show their level of thinking, not our level of high performance. [*Desk thumping*] I promised that I would not waste time on matters that are irrelevant. There is so much and no more that could be done by Members on this side. [*Interruption*]

Mr. Deputy Speaker: Hon. Members for Diego Martin West, Diego Martin East, Arouca South and the Member for Barataria/San Juan, please. I know Members will want to make comments on everything else, but do wait a little and Members will have an opportunity to make their comments in this honourable House. Please allow the Member for Pointe-a-Pierre who is, in fact, making a very interesting contribution to continue. [*Desk thumping*]

Miss G. Lucky: Mr. Deputy Speaker, I was hoping not to have to resort to a particular occurrence yesterday. The Member for Laventille East/Morvant, for whatever reason, found it compelling to call on a programme on Radio 90.5 and speak in the most glowing terms about me, and said how great was my legal acumen. The Member said it to so many people who were listening to Radio 90.5, which is the No. 1 East Indian station in Trinidad and Tobago. [*Interruption*] My colleague, the Member of Parliament for Barataria/San Juan, called and told listeners—thousands of listeners—not to be fooled, because whereas in the Parliament, the Member for Laventille East/Morvant sometimes makes the most disparaging remarks about me, the Member was only trying to score points yesterday by saying how great I was. I always say that the truth is usually spoken when there are no parliamentary privileges, and yesterday the Member for Laventille East/Morvant was praising me in the most glowing terms when he was not under the guise of parliamentary privileges. [*Desk thumping*]

Hon. Member: Mamaguy.

Miss G. Lucky: There was no need to mamaguy because by then the results were out, so there was no need to comfort a loser. We did not even consider ourselves to have lost. In any event, I will move on to another point. Perhaps, the

first message that needs to be sent by this Government is that they are willing to listen and learn. If they are not willing to listen and learn—because we have already been deemed to be an Opposition that is irrelevant for their purpose—the reality is that they will not get very far and bad legislation would be passed. Even if you tell the opposite side, "Well, listen, an "a" is missing and the amendment should read, "'a' police officer," they would not even concede to that." It is better in their view to pass legislation that has bad grammar than to concede that the Members of the Opposition are right. That is their privilege and that is how they operate and, unfortunately, that is not taking the nation forward and they would never achieve any kind of good vision; not even their own vision 2020.

Mr. Deputy Speaker, I know that presently there is legislation that is meant to recruit more judges for the High Courts and more judges for the Court of Appeal. Again, I am saying that is good. But the Government must remember that when increasing in number, those involved in the administration of justice, it is also important to ensure that those who would be appearing before them must also have enhanced terms and conditions, so that lawyers on the outside would be attracted to come and work for the State. Presently that is not the case. I am not only speaking here of state counsels who are attached to the Office of the Director of Public Prosecutions. I openly admit that I will always have a soft spot for the Office of the Director of Public Prosecutions, because there is where I worked and lived for eight to nine years of my life—my life meaning my legal career. There are other competent state attorneys in the various departments that fall under the Attorney General and, they too, need to be given better terms and conditions so that holistically, all those who worked with the State and state departments, and also young law students who might have passed their second year or first year examinations would be showing their smiles and saying, "Yes, we agree with this Member," and they would also feel that when they have graduated that there is something for them in working with the State, even if we do not get any concessions from Members on that side. Hide your smiles now so that they do not see you. I know they have already understood the point and, they too, would be happy.

Mr. Deputy Speaker, I have tried my best to raise as many points as I could. In fact, I have shown that I am way ahead of the other side, because I have commended them with legislation and given them the way forward. It is said that you could take a horse to water but you cannot make it drink, but I am saying you could take a horse to water, you could put the water in its mouth and tickle its throat and it would swallow. There is so much and no more that you could do. All I am saying is that if we really put the political agenda aside, and work in the best interest of the public—bearing in mind that this Government boasted that it was

so successful in the recent election—it is the Government of the day who must remember to whom much is given much is expected and, therefore, when those on the other side come to terms with the fact that they are failing in their responsibilities to the citizens of Trinidad and Tobago, maybe when we on this side make our contributions, they will do more than say, "hush".

Mr. Deputy Speaker, I thank you very much. [*Desk thumping*]

The Attorney General (Sen. The Hon. Glenda Morean): Mr. Deputy Speaker, while we appreciate what the Member for Pointe-a-Pierre has said, it really had no relevance to the actual resolution that is before this House.

Hon. Members: True.

Sen. The Hon. G. Morean: I will just assure the Member that the problem with respect to computer-generated evidence is a matter that is being addressed in an amending Bill that is to be brought before this Parliament in the near future.

With respect to the placing of the central authority in the Office of the Attorney General, the fact that the hon. Member is now lamenting this fact is really mind-boggling, because the Member was part of the administration when this was done. Nevertheless, we have taken her comments and since she has not really dealt with the resolution that is before the House, I beg to move. [*Desk thumping*]

Question put and agreed to.

Resolved:

That the Extradition (Commonwealth and Foreign Territories) (Extraditable Offences) Order, 2003 be now affirmed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, I beg to move that this House do now adjourn to Friday, July 18, 2003 at 1.30 p.m.

I wish to inform hon. Members that on that day the Government intends to pilot the second reading of the Bill to amend the Medical Board Act, and we will also want to deal with the Supreme Court of Judicature (Amdt.) Bill, which was introduced today by the Attorney General. [*Interruption*] On that day we expect to go on the "summer recess" so that Members who so wish could enjoy their time in some foreign place, perhaps, England and so forth. I beg to move the adjournment of the House.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 3.58 p.m.