HOUSE OF REPRESENTATIVES

Wednesday, June 08, 2005

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

PAPERS LAID

1. Report of the Elections and Boundaries Commission on the Tobago House of Assembly Elections held on Monday, January 17, 2005. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

2. Report of the Law Reform Commission of Trinidad and Tobago for the period January 2002 to January 2004. [*Hon. K. Valley*]

3. The seventy-fifth report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. K. Valley*]

4. The seventy-sixth report of the Salaries Review Commission of the Republic of Trinidad and Tobago. [*Hon. K. Valley*]

5. Financial statements of the Industrial Relations Charitable Fund for the financial years ending December 31, 1974 to 1997, the financial period January 01, 1998 to September 30, 1998, the financial years ending September 30, 1999 to 2004 and the period October 01, 2004 to January 04, 2005. [*Hon. K. Valley*]

6. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the National Institute of Higher Education (Research, Science and Technology) for the year ended December 31, 2001. [*Hon. K. Valley*]

Papers 5 and 6 to be referred to the Public Accounts Committee.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Bill to amend the Indictable Offences (Preliminary Enquiry) Act [*The Attorney General*]; read the first time.

CORPORAL PUNISHMENT (OFFENDERS OVER EIGHTEEN) (AMDT.) BILL

Bill to amend the Corporal Punishment (Offenders Over Eighteen) Act [*The Attorney General*]; read the first time.

BAIL (AMDT.) BILL

Bill to amend the Bail Act [*The Attorney General*]; read the first time.

FINANCE COMMITTEE

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move,

That this House now resolve itself into Finance Committee to consider matters relating to the 2005 accounts.

Question proposed.

Question put and agreed to.

Mr. Speaker: The House would now go into Finance Committee. May I request all strangers to depart the Chamber until the conclusion of the meeting of the Finance Committee.

1.35 p.m.: *House resolved itself into Finance Committee.*

1.50 p.m.: *House resumed.*

SUMMARY COURTS (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie): Mr. Speaker, I beg to move,

That a Bill to amend the Summary Courts Act, Chap. 4:20, be now read a second time.

Mr. Speaker, in moving the second reading of this Bill, I seek the leave of the House to discuss along with this Bill, the Criminal Procedure (Amdt.) Bill 2004 since the two Bills are interrelated.

Question put and agreed to.

Sen. The Hon. J. Jeremie: Mr. Speaker, the Government begins its task to provide legislative solutions to the crisis which faces us with measures which are designed to target the administration of justice.

Our goal is to provide for the courts the tools which are necessary to enable them to deliver quick justice without compromising the protections, which are due to citizens of the Republic, and which are required by the Constitution, and without compromising the due process; constitutional safeguards.

Mr. Speaker, I begin with the Summary Courts (Amdt.) (No. 2) Bill of 2004. The purpose of this Bill is to amend the Summary Courts Act to provide for the admissibility of written statements that is: statements in writing by witnesses of matters that are not in dispute, as well as to allow formal admissions as proof of a fact that is not in dispute in a summary trial.

I propose to first speak to the process of reform in general, which has brought us here today; then to turn to an explanation of the law; and then to look at the reforms which are proposed by the Bill.

Mr. Speaker, in his maiden address to open the 2002 to 2003 Law Term, the hon. Chief Justice identified several serious problems facing the Judiciary that needed attention. Chief among these was the backlog of cases in the system, and the taking of notes in court by longhand. The Chief Justice noted that these problems were particularly acute in the magistrates' court.

On October 15, 2002, the Chief Justice established a committee under the chairmanship of Mr. Justice Mark Mohammed, Senior Counsel, essentially to address the issue of delay in the criminal justice system. That committee was mandated to consider measures that could be adopted to shorten criminal trials in the High Courts and the magistrates' court and also to consider the setting up of a Remand Court.

The composition of the committee was varied. The committee comprised of members of the community, including members of the magistracy, the Law Association, the Criminal Bar, the Southern Assembly of Lawyers, the Tobago Lawyers Association, the Director of Public Prosecutions, the Court and Process Division of the Police Service, the Prison Service, the Forensic Science Centre and members of the administration section of the court. Mr. Speaker, that committee reported on February 27, 2003.

Mr. Speaker, what I speak to in relation to summary trials is, essentially, the product of the committee's deliberations. The committee recommended that the Summary Courts Act be amended to include provisions similar to sections 9 and 10 of the Criminal Justice Act 1967 of the United Kingdom. These provisions are reflected in clause 2 of the Bill in the proposed new section 63A and 63C.

Mr. Speaker, the central focus of the proposed amendment is to allow the written statement of a witness which contains matters not in dispute, to be admitted into evidence upon the agreement of the defence and the prosecution.

Members may wish to note that our country is not the only country in the region that is attempting to make provision for the admissibility of written statements into evidence. Mr. Speaker, Bermuda and Jamaica have introduced similar provisions in their respective Evidence Acts.

The admissibility of written statements in the magistrates' court would shorten the length of summary trials, because this would reduce the time spent by the note-taker in the recording of evidence-in-chief, and when witnesses are being cross-examined as well. In fact, where the parties have agreed to the admission of matters not in dispute, and the statement of the witness is admitted into evidence by agreement, there would be little or no time spent on cross-examination or even evidence-in-chief. This judicial time would be saved and matters would be completed more expeditiously.

The second major purpose of the Bill is to address the issue of the formal admission of facts which are not in dispute between the parties. To achieve that objective, the Mohammed Committee recommended that the Summary Courts Act be amended to incorporate section 10 of the Criminal Justice Act 1967 of the United Kingdom which allowed for formal admissions to be made and to be received. That amendment would relieve the prosecution from the burden of having to prove matters which are not in dispute.

Clause two of the Bill, the proposed new section 63C, was drafted along the lines of section 10 of the Criminal Justice Act of the United Kingdom.

Mr. Speaker, similar provisions relating to formal admissions have also been introduced in the region, namely, the Bahamas, Belize and Bermuda in their respective Evidence Acts. This Bill will not be applicable to preliminary enquiries, it only deals with the summary trial process and provides for written statements and formal admissions being tendered into evidence.

The Government would be looking to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, to deal specifically with written statements and formal admissions being tendered into evidence at a preliminary enquiry.

This Bill which is before us deals with the summary trial process and provides for written statements and formal admissions to be tendered into evidence.

Mr. Speaker, I turn now to an examination of the existing law. The existing law provides that in a summary trial, the defendant is brought to court by summons or warrant. Once the case is called, the magistrate proceeds to hear the complaint.

If both the complainant and the defendant fail to appear, the magistrate can make such an order as the justice of the case requires. However, if both complainant and defendant appear, the magistrate would proceed to hear and determine the complaint.

At the commencement of the hearing, the magistrate must state to the defendant the substance of the complaint, and must ask him whether he pleads "guilty" or "not guilty". If the defendant pleads guilty and shows no cause why an order should not be made against him, the magistrate can make such order against him as the justice of the case requires. If the defendant pleads not guilty, the witnesses for the prosecution and the defence are called and heard by the magistrate.

Mr. Speaker, the magistrate must hear the complainant and such other witnesses as the complainant may examine, and such other evidence as he may adduce in support of this complaint. The magistrate also hears the defendant, and such witnesses as the defendant may examine and such other evidence as he might adduce in his defence. If the magistrate thinks fit, he can hear such witnesses as the complainant may examine in reply. If the defendant has examined any witnesses or given any evidence then that, too, must be recorded.

The complainant is not obliged to give evidence in support of his complaint, but if he wishes to do so, he may do so at any time before his case is closed. The complainant is entitled to address the magistrate. The defendant is entitled to address the magistrate at the commencement or the conclusion of the case as he thinks fit. Further, if any witnesses for the defence have been examined or any evidence given, the magistrate may allow the complainant to reply at the conclusion of the case.

Mr. Speaker, under section 63(5) of the Summary Courts Act, the magistrate must, in every case, take or cause to be taken by a competent clerk, notes in writing of evidence or of so much of it as he considers material, in a book to be kept for that purpose. The magistrate, at the conclusion of each day's proceedings, is required to sign that book.

Mr. Speaker, it must be noted that section 3 of the Recording of Court Proceedings Act of 1991 states that "where a written law provides that proceedings in a court shall be recorded, those proceedings may be recorded by any means."

The registrar of the court or the Clerk of the Peace may, as soon as practicable, cause a transcript of the record of the proceedings to be prepared, but certificates of those responsible for the accuracy of the recording must then verify the

transcript. Mr. Speaker, this process makes it difficult, some say impossible, for us to rid ourselves of the taking of notes by longhand and, thereby, defeats the objective of saving time and speeding up the trial process.

The Judiciary has already implemented the audio digital recording in the magistrates' court to facilitate the court processes. This measure would contribute to the reduction of delay, costs and complexity in cases before our magistrates' court.

At present, the parent Act deals with the recording of evidence only in the form of written depositions. The Recording of the Court Proceedings Act of 1991 addresses the issue of verification of the recording of those proceedings, but section 3 of this Act provides that the record of the relevant court proceedings may be recorded by any means. That would include: electronic audio recording, video recording or computer aided transcription. In these circumstances, we propose certain amendments to the Indictable Offences (Preliminary Enquiry) Act to allow the process to be consistent with the provisions of the Recording of the Court Proceedings Act of 1991.

Mr. Speaker, I turn now to the provisions of the Bill. The Bill comprises two clauses. It requires a simple majority vote. Clause 2 of the Bill seeks to insert after section 63 of the new Act, new sections 63A, 63B and 63C.

The proposed new section 63A provides that a written statement by a witness shall be admitted in a summary trial as evidence to the like extent as oral evidence to the like effect by that person. However, before a witness statement can be admitted into evidence by agreement it must satisfy certain conditions. Mr. Speaker, this is where the due process rights are protected.

The conditions that must be satisfied are:

(a) that the statement must be signed by the person who made it, that is the witness;

(b) the witness must swear to the statement before a Clerk of the Peace or Justice of the Peace, and it must be authenticated by a certificate signed by the Clerk of the Peace or Justice of the Peace;

(c) the statement must contain a declaration by the witness to the effect that it is true to the best of his knowledge and belief, and that he made the statement knowing that if it is tendered in

evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true.

(d) before the statement is tendered into evidence, a copy of it is given to each of the other parties to the proceedings; and

(e) none of the other parties or their attorneys-at-law within seven days from the date on which the copy of the statement was given to them serves a notice on the party objecting to the statement being tendered into evidence.

So those are the safeguards which we have built into the process.

The following conditions would also have effect in relation to any written statement tendered into evidence under this proposed new section. Firstly, if the statement is made by a person under 18, it must state his age and that a named adult of his choice was present with him when it was made.

Secondly, if the statement is made by a person who cannot read or write, it must be read to him before he signs it or his mark of thumb print must be fixed on it, and the statement must be accompanied by a declaration by the person who read it confirming that he had done so.

Thirdly, if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection 3(d), must be accompanied by a copy of that document or by such information as may be necessary, to enable the party on whom it is served, to inspect that document or a copy of it.

Mr. Speaker, where any party objects to the admissibility of a written statement, the magistrate must make a ruling on the objection. So that where he overrules the objection, the statement is only then admitted into evidence. The statement must be read aloud in court, unless the magistrate otherwise directs that an account shall be given orally of so much of it as is not read aloud. Exhibits identified in statements tendered in evidence become exhibits as if produced by the witness.

The proposed new section 63B provides the procedure to be followed for the admissibility of a written statement into evidence; either party must file the statement with the Clerk of the Peace or the magistrates' court, and a filed copy must be served on the other party to the proceedings, as soon as practicable. Once the statement is admitted into evidence it must be marked by the magistrate as a court exhibit and kept together with all the other written statements and any other depositions.

Mr. Speaker, it is to be noted that where a statement is to be admitted into evidence, and the magistrate is of the opinion that a part of it is inadmissible, the magistrate shall write against that part the words "treated as inadmissible" and then sign it. Where it is not possible to write on the statement, the words shall instead be written on a label or other mark of identification which clearly identifies the part of the statement to which the words relate and contains the signature of the magistrate. It is only then attached to the statement.

Mr. Speaker, where a written statement is admitted into evidence and it refers to a document or object as an exhibit, that document or object shall be identified by means of a label or other mark of identification signed by the maker of the statement. Before the magistrate treats any document or object referred to as an exhibit, in such a statement, the magistrate must be satisfied that the document or object is sufficiently described in the statement for it to be identified.

Mr. Speaker, it must be noted that an accused person is entitled to submit to the magistrate that any part of a statement is inadmissible in evidence.

The proposed new sections 63C provides for any fact of which oral evidence may be given in any criminal proceedings, to be admitted for the purpose of those proceedings by the counsel for the prosecution of the accused. The admission by any party of such a fact shall, as against that party, be conclusive evidence in those proceedings of the fact admitted. An admission under this proposed section 63C may be made before or at the proceedings.

When the admission is made otherwise than in court it must be in writing. Also, when a person makes it in writing, he must sign it. Where it is made by a body corporate, the director or manager or the secretary or clerk or some other similar officer of the body corporate must sign it. When the admission is made on behalf of a defendant who is a person, his counsel shall make it. When it is made at any stage before the trial by a defendant who is a person, it shall be approved by his counsel whether at the time it was made or subsequently before, or at the proceedings in question.

An admission for the purposes of proceedings relating to any matter would be treated as an admission for the purpose of any subsequent criminal proceedings related to that matter. An admission may, with the leave of the court, be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to that matter.

Mr. Speaker, the use of written statements obviates the need in some cases, to adopt the cumbersome procedure of recording evidence in longhand, thereby

relieving the court to a great extent of the time-consuming process of taking notes of evidence.

Often we have heard the saying "justice delayed is just denied", but this amendment seeks to reduce the delays inherent in our magistrates' court system which are built into the process and which have existed from time immemorial. Members may wish to note that the Office of the Director of Public Prosecutions, the Law Reform Commission and the Judiciary itself support the Bill.

This Government is committed to effecting reforms in the administration of justice and to modernizing our system of criminal justice. Members would have noted that the Order Paper reflects our commitment, in that we will debate amendments to the Offences Against the Persons Act, Chap. 11:08, the Criminal Procedure Act, Chap. 12:02 and numerous other pieces of legislation under the Administration of Justice (Miscellaneous Provisions) Bill. So this Bill before this Chamber is, therefore, but one of many pieces of legislation that the Government recognizes to be necessary as we seek to address the problem of crime and to pursue the goal of our 2020 vision.

Mr. Speaker, I turn now to the Criminal Procedure Act. Mr. Speaker, the Criminal Procedure (Amdt.) (No. 2) Bill has a genesis which is similar to the Summary Courts (Amdt.) Bill in that the Hon. Chief Justice invited representation in setting up his committee under the chairmanship of Mr. Justice Mark Mohammed of the Law Association, the Criminal Bar Association, the Southern Assembly of Lawyers, the Tobago Lawyers Association and the Office of the Director of Public Prosecutions. Representation on the committee was further extended to the magistracy, the senior ranks of the police and prison services and the director of the Forensic Science Centre.

Mr. Speaker, this committee reported on February 27, 2003, as I have said before, and another of its recommendations is what is before us in the Criminal Procedure (Amdt.) Bill. This Bill seeks to provide for the use of formal admissions in criminal proceedings, along the lines of section 10 of the Criminal Justice Act of the United Kingdom. Mr. Speaker, what we are speaking of here is criminal procedure in relation to essentially the High Court, whereas what we were speaking of before relates to the procedure which governs in the magistrates' court.

Mr. Speaker, the critical importance of a formal admission is that the prosecution is relieved of the burden of having to prove matters which are not in dispute. By way of example, in narcotic cases, if the nature of the substance was admitted, the

prosecution would no longer be required to send the exhibit to the Forensic Science Centre for analysis as is now required by law to be done. A tremendous amount of time would be saved by the introduction and adoption of this procedure.

In the vast majority of cases, accused persons are willing to concede that point—the point that the substance is an illegal substance—but to argue another question of fact relating to knowing possession of other circumstances.

Mr. Speaker, I turn to the provisions of the Bill itself. Clause 3 would amend the Criminal Procedure Act by inserting a new section 37A that follows section 10 of the Criminal Justice Act 1967 of the United Kingdom.

Subclause (1) would allow any fact of which oral evidence may be given in criminal proceedings, to be admitted by either the prosecution or the defence. The admission of that fact would then be conclusive evidence of the fact admitted.

Subclause (2) sets out the procedural requirements for making a formal admission which are as follows:

(1) it must be made before or at the proceedings;

(2) if it is made out of court it must be in writing;

(3) if it is in writing, it shall purport to be signed by the person making it, and in the case of a body corporate by the director, manager, secretary or clerk;

(4) if it is made on behalf of the defendant, it shall be made by his counsel; and

(5) if the defendant makes it before the trial, his counsel must approve of it.

Mr. Speaker, subclause (3) would enable an admission to be used in any subsequent criminal proceedings relating to the same matter.

Subclause (4) would allow the withdrawal of an admission with the leave of the court. Subclause (4) seeks to give effect to another recommendation of the committee. The committee recommended that the Criminal Procedure Act be amended to enable judges to provide written directions to juries after consultation with attorneys both for the prosecution and defence on matters of substantial complexity.

Mr. Speaker, I should like to indicate that the proposed written directions would not substitute oral directions which are presently given, but rather they would be complementary. This provision is necessary because of the increasingly complex matters before the courts. For example, prosecutions for murder of multiple accused; complicated fraud matters which are before the courts and likely to be engaging the attention of the courts in the near future; and the doctrine of common design.

Mr. Speaker, in these circumstances where complicated legal concepts are involved, the written directions of the trial judge would provide invaluable assistance to the jurors in their deliberations. The safeguard in the provision is the required consultation with counsel on both sides.

The provisions of these two Bills: the Summary Courts (Amdt.) (No.2) Bill and the Criminal Procedure (Amdt.) Bill seek to improve the administration of justice; seek to improve on the throughput of the courts, and I wish to commend them accordingly to hon. Members in this House, wherever they might sit.

Mr. Speaker, with these few words, I thank you and I beg to move.

[*Desk thumping*]

Question proposed.

Mr. Speaker: Hon Members, may I remind you that in dealing with this Bill you can deal with the other Bill, the Criminal Procedure (Amdt.) Bill, and you can discuss the merits and principles of both Bills.

Mr. Subhas Panday (*Princes Town*): Mr. Speaker, thank you very much. Mr. Speaker, it is unprecedented in this House that two Ministers of Government would address this Chamber on the same day, on the same subject matter.

Mr. Speaker, what is surprising is that the hon. Minister of National Security—sorry, the hon. Attorney General indicated on Monday in his speech:

> "Mr. Speaker, on Friday the Member for Caroni East attempted to raise a matter on the issue of crime, which, as he put it, was of definite, urgent national importance because criminal activity in Trinidad and Tobago was bordering on a national disaster."

2.15 p.m.

Sen. Jeremie: I cannot hear you.

Mr. S. Panday: Sorry, I apologize to you. I said that it was unprecedented in this House that two Ministers of Government will address the House almost simultaneously on the same subject matter and when the hon. Attorney General was addressing the House, he said:

> "Mr. Speaker, on Friday the Member for Caroni East attempted to raise a matter on the issue of crime, which, as he put it, was of definite, urgent national importance because criminal activity in Trinidad and Tobago was bordering on national disaster.
>
> We see this as a moment of great peril also one of great opportunity.

Sen. Jeremie: Repeat the last part.

Mr. S. Panday: Since you find that important, you could deal with it.

It is surprising that both Ministers would come on the same day with such a speech, when only on Friday, when the hon. Member for Caroni East brought that Motion, he was struck down by the Speaker. The Speaker said that this matter was not a matter of definite, urgent public importance under section 12 and that he should bring it under section 11 and give the Government three days' notice. Of course, that appears to be giving the Government sufficient time to prepare to answer to the debate.

What they have done here is really embarrass the Speaker, because they give the impression that the Speaker is indeed biased, in that he would strike down—

Sen. Jeremie: Would you give way? The Member for Princes Town is not accurately stating the sequence of events. There was no attempt on anyone's part to embarrass the Speaker. No one knew by intuition that the Member for Caroni East would have raised the Motion that he raised, and the statements by the Minister of National Security and the Attorney General were being prepared as the Member for Caroni East was raising his Motion. So, there can be no question of us embarrassing the Speaker.

Mr. S. Panday: Mr. Speaker, I thank the Member for that. But what has happened is that on Friday the Speaker struck down the Motion as not being a definite, urgent public matter, and, lo and behold, as he says, that it was after the Member for Caroni East brought that Motion on Friday, that they began to prepare their response. [*Interruption*] He said it is as response of the—

Mrs. Robinson-Regis: He did not say that.

Mr. S. Panday: Mr. Speaker, on Friday, the Member for Caroni East attempted to raise the Matter on the issue of crime, which as he put it, was a matter of definite urgent public importance, and it was struck down.

Sen. Jeremie: You want to hear me?

Mr. S. Panday: No, not yet. Mr. Speaker, I perceived it to be that. I perceived it that they tried to embarrass the Speaker; they tried to make the Speaker look as though he was biased; that the Speaker was protecting the PNM [*Interruption*] No. I am not saying you are bias, Mr. Speaker. They did that.

Mr. Speaker: No, no, no. I hope you are not questioning the authority of the Speaker.

Mr. S. Panday: No, no, no, not at all, Mr. Speaker.

Mr. Speaker: Okay, go ahead.

Mr. S. Panday: What I am saying, is they who, in my view, were trying to embarrass the Speaker and to make him look biased in the eyes of the nation; that he would strike down a matter of definite, urgent, importance when everybody in the country—because it was brought by the UNC—including the Government, thought it was a matter of definite, urgent, public importance.

Mr. Speaker: I do not want to join in the debate, but your last statement alone says that the Speaker is not biased. I hope you are not hon. Member imputing biasness on behalf of the Speaker.

Mr. S. Panday: What I am saying, Mr. Speaker, that is the impression they have given to us and to the society and I do not subscribe to that.

Hon. Member: Not at all.

Mr. S. Panday: But in those circumstances, I am certain that with hindsight now that the hon. Speaker would be more judicious to protect yourself from them, when you exercise your discretion; when a Motion is brought on a matter of definite, urgent, public importance on these important issues; rather than condemn us when we bring these matters and say we are trying to catch the press and what we should do is bring it under section 11 and ask the press to stay. Mr. Speaker, I know that and I have faith in you, but what I am saying is that is the impression in which the PNM is putting you.

We must analyze their speeches on Friday and look at what they have done today, to see that this PNM really does not care about dealing with crime but their statement was mere bravado—mere bravado! When one analyze the statements

which both Members introduced in the House, dealing with crime, one will see that whenever there is pressure on the Government, for example, when the murder rate becomes two per day, they come to the Parliament or they make statements: "We going to deal with it! We going to deal with it! We going to make sure we are sending a message to criminals! We are declaring war on criminals". After they shout, they bring legislation which is really at the tail-end of the process of dealing with crime.

Mr. Speaker, I humbly submit that what they have done in Parliament on Friday—both Ministers and the PNM—was merely an exercise in public relations (PR) attempting to hoodwink the population. I would go through their speeches on crime and show you that what they are doing here is really putting their PR machinery in high gear to give the population a sense of security, when, in fact, they are doing nothing about crime. This is their habit; this is their practice.

Mr. Speaker, you remember at one time when things began to get hot they got "Operation Anaconda"? Anaconda, like the anaconda, went to sleep, did not do anything. Then they had "Operation Baghdad".

Dr. Moonilal: That was a tourist—

Mr. S. Panday: "Operation Baghdad", well that ended up in the sand and nothing came out of that; and they kept on, as they went along and as the population conversed and started to cry out against PNM's inactivity, they came out with these PR slogans.

As a matter of fact, even in spite of all these public relations exercises by the PNM, the crime statistics continue to increase. As I said, the statements by the Ministers on Friday are really a hoax perpetuated on the population when it cries about the level of crime. When one looks at what they have said, one would see that they take a little piece of the legislation and say: "We bad! We starting now! We going to deal with you!"; and I have come to show that they have done little with regard to dealing with the crime, but I will come back to that a little later.

The effect of this Bill which is before the House today pales into insignificance, when one considers what should be done by the Government immediately to deal with crime. They are speaking here about two Bills which deal with procedural matters in the court. But those procedural matters would only take place after you apprehend the criminals. It is only after you apprehend the criminals then this would kick in. So this has no value if you cannot apprehend the criminals.

They boast about measures that they have put in place and we must quote from their speeches to see what they have put in place and what results have emanated from that. As far as the Minister of National Security goes, when one looks on page 1, he said:

> "Over the last three years, the Government has implemented a series of initiatives aimed at building the capacity of the law enforcement agencies and targeting criminal elements in the society. The approach is multi-dimensional, one in which we have been making progress, but the issues of gang related homicides and kidnappings continue to provide a serious challenge."

That is not all, Mr. Speaker, on page 7 of that speech, he said:

> "We have recognized that a collaborative effort of all law enforcement agencies is required to deal with the growing incidence of kidnappings. No one agency by itself can provide the successes we need. Towards this end, we have established an incident coordinating centre comprising of the Anti-Kidnapping Unit, a Special Anti-Crime Unit and other intelligence agencies. We have increased the amount of training of personnel engaged in these law enforcement activities. The new head of the AKU recently completed an intensive 12-week training programme with the FBI in Quantico, Virginia."

He went on to say again, giving us the impression that they have done so much:

> "We have been receiving assistance in strengthening our law enforcement capabilities to deal with kidnappings from the FBI, DEA, Interpol and other international organizations."

He said:

> "Over the past 20 months this Government has intensified its efforts at modernizing the capacities of the Trinidad and Tobago Police Service."

He went on again to say:

> "…from January to June of 2005, a site coach, Dr. Jeff Snipes, worked directly with members of the TTPS. The site coach provided support of various organizational change activities. His specific functions included:
>
> Working directly with divisions in improving the effectiveness of their participation in Comstat and strategic crime control.
>
> Providing research and analysis support for the various task force charged with developing long-term plans for the improvement of the TTPS.

Assisting various units in the use of statistical packages which are being utilized to drive crime fighting strategies;"

In the fiscal year 2005, an additional 149 vehicles are being purchased, 3,000 bullet proof vests will be procured, additional firearms have been procured and a 360 degree radar system at 10 different locations are being constructed. Two of these sites are already up and running..."

As if that was not enough, telling this House:

"In FY04, the Government acquired two helicopters with state-of-the-art technology to assist in crime fighting efforts."

He said, Mr. Speaker and I wish to repeat:

"In FY04, the Government acquired two helicopters with state-of-the-art technology to assist in this crime fighting efforts."

And he keeps on going and telling us:

"During FY04, Government procured the following:

They received a fundamental grounding in the problem-oriented policing. Additionally, 36 police officers also received a crash course in crime control…"

He said:

"…the Ministry entered into an exchange agreement with the United Kingdom to train police officers in modern policing techniques.

He said:

"…the Forensic Science Centre's operational capacity is being modernized. An Integrated Ballistic Identification System (IBIS) has been procured."

And he keeps on going, Mr. Speaker. He said:

"…an Incident Coordinating Centre (ICC) has been introduced to improve police and intelligence reaction to kidnappings. The centre brings together elements of several agencies, housed around the clock at a central location and connected in their respective agencies by high-speed data lines. This ICC has a direct link..."

I wonder what is the relevance of this.

"This ICC has a direct link with the Federal Bereau of Investigation (FBI), Drug Enforcement Agency (DEA) and UK intelligence."

He says that this Government—as he claims it:

> "The Government of Trinidad and Tobago is determined to reduce crime and criminal activity."

Having done all this, during the last three years and in particular fiscal year 2004, what does one see? In spite of all of this, one sees and I quote him again:

> "For the period January 01 to June 06 2004, the number of homicides committed was 104. For the corresponding period in 2005, the number of homicides committed was 152, an increase of 48."

So, all this money they have spent; all these activities they have introduced; what have you found? You have found a negative effect or, to put it another way, they have been unable to deal with the crime situation and reduce crime. This is what they are saying and admitting here. This Government has a lot of oil money and they are merely throwing money at crime without thinking how to deal with crime. They have not analyzed the reason for crime; why people commit crime; what rehabilitation needs to take place; what needs to take place in the education system as a part of it—nothing at all. They are merely spending money in this organization and that organization is creating so many different units in the police service, that certain groups hide information from the other side and they are going nowhere fast. He said:

“	2004	2005
Gang related	06	31”

Where is all this, the 360 degree radar? Where is the helicopter? When there is a report of a kidnapping, people say they have to wait about two hours for the police to arrive and when the police arrive they cannot do anything. Where are these helicopters to find out who these people are or to trail these people? He said:

> “…increasingly, criminal gang-related homicides are directly linked with the prevalence of drugs. The illegal drug problem has developed in Trinidad and Tobago. Successful demand reduction programmes will go a long way towards reducing the drugs and the related crime problems...”

Mr. Speaker: If I may remind you, we are not debating the statements made by the hon. Ministers last Friday, but if you are using the statement as a

foundation for the Bills before us, I think you have amply laid that foundation. So, if you can get onto the matters before us.

Mr. S. Panday: That is to make the point that it is bravado and "ol' talk" that the PNM does not really care about crime. That is why there should have been more activities taking place, because you must apprehend the offender before you could use this; this is like putting a cart without a horse—not even a cart before the horse, but a cart without the horse. What they should have done was try to put machinery in place in order to deal with the apprehension of criminals.

Mr. Valley: Mr. Speaker, if the Member would give way. I thought that is what the Minister of National Security attempted to do in his statement. While the Minister of National Security dealt with the issues with respect to apprehending the criminals as it were, the Attorney General dealt with speeding up the judicial process. Basically, that is what it is.

Mr. S. Panday: That is exactly what I am saying. They are dealing with the acceleration of the judicial process and they are not catching the criminals. That is the point. You need to catch them in order to deal with it. That is the point I am making and thanks for bringing that point forward. This PNM Government knows, they have the intelligence, but they are not holding the criminals. Therefore, this legislation might have no value. He said:

> "…our best intelligences indicates that there are some 66 known gangs in Trinidad and Tobago."

You know the gangs. He went on to say:

> "We further estimate that there are 500 hardcore members. We also have a sense of the areas in which they operate. We have established a homicide prevention working group with the main goal of reducing homicide, especially gang-related homicides."

Why was all this money spent? Why have you not been able to arrest these people? The public knows where they are from. Basically, they are from Port of Spain East.

Mr. Valley: Mr. Speaker, I am tempted to say when we arrest one, they march up and down the town, have motorcade and so on.

Mr. S. Panday: Mr. Speaker, I was speaking about gang-related members associated with the PNM. Thanks for driving me to the point, but I will be coming to it in a minute, to indicate why they are not holding them because they are the PNM supporters and they are in the bosom of the PNM. That is why.

Hon. Member: You opening the debate now or is it a statement?

Mr. S. Panday: Against this backdrop, bravado: "We declare war on them".

> "This Government will not allow a small group of criminals to threaten the safety, security and well-being of our nation. These criminals are miscreants, social misfits and tyrants, who refuse to behave and live in a civilized manner. We will not allow these criminal elements to ruin or compromise this country's inexorable drive towards developed nation status…"

All this is "ol' talk"; all this is bravado. You are not arresting them. You have helicopters; you have so many different groups. As a matter of fact, what is the joke about this, Mr. Speaker, is those persons are not hiding, they are driving on the road with high speed, posh, expensive cars and some of them are so boldface, they are not even tinting the glass.

The last one was killed by somebody in Richplain, Diego Martin. But the moment he was killed, you hear the police run up and identified him, and when they identified him, they said he was wanted for a number of murders and kidnappings. Why? Something is wrong in the criminal justice system. When we read this Act, all of this must be taken together. This is the problem which we have. You tell me, Mr. Speaker, that 66 gangs, an average of 500 persons, that would be about seven or eight persons to a gang; you cannot identify them with 4,000 police officers in this country, hold them, lock them up, bring them to court and then use the Bill and the law to expedite the system, so we could deal with crime in the country? Not at all!

That is the point I am glad the Member drove me to: why the crime cannot be solved. Crime will not be solved because the criminals are partners in the PNM; and that is the reason. The criminals are supporters of the PNM. The bandits are their followers—[*Desk thumping*]—and they are afraid to touch them, they do not want to touch them.

Mr. Ramnath: They "can't" touch them.

Mr. S. Panday: You remember that one that was killed in Wallerfield? That person—I forgot his name.

Hon. Member: Guerra.

Mr. S. Panday: —Mark Guerra. Mark Guerra was at a PNM meeting, protecting PNM Members in Couva the night before he was murdered. The reason why he went to Couva is merely a joke made by the Member for Couva South. When they

were trying to demolish the sugar industry, the Member for Couva South said: "I don't guarantee your safety".

Hon. Member: It was not a joke.

Mrs. Job-Davis: That was a joke?

Mr. S. Panday: Instead of bringing policemen to protect them, they brought their criminal friend, Mark Guerra, to protect them. This is why we are saying, that the bandits are in the bosom of the PNM, and that is why we cannot deal with crime.

These bandits, instead of dealing with them with an iron fist, the first thing the hon. Member for San Fernando East did when this Government came into office, he elevated them from gang leaders; he laundered them; he painted them in white and called them community leaders. That is what he did. So when they gave them that sort of authority, that is why they could walk with their guns in their waist in Port of Spain, because you call them community leaders. You knew that they were criminals that you were calling community leaders. Did you give that information to the police, so they could monitor them? Could you not have given the police that information about the community leaders that you met, so that the police could keep an eye on them? So that 150 persons would not have been killed this year?

Mr. Speaker, this is the problem. Maybe, the police know that those are PNM honchos and they have to be careful when they are going to touch them, and that is the problem. This legislation that comes before this Parliament means nothing, unless we deal with them and the PNM cannot deal with them.

You remember the hon. Member for Ortoire/Mayaro gave a certain esteemed religious leader a pass for the priority bus route, when hard working people in this country who deserve bus passes to travel on the priority bus route cannot get. As if that was not enough, when he came to Parliament and they asked him: "How you could do such a thing?", the leader of a gang or a community—as you wish to call them—who tried to destroy and overthrow the democracy in this country, he said that we in the PNM and I consider him a religious leader. If that was not all, they gave him a sub-contract—this Government; the criminal element—a sub-contract to go into Petrotrin, in a country whose resources are basically energy based put him in there. That organization tried to shoot down this Parliament—killed a Member of Parliament and police officers. To finish off, they gave them the Tapana Quarry to rake as much money as they can and destroy the environment.

Mr. Speaker, you see why when we say what they said in Parliament here, was bravado and "ol' talk", and bringing the most insignificant piece of legislation to the Parliament and say: "This will deal with crime", this will not deal with crime. Catching the criminal first is dealing with crime. But the PNM itself is crime, because it came into office on a wave and with the support of the criminal elements in society.

Hon. Member: You talking about Robinson?

Mr. S. Panday: In the marginal constituencies, certain members who are supporters of the PNM financed criminal elements to inflict violence on people of the UNC. Ortoire/Mayaro—I do not know if that was your personal mission; saying thanks for the violence which was inflicted on people of Ortoire/Mayaro.

2.45 p.m.

That is why the criminals that you harbour, you are riding a tiger and getting serious trouble in jumping off. To drive the point home and to send the message to criminals that they are safe, the Member for Diego Martin Central once said that these gang leaders are people too; they have children, family and needs and he met with 30 or 40 of them. It is only 66 and he met 30 or 40 of them on Thursdays when he went to his constituency office. He advised the other PNM members that when they go to their offices, attend to them or you will suffer at your own peril. Bringing this against that backdrop pales into insignificance with the real problems with crime.

If the police is so active with so many weapons and facilities, why can they not catch the kidnappers and murderers? Do the police believe that these criminals feel safe with the PNM and they do not want to get in trouble? These are questions that we ask. You have everything within your power to catch the criminals, yet no one is being caught. When we go back to his speech, one will see that the number of solved kidnappings is lower this year than previously. That is the situation that we have. Gang related as we said, the total number of crimes which was solved in 2004 is 30. After we give them all these facilities and equipment the number dropped to 29. Where are we going? How could the criminals be so boldfaced in Trinidad and Tobago? My view is that the criminals can only be so boldfaced under a PNM government. When the UNC was in power they hung nine in one batch. They sent the message to them.

Under this PNM Government, while we are passing legislation to let this and that statement in without anything, in a cemetery in broad daylight when a gang member was slain, he had a 12-gun salute. You serious about crime? It is only

bravado and "ol'" talk." You do not want to deal with crime. A gang leader is being buried and you will not send your intelligence to look at those criminals to identify people and video them from a distance. You turn a blind eye to criminal activity. Imagine, when you are a soldier you get two or three gun salute and when a gang leader dies he gets a 12 gun salute using your guns. PNM what are you doing? You are the cause of the problems in the country. You should hang your heads in shame and go!

Hear this other one. The police killed a bandit in South. A rumour went out that they caught him with 200 kilos of marijuana. They spread a rumour that the police pulled him out of the car and killed him. At the funeral they did not have a funeral by hearse, but like the Palestinians, with the coffin walking down the street; shooting up in the air and saying, "Revenge will come. Who kill this man, the police will pay for it". That was less than half mile from the police station. The police turned a blind eye.

Assistant Commissioner Allard will lock up Hamza, the Members for Caroni Central and Chaguanas; with armed machine guns, scramble them, put them in the van and carry them to jail. Criminals are on the streets shooting guns in the air and threatening the police and we have not heard anything. We ask: Where were all these units and the Assistant Commissioner of crime? While he was in Parliament trying to put out the Member for Fyzabad from the House to ensure that law and order were maintained, men in the south were shooting guns in the air. [*Interruption*] This Speaker is decent and I will not bring the Speaker into disrepute.

As they have these 24-hour surveillance and speed boats, why is there more crime in the country than before? Is the training that we are giving the police inadequate, or are the criminals smarter than the police and the PNM? As far as I see, the Government has not made any firm, positive and bold move to deal with drugs in Trinidad and Tobago. As they say, the drugs help to bring on the crime, but it is not the drugs alone that bring on the crime. The PNM is the cause of crime in the country. They are so biased and vindictive to certain sections of the society that they share money left, right and centre to the criminals whom they feel are their supporters. For example, the contract for the refurbishment of housing, do you know how many men got killed as a result of that? The URP gangs and the ghost gangs that they continue with—as the Minister of Local Government came once, "yes we know that there are ghost gangs and we are trying to stamp it out."

Recently, an accused person was held in Port of Spain for shooting someone in the centre of Port of Spain at high noon. He went to court and the magistrate asked him, "Where are you working?" He said, "Ah does collect URP cheques". That is his work.

The PNM is engineering that kind of behaviour. They are spending and wasting money at such a rate that it is giving the criminal gangs a head. It is giving them a high even higher than when they are on drugs. That money they are not working for, they are so crazy about it that they are killing one another. These are not gangs as a result of fighting for drug turf, but the killing is as a result of fighting for PNM turf. The PNM has set turfs throughout the country and all these killings are as a result of the PNM setting up turfs. That is why there are so many gang killings in the PNM constituencies. It is because that is where they are flashing the money! When they flash the money in one place, the poor police try to lock down Laventille/Morvant and Caledonia. As they lock down those places, down Diego Martin they migrate. PNM areas are where the money is. The PNM is abusing and wasting this oil windfall. Instead of developing the country they have a feeding frenzy in the Treasury. You know about that one. They are feeding from the trough.

When you come with this legislation we say that you are merely trying to fool the population. There are many more serious problems dealing with the administration of justice and making the courts more efficient, but they have not dealt with that. In truth and in fact, the PNM does not have a true legislative agenda to deal with the efficient administration of justice. It is "ol" talk".

I will tell you as the Attorney General said, this piece of legislation was as a result of the initiative of the honourable Chief Justice. If you go back and read the opening address of the law term 2003—2004, at the Hall of Justice, the hon. Chief Justice S. Sharma said that on February 23, the committee had already reported and he had set it up before. We must take the opportunity at this point in time to publicly praise the honourable Chief Justice for the vision he has to deal with the administration of justice. I will come to it in a minute to show you how you are so incompetent. How long has this been on the desk of the Attorney General?

If you look at the Bill you will see that it is No. 30 of 2004. Long before that it was on the desk. You bring it to Parliament merely to hoodwink the population to say that you are doing something. Why did you not bring it before over 150 persons were killed? It is incompetence or you do not care about dealing with crime. The same Chief Justice who the PNM is trying to hound out of office. [*Interruption*]

"I does take my bouff like you."

Mr. Speaker: Hon. Members, the speaking time of the hon. Member has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Dr. Roodal Moonilal*]

Question put and agreed to.

Mr. S. Panday: I am a lawyer. I am not the kind of engineer who builds a wall and it falls even with a breeze—a lego wall. I do not build buildings using lego.

You bring this piece and other pieces of legislation and you are leaving out fundamental action which could have been used to deal with crime. On February 27, 2003, the honourable Chief Justice was speaking at the opening of the law term:

> "On February 27, 2003, the report of the committee was submitted to me containing several unanimously agreed recommendations for much needed reform at the level of the Magistrates' Courts. The report went further than the recommended terms and was quite comprehensive and far-reaching".

I wonder if the hon. Attorney General had an opportunity to look at that report and that of Justice Mark Mohammed's committee. This report was delivered on January 14, 2003. We are now in 2005. [*Interruption*] If you want to argue with me for 14 days, that is okay. "Panday in dey more than eight or nine already and he eh ded."

> "The report of the committee established to consider the measures which can be adopted to shorten criminal trials in the Assizes, Magistrates' Courts…"

The Chief Justice was trying to develop the judicial system. On October 15, 2002, the Honourable Chief Justice established a committee under the chairmanship of Justice Mark Mohammed to consider measures which could be adopted to shorten criminal trials in the Assizes and the Magistrates' Courts. That committee was comprised of many people who did pro bono work. My information is that the committee assisted in drafting the legislation which was then sent to the Law Commission for any alterations. Since 2003 this has been done. It stayed on the desk of the Attorney General for that length of time and has now seen the light of day because of the public outcry at this time.

Some of these other pieces of legislation are merely to ease the fear of the population, but deep down inside they have no intention of dealing with it. This is simple. The recommendations of the committee which gave rise to this legislation before us were so simple and straightforward, that I think we should read them into the record to show how—is the word indolent?—they are lazy and the lack of enterprise by the PNM. It said:

> "Criminal trials could undoubtedly be shortened if matters not in dispute are allowed in evidence by agreed admission of written statements. An example of such evidence in some retrials would be that coming from police officers only on a chain of custody issues relative to narcotics. The main issue in the case was not whether the subject was narcotic is prohibited but rather there were other elements in the offence you were relying on."

In narcotics, they say that you are in possession of narcotics. If you go before the court and plead guilty, it means that you have accepted that that is narcotics and you take the blow. If you say that you are not guilty the police must send it to the Forensic Science Centre. When you say that you are not guilty, that means that you deny all the elements of the offence; the quality of the exhibit or whether you did perform the act and when you performed the act if you had the intention to commit the criminal offence. I have heard in the courts people say, "You see that drugs, I am not questioning whether it is drugs or not. All I am saying is that I did not have it; I do not know anything about it, so therefore I am not guilty". This is setting that position where in a criminal trial we could shorten it. How much? When somebody gives that kind of evidence, you get the drugs; put it with the property keeper and take it to the Forensic Science Centre. The officer there collects it, marks it and calls you back at another time. I came and I collected it. That is the extent of the shortness in the trial which we are going to deal with. The real issues in crime they are not dealing with them.

I wonder if they had to wait for this committee to come with this recommendation or whether there are people in the Office of the Attorney General who read. The committee said in section 9(1) of the Criminal Justice Act 1967. That is over 30 years ago. You are jumping up; you are going to deal with crime and war on crime. You are introducing legislation about 37 years old. It said identical to our law that in any criminal proceedings other than committal proceedings, a statement by any person shall, subject to conditions, be admitted as evidence to the like extent as all evidence to the effect by that person. If one looks at this legislation it is identical, taken word for word from the 1967 legislation.

The statement must purport to be signed by the person who made it. The statement must contain a declaration by the person to the effect that it is true and to the best of his knowledge.

We are dealing with a small area of criminal law about small admissibility of evidence which forms a minute part of the criminal procedure. [I*nterruption*] You can heckle me as much as you want. I know that when the hon. Attorney General was talking on the last day, you were so disobedient that the hon. Member for San Fernando East said, "Shut up". I said, "Boy, you could take bouff in public." Let him behave so because he is sleeping. When the cat is sleeping the rats play.

The committee suggested the introduction of legislative provision according to similar lines to section 9 of the United Kingdom Criminal Justice Act, 1967. This would have the effect of saving time, it is not by note-taker, in recording evidence in chief when the witness sought for cross-examination, when the evidence is not in dispute, the statement may be admitted into evidence.

This would have gone through extensive debate in the House of Commons and the House of Lords. They would have done all the groundwork and then come up with this piece of legislation. In this case we find it difficult to say that we do not agree because our Criminal Bar Association had taken part in this exercise and we contributed to it. We are saying that bringing this first is mamaguy.

I can deal with the situation again. We have a photographer or a draftsman who merely goes to give formal evidence and he could use it for any officer or member of the prosecution who is merely giving formal evidence. In this matter we speak about admission. We say that this piece of legislation by itself will not go very far in dealing with the issue of crime or the administration of justice.

We humbly suggest that legislation should have been brought to this Parliament to deal with other aspects of the administration of justice which need more urgent attention. When we come to the Criminal Procedure Bill we see that it is procedural. It is not because of the initiative of the PNM, but because of the initiative of the Honourable Chief Justice. He set up the committee and had this done. The committee suggested the introduction of legislative provision to deal with the issue of written directions to the jury. In cases of substantial complexity, it is unrealistic that the jury has the ability to address in one go, fairly difficult directions of law. Debate in the jury room may therefore sometimes circulate more around the varying recollection of what the trial judge said as opposed to a proper understanding of what was in fact said. The risk of misunderstanding and perverse verdicts are too serious to ignore.

That is the rationale they have used to bring this section. As the Member rightly said, in England they said that in cases of joint enterprise, common design and other aspects of law that are complex, the time has come for the trial judge in each case to give the jury a series of written factual questions tailored to the law as he knows them to be and to the issues and evidence in the case. The answers to these questions should lead only to a verdict of guilty or not guilty. I do not recommend that where a judge considers it appropriate he should be permitted to require a jury to answer publicly, each of these questions.

As I say there are further recommendations. One should have looked at the spirit of the recommendations of the committee. Merely to say that a judge may after consultation with counsel for the prosecution and the accused provide written directions to the jury on matters of substantial complexity, the committee has given guidelines and pointed you in a certain direction for the modernization of the administration of justice. You took the shortest way out, put it in the Bill and brought it before this honourable House. That is why we say there is a lack of initiative on the part of the PNM to deal with crime and the administration of justice. The jury system is the bulwark of our democracy. Having said this, those of us who practise at the criminal bar will advise in this case. Maybe, the time has come for us to review the Jury Act because this piece of legislation probably applies to a society where most of the people are numerate and literate.

3.15 p.m.

With the kind of education system the PNM is perpetuating in this country, one wonders if this would have any value on the number of persons who are coming from the junior and secondary schools and cannot read or write.

Mr. Speaker, many of them come before the courts and when they are given the oath to read they cannot read it and they have to be disqualified. So when one looks at the system, it must not be looked at in isolation, but one must have a holistic view of the population before one could take this action.

When the jury goes in the jury room, no one knows what takes place there, when they come out all they do is read the charge and they are asked if they have all agreed. They will say yes. Are you guilty? Yes. Not guilty? No. That is all that takes place in the jury room.

We feel that not only the complex points of law should be the written part of the summing-up by the judge, but what should take place is that the whole summing-up should be précised, so the jury would have that additional assistance in the jury room to come to a fair verdict.

Many times, Mr. Speaker, a trial takes 21 days in court, the jurors are sitting there looking around the court, some might have some problems at home, they may not be paying attention, they may miss certain important points because the judge cannot enter into the arena of the criminal part of the matter. He cannot tell them to pay attention because an important part is coming now. Sometimes some of the jury daydream and when they go into the jury room you find the one who has been listening, or the one who has taken a hard line position would influence or dominate the jury and as a result, there is a one-man jury verdict coming out.

However, if you are sitting in a jury for a long time and the whole summing-up is either précised or given in writing, the jurors can go into the room and what they miss they will get in going through the summing-up, or have somebody read it for them, they can then deliberate and give a decision according to their oath. That takes us to another position.

It would appear that many of the persons who submit themselves to jury service are forced to do it. Most businessmen and companies make all kinds of excuses to prevent their workers from going for jury service, and some of them do not pay them. Judges have intervened on many occasions to ensure that jurors are not adversely affected.

They sit there for 30 days, some of them have businesses and they lose income for those 30 days and at the end of the day do you know what they get for all that work they did? They are told: "Thank you very much for doing your civic duty." These people have their bills to pay. They get taxi fare to and from their homes for attending and that is the end of it. No subsistence!

Many times jurors have to come to court and it is only when the court feels sorry for them, or it intends to carry them for the long haul until 2 o'clock or 3 o'clock it orders lunch, and they have to take money from their own pockets in order to provide this service. We have money flowing, we have money to give bandits, to give gang leaders, we have money to give to criminals and we have been wasting it. Why do we not put some of that money in the jury system and adequately give them some kind of emolument for their service?

If you are a juror and you are thinking about your business you cannot concentrate on the case and when you go into the jury room, you want to get out as quickly as possible, you would not want to wait for the entire four hours because you have your work to see about. So when you are dealing with the administration of justice and the criminal system you must take a holistic view of

it and that leads us to another question. This simple clause, clause 4 of the Bill to amend the Criminal Procedure Act, Chap. 12:02, the judge may after consultation give written directions.

Mr. Speaker, the law as it stands in jury trial is that the jurors may go to a jury room to deliberate for a maximum period of three hours, sometimes they come out before, but it is only in special circumstances that they may come out and ask the judge for some time and after three hours have expired, the judge may ask if they need some time. When you are adding this new dimension into the jury system, then it may be necessary to amend the law to permit juries like in the United States of America to deliberate over a longer period of time because if we leave the law as it stands, where the amount of time allotted for the jury to deliberate is merely three hours, then the time taken to read these written submissions would not leave them with sufficient time to adequately deal with the issue before them.

That is why we say that the PNM does not know what it is doing. When the hon. Attorney General talks about the legislative package to deal with crime, it is only false hope they are giving to the people, they are not looking at the criminal justice system as a whole to ensure that the society develops. If the guilty man goes down, it is okay, but in the process of apprehending people and putting them on trial you must ensure that systems are put in place to make sure that the innocent man does not go down. It would be a sad day when an innocent man goes down because when he goes to prison and comes out he would be such a bitter man that all the legislation we have he will go for criminal action.

Mr. Speaker, with these few words, I humbly submit that this PNM Government has no real intention of dealing with crime.

Thank you.

Ms. Gillian Lucky (*Pointe-a-Pierre*): Mr. Speaker, I have listened quite closely and attentively to what has been said by the hon. Attorney General and also by the Member of Parliament for Princes Town with respect to this piece of legislation. I have also availed myself of the relevant authorities; those being the text, script, and the laws that have been referred to from where this local legislation has in fact been pegged.

Mr. Speaker, might I say from the outset that there is a fatal flaw in the proposed legislation, that is, an Act to amend the Summary Courts Act, Chap. 4:20 because this particular Bill, whereas most of its provisions have been lifted from the equivalent in the Criminal Justice Act 1967, more specifically

section 9, there is a glaring omission that does not form part of the Bill that is present in the United Kingdom (UK) legislation and there is in fact an insertion in the Bill of a particular provision that is absent in the UK law.

If I go immediately to the particular provision, and I would like to indicate that if at any time during my contribution the hon. Attorney General, who piloted the two pieces of legislation, although I am dealing now specifically with the Summary Courts Act amendment—if at any time what I say may be of some concern, or the subject of objection by the hon. Attorney General, I would like to indicate from the outset I am prepared to give way because I am very committed to the fact, as all Members on this side are no doubt committed to, and that is, when we pass legislation in the Lower House we have to get it right. [*Desk thumping*]

Far too often there are persons, moreso the criminal element, that enjoy nothing better than the politics being given the precedent and time that is spent dealing with political banter rather than trying to get the laws correct and, unfortunately, many times in the Opposition we make suggestions and they fall on deaf ears. But I would rather err on this side this afternoon that the hon. Attorney General is going to be true to what he has said in terms of his piloting this piece of legislation. Whether it was made clear by the hon. Attorney General that this particular piece of legislation and others before us and those to come are meant to send a message to criminals that they will not be allowed to run roughshod throughout Trinidad and Tobago—and I make no apology in saying that, so far, this Government has not done anything to send that message to the criminals, that it is not going to tolerate crime.

Mr. Speaker, the best evidence comes from what happened this week. All the newspapers yesterday and the day before had on the front pages that there was a battle against crime, that there was a war on criminals specifying a list of things that would be done by the Government. And yesterday we had a kidnapping and a shooting. The criminals are holding law-abiding citizens in contempt because they are not afraid of this Government, and we have made the point over and over that the Government has allowed itself to intermingle, interface, and embrace the criminal elements.

I go directly to the Bill before us. In the Explanatory Note—and I would ask the Attorney General to follow with me, as I am sure he would, in which the flaw of which I speak is highlighted—it states:

"This Bill seeks to amend the Summary Courts Act, Chap. 4:20 by inserting—

(a) a new section 63A to provide for the admissibility of a written statement by a witness which contains matters that are not in dispute, after there has been no objection by any party, to the statement being tendered as evidence;"

Mr. Speaker, put simply, the very explanation that is given is that this new section is meant to allow into evidence written statements by persons when there is no objection to what is contained in them. In other words, the facts are admitted and either side, the prosecution or the defence; the defence having received that statement—and I am looking at it from the perspective of a person who will be appearing for the prosecution but I am mindful that the legislation works both ways. In other words, it also applies to a person whose statement can be relied upon by your defence.

What I am saying, Mr. Speaker, is that the clause, as in England, is meant to allow as *viva voce* evidence, as though the person had come in the court and given the evidence based on a statement that was given by that witness. In other words, the witness does not have to come into the courtroom, and what is very important, is that there must be no objection as it is stated in the Explanatory Note, the statement is not in dispute.

So that the very section as in England contemplates a situation in which for example, a witness is being called by the prosecution and it is a witness—as the Member for Princes Town was pointing out—who is coming to give what we call formal evidence: a photographer, or perhaps the person who took the exhibit to the Forensic Science Centre. There is no contention, and what is done now in the courtroom, and with the greatest respect, it does not save much time, is that the defence counsel will say to the magistrate—because this is meant for summary matters heard by magistrates—My Lady, or Your Worship, at this point the defence is not going to have any objection to the evidence of this witness, and, with the leave of the court the prosecution may lead the witness.

It means that the prosecution, armed with the statement of the witness, literally refers to everything contained in the statement and it is really a "yes" or "no" question going along the lines of: Your name is John Brown? You live at such and such a place? As opposed to saying: State your name. Where do you live? Do you remember a particular date? So it speeds up the process in a practical sense because the notes still have to be taken in longhand. It is not really of tremendous benefit but it helps.

What was recognized in England in 1967 or before was that there should be a system for some retrials in which this formal evidence could be taken. Right now what happens is that the defence counsel would have to ask the prosecutor because he/she is not given the statement. Defence counsel would ask the prosecutor: "Who is this witness?" And if the prosecution says: "It is just a formal witness", then defence counsel may decide to allow the witness' evidence to be taken in the formal way as just described.

Recognizing the situation, what they did in the United Kingdom was make provision for this practice and what was done in the Criminal Justice Act of 1967 by virtue of section 9 was that there were certain criteria laid down and one of the most fundamental principles about the section as is said in the Explanatory Note of this Bill being debated now, is that there must be no objection by either side. So that is a fundamental principle and it is one I think is very commendable but therein lies the flaw in our legislation.

What has occurred by the drafters—and I mean no disrespect to them—I always say that I have a soft spot for the Attorney General's Office and the State Counsel, because it is there I began my career and they are very committed, but sometimes it is in trying to take different things out of legislation, or to ensure that there are certain checks and balances, things go wrong and I think with the greatest respect that is what has happened here.

Thankfully, this is a debate. We do not as yet live in a dictatorship state, I hope we never reach to that stage where laws are just imposed upon us, and I am hoping at least in the Parliament we would be given—that is the Opposition—a chance not only to say views, but to really get those views duly considered by those who eventually, at this stage, have what is the simple majority.

Mr. Speaker, our legislation is the same as that in section 9 of the Criminal Justice Act, 1967 in the UK, but what happened in the local Bill is that there is a particular insertion that has been placed in it which is found in clause 63A, subsection (5) on page 6. It states:

> "(5) Where any party objects to the admissibility of a written statement under subsection (3)(e), the Magistrate shall make a ruling on the objection and where he overrules the objection, the statement shall be admitted in evidence in accordance with subsection (1)."

Hon. Jeremie: Thank you for giving way. That is a valid point, and in the UK it has been solved by sections 9(1)(d) and 9(4) and, perhaps at the committee stage we can proceed to make the necessary amendments.

Miss G. Lucky: Mr. Speaker, things are happening in here that have never happened before and I do not think that the wind has been taken out of the sails. I just want—bearing in mind what the hon. Attorney General has said, no doubt a little birdie must have whispered it to him. We still have to make sure that we agree and get it right and even though we may do it at the committee stage, it is important to understand that is not how the United Kingdom really solved the problem because that legislation does not have the particular section of which I spoke.

What has been done there is that their section 9(1)(d) to which the hon. Attorney General has referred is contained in our legislation. So there is no need to revisit that particular aspect. The only difference is that in the United Kingdom by its paragraph (d), has said that if there is any objection on either side, it must be filed within seven days. And even if it is filed within seven days, if, during the course of the trial there is a change of mind by the person objecting, then the statement—if there is consent—can be read.

So the first way to solve the problem with respect to this Bill is a total removal of subsection (5) because it is also worrying in this regard. If the purpose of this particular Bill is really to facilitate statements from witnesses who are going to give formal testimony being admitted without having to go through the process of a witness coming to court, going under oath and taking notes in longhand, then we have to be consistent in terms of the clauses with that particular principle.

What the United Kingdom has gone on to do to ensure that there is fairness, and this is the particular provision that I was very concerned about and which has been left out completely, is that in the United Kingdom's equivalent section 9, there is a particular subsection (4) that says:

> Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of the section, the party by whom, or on whose behalf a copy of the statement was served, may call that person to give evidence and the court may, on its own motion, or on the application of any party to the proceedings require that person to attend before the court and give evidence.

Mr. Speaker, in other words, the UK equivalent legislation makes provision for the judicial officer, in that case the magistrate, even though a statement has been agreed by both sides to be admissible because there is no objection, to still allow the maker of that statement to come to the court and be subject to cross-

examination. And even if the parties, that is the defence and the prosecution, decide they are not objecting to the statement and neither of them want—well it would be the defence if it is a prosecution statement—to cross-examine, the court may of its own motion, require the attendance of that person to give evidence.

That, Mr. Speaker, is a proper check and balance, and it is for that reason that I am respectfully suggesting in the Parliament this afternoon that that subsection (5) be totally removed. The reason for it is that by allowing a magistrate to make a determination when there has been an objection launched by either party—the prosecution or the defence—and to let the magistrate be the final arbitrator goes against the very grain of what is contained in the Explanatory Note and it is in violation of the very recommendation that was made by the committee in its report dated February 2003. One would remember that significant reference was made by the hon. Attorney General and the Member for Princes Town.

In fact, in that very document, the Committee's Report, reference was made by the committee to Phipson's evidence and Phipson is considered almost a bible on evidence, and the particular excerpts—and I really do not want this to go into some sort of legal lecture but really to state that even the committee recognized and Phipson endorses that the purpose of this type of legislation and these sections is just to facilitate where there is consent. If there is no consent, then there is reversion to the usual practice, that is, the witness must be brought to the court and that must be done with good reason because the Attorney General has not indicated whether there will be a removal of that subsection (5) from the Bill before us.

If that commitment is given, then what I am about to say would not really be relevant, but if it is still being considered whether it ought to be left, I just want to continue the argument as to why it is not only dangerous for it to stay, but it would make no sense of this particular legislation, and the State would be courting constitutional actions and litigation.

Hon. Jeremie: I would not like to interrupt you, you can make your point, but the point on section 9 on the subsection is well taken; section 63A(5).

Miss G. Lucky: I will therefore continue on the point as to why the particular provision ought to be removed because if I understand the hon. Attorney General correctly, it means that the particular provision in the United Kingdom dealing with the calling of the witness, even though the statements have been agreed to be produced into evidence and accepted and admissible by the parties, the court will be getting that discretionary power to call the witness.

Mr. Speaker, the idea of having witness statements being made part of evidence, in other words, where testimony is accepted even though the witness is not in court is not really new. For summary trials it is, but with respect to trials in the High Court, there is a particular provision in the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 which caters for a situation in which a witness has given evidence in a preliminary enquiry in the Magistrates' Court, and, after giving that evidence, provided that certain criteria have been met.

If for example, by the time the trial comes up in the High Court, the witness is dead, abroad, or cannot be located and there has been an opportunity in the lower court for significant cross-examination—and it states in section 39 of the particular Indictable Offences (Preliminary Enquiry) Act that the Judge has a discretion as to whether to allow that particular statement into evidence, because he has to determine whether the prejudicial effect outweighs the probative value and there are certain case laws that are binding on the court, and there is recourse to those particular decisions.

Mr. Speaker, the simple point is that one cannot use legislation—and this was recognized in the United Kingdom—to do a particular thing but in the very thing it is doing violates the rules of natural justice, due process and the constitutional rights that an accused person is entitled to. That is why, even in the United Kingdom in 1967, there was the acceptance that we need to speed up trials and summary trials in the Magistrates' Court in England. So, let us see how far we can go legitimately and fairly to speed up the process.

What was important was that while this legislation was passed, the roles of change continued moving. In other words, there was legislation passed to deal with the removal of what is called in England, "old style committals". So there was legislation to deal with paper committals and the taking of evidence in the Magistrates' Court is usually not done in longhand but by way of tape recordings. In fact, in Australia, Magistrates' Court tapes the proceedings if it is not taken in longhand in summary matters and then at a later stage that is more convenient at the end of the day's hearing, it is transcribed into written form and the parties of both sides get copies of the transcripts. So this is the kind of thinking we need to have.

Clearly, the legislation has to be revised, revisited, and changed because right now, it is the legislation that constrains us with respect to the taking of evidence, especially in preliminary enquiries where it says it must be in longhand and by way of deposition. It comes back to the very fundamental point that we are making little steps, and in making those little steps let us get it right.

I am respectfully suggesting that a complete removal of subsection (5) be done because giving the magistrate any kind of authority in which he/she will make a decision, if there is an objection, and if the magistrate decides to allow it, it says that the statement shall be admitted. The concern there, is that although it may be the intention to remove the plug in terms of the time being taken in summary trials, there will be several appeals and what is going to happen now is that the backlog is going to move and you are going to transfer the flow from the Magistrates' Court and send the bottleneck to the Court of Appeal that hears magisterial appeals, that is appeals that are coming from the Summary Courts. So instead of transferring the bottleneck, which is very much like what happens, on our roads with respect to traffic jams, let us just do as the English did in 1967, and continue looking at all the other recommendations so at least we would get it right.

Once again, I know the Attorney General has said that they would give consideration to it, let us include that very important section that existed in the 1967 legislation in the UK that a person who has given a statement which has been accepted by both sides, can still be called to give evidence, because down the road one does not want a particular accused person to say: "I was not properly advised by counsel, or that I did not realize that I had a particular right, or my counsel had no right to accept that statement." In other words, if a magistrate—that is the court—finds that even though the attorneys have agreed to allow the statement to become evidence without the witness being called, the court may see some reason that justifies the witness being called to the courtroom—and might I just say that is exactly what the practice is now even without this legislation.

The practice is that even if defence counsel stands and says to the prosecutor: "Your worship, with leave of the court, the defence has no objection to the prosecution leading this witness", the magistrate can say even though the defence counsel has no objection to that method being adopted, that the court feels the prosecutor ought still to elicit the information *viva voce* without any leading questions.

3.45 p.m.

Let us continue to allow the court to have that particular discretionary power, rather than having a power which says that statements without any objection will be admitted, but yet if there is an objection, the magistrate will have to make a determination. If the magistrate overrules the objection it will be admitted. In other words, it is a mockery, because you are allowing then an objectionable statement into evidence, if that particular subsection is left.

It is very important when we are dealing with revising and revisiting that sometimes it has to be done in a piecemeal fashion to deal with a particular problem. The summary courts legislation has been on the books so long that there is really no excuse for us not looking at all the other sections in the Act that need to be revised and revisited. There is a particular section, for example, in the Summary Courts Act that deals with a situation in which there is a cross charge; I think it is section 66. [*Crosstalk*]

Mr. Chairman: Order!

Miss G. Lucky: It says that if there is a cross charge, it is for the magistrate, if there is consent, for the matters to be heard together. In the Magistrates' Courts right now, in several magisterial jurisdictions, the point is being made that that particular section is, in fact, unconstitutional because the section is enabling a person who is the subject of a cross charge to have to answer a matter without even knowing what the particular evidence against him would be. In other words, whether they should really be joined in the cases of cross charges is something that also has to be examined.

The simple point is that we have legislation which is very old and unless we are prepared to look at it as a whole and bring something that is more in line with what is operating internationally and also what would be considered the best practice in the courts, we are not going to get anywhere. Even with this legislation being passed, we are still many steps behind.

Mr. Speaker, the state of the Magistrates' Courts. What is the purpose, for example, in passing this legislation—if the flaw is addressed and fixed in the manner suggested by the Opposition—if the buildings themselves are not fixed? It is a nightmare to go to the Chaguanas magisterial jurisdiction, not because of the personnel or the judicial officers that sit there, but there is no briefing room, no witness room. Sometimes witnesses are being briefed in the corridors standing right next to accused persons who are hearing everything that is going to be said and not said. These kinds of things cannot continue to operate if we are to have justice in Trinidad and Tobago. Many times the Magistrates' Courts will be the first and only time people get a chance or have an opportunity to have their day in court. When we continue to make excuses for the deplorable state of these courts, it means that the Government is not really serious.

I remember some time ago the hon. Attorney General had, in fact, indicated that the responsibility of the Magistrates' Courts had been placed in the hands of an officer with the Judiciary—not a judge, but an officer who was attached to the

Judiciary—because it was felt that there should be this separation of powers, and it must be shown. I remind the hon. Attorney General that the concept of delegation is a concept which says that you delegate responsibility, but when you delegate responsibility you must retain control.

Promises were made by the former Attorney General, Mrs. Glenda Morean-Phillip, that there would be an adjustment, restructuring and upgrading of the San Fernando Magistrates' Court; it is June 2005; after two, three years, nothing has been done. It is a horrible situation; it does nothing to lift the practice; it does nothing to lift the entire image of justice here in Trinidad and Tobago. So it is not about pointing fingers and laying blame, but do not lightly dismiss these issues. In many instances persons who are witnesses to the prosecution indicate that they would just rather not go to court. Their point of view is that if every time they go to the court they will be subjected to 35 and 40 adjournments before a case can get off the ground, they just prefer to stand their losses and move on—very much like what is happening now with respect to kidnappings.

There are families who are saying, "We cannot depend on the Government to give the resources to the Anti-Kidnapping Squad, so when somebody is kidnapped we do not want them shot and killed; we will give the money", and hundreds of thousands of dollars are going into the hands of the criminals and kidnappers. They are using the money, not to invest in legitimate business, but to invest in more kidnappings and getting technology over and above what the police have. It is a vicious cycle and the law-abiding people are the ones suffering.

This Government has to understand that whether it delegates or not, it remains ultimately in control. If people who have been given a duty or responsibility are not living up to that high benchmark that has been set for Cabinet Ministers in the PNM—common sense and a level head—then let them get out; it is as simple as that. This Government always accuses the Opposition of playing politics, but, with the greatest respect, politics is being played by this Government by not facing the crime situation head-on. Citizens are saying it; supporters of the PNM are saying it; supporters of the UNC are saying it; people who do not want to support any party are saying it.

If we are going to get it right—it is not to say that you get it right first or you are not doing your job or when you were in office. How many times when you look at the *Hansard* most contributions eventually go into who did it, who did not

do it, who was in office and who should have done it. It is not taking the country anywhere and the crime situation is getting closer and closer and closer to home.

The Attorney General has spoken about the fact that there is going to be a revisiting of the situation with respect to hangings. He has also said his views on Pratt and Morgan. I am a staunch believer in the implementation of the death penalty. When Pratt and Morgan was decided many years ago, I, too, was somewhat upset with these Jamaican prisoners—and the Privy Council giving these time lines—when in Trinidad and Tobago's judicial system, at the time, just could not fulfil the time line of five years from the date of conviction to have all appeals, including to the several bodies and the Mercy Committee, concluded or exhausted; but that pressure forced the country, and more so the judicial system, to get the resources needed and now most of the capital matters are heard within the time period.

Somehow the pressure being placed on this Government to do something with respect to crime is not helping us. The business community has come out in its numbers; paid advertisements itemizing one by one what needs to be done and the Government just seems to be ignoring it, but the worst kind of disrespect is when you have all the media carrying the battle plan. It is almost as though with the movie now, the *Revenge of the Sith*—because I am a *Star Wars* fan—you hear that the death star is coming and everybody laughs and asks, "The death star?" and they take down their light sabers and say, "Let us see it."

The example that the Member for Princes Town gave at a funeral, a 12-gun salute and years ago with the death of Mark Guerra, the Opposition made that point to the PNM and to Members on the other side: You are sending the wrong message. You are making bad become good; you are telling youngsters in the country it is good to be bad and better to be worse; that is the message that has been sent. I am appalled to think that incident might have happened in South Trinidad, because if it did that makes it even more worrying, from the point of view that in the South we like to pride ourselves in knowing that we do the right thing and we get things right; but it is a local problem.

Mr. Speaker, I am not going off the Bill except to say that this is something that is meant. The Bill deals with summary offences, but remember things like theft and certain types of larceny, they all come within the scope of summary matters; they can be tried either way. The Member for Tobago East, I am sure, is aware that the crime situation is very bad in Tobago; it has reached alarming

proportions. Let us not pretend; there are some people who have said that it is the Trinidadian criminals who have gone there, but we do not want to enter into a Trinidad versus Tobago row; no. The fact is that it is worrying.

Many investors in Tobago, in terms of residential homes, have started pulling out or having second thoughts and it is frustrating. Why? Because when you are patriotic and you love Trinidad and Tobago, what Barbados boasts of, Tobago has double that. Yet still in Barbados their tourist industry is up and running with all the problems there. I can say that, because I studied there for two years. Bajans were boasting about beaches that some of us would not even go into; that is a reality. I mean no disrespect to them, but they also love our flying fish, that is obvious. The point is, it is either we are going to set the example and get it right here and have debate that will involve, in this case, pressuring the Government to do the right thing. I think I have exhausted my views with respect to the Bill.

I also suggest to the hon. Attorney General that there are certain recommendations made by this committee that have been referred to by Members of the Opposition for the last three years in the various contributions, that we should be thinking about things like a drug court; it was recommended by the very committee. Let us establish a drug court that makes a distinction between persons who are traffickers, the drug lords, and persons who are users. Let us do what they have done in Miami and Canada. Based on my information, the experts from Canada came to Trinidad and Tobago, I think last year or sometime before. They, themselves, pegged their drug court on what was done in Miami.

What happens is that many persons who are charged with possession of drugs and because of the quantum for the purpose of trafficking, there is a distinction between those who are criminals, meaning the drug lords, they are into drug trafficking and the illicit drug trade, as opposed to those who are in possession and have a drug problem. What the drug court seeks to do is to give those persons who have a drug problem a chance to get cleaned out and give community service and there is a constant checking. From the time a person who is in the drug court is shown to be abusing the privilege being given of attending the various clinics available and shows no kind of remorse, then that person is put into the criminal justice system.

In other words, they are told, "You, obviously, do not want help; you will now go and face a trial and if you are found guilty, you are going to jail." So that is the kind of thinking that we need to have. That is Vision 2020, I am scared to say. I will not go there. That is vision before 2005. The Miami Dade Drug Court was set up in the 1980s and they have now moved from operating in Miami. The

establishment is bigger and better and because it forced things like community services and rehabilitation centres, everybody was forced to upgrade; that is where we need to go in this country. We have done it with the Family Court in Trinidad and Tobago. It is a pleasure to go to that family court.

I do not really practise extensively in the Family Court arena, but I had cause to go there about three months ago; it was amazing. That place was nothing short of a dump when it housed the Magistrates' Courts. When I walked through and saw what could have been done for the magistrate criminal courts, because I have seen what has been done for the family court, and I saw the kind of ambience and I experienced litigants on opposite sides trying to resolve using things like resolution, negotiation and conflict resolution, bearing in mind that the child is of paramount importance when there is a custody battle; if we can get it right for the Family Court, which has come after in the thought process, why can we not get it right for the criminal justice system?

That is why people in this country are saying that this Government is not serious about fighting crime. It is not that we do not have the resources; it is not that we do not have the personnel; it is not that we do not have the expertise. We have a Government that is not committed to providing national security for all law-abiding citizens in Trinidad and Tobago. [*Desk thumping*]

You cannot run away from it. I do not want to see Tobago destroyed in any way; it is too beautiful an island to let the criminals run persons away, including persons who might want to just go from Trinidad to Tobago for a holiday.

I wish to deal very briefly with the second piece of legislation, Criminal Procedure (Amdt.) Bill. Might I say that clause 3 deals with proof by formal admission, which is something that is unobjectionable; in other words, it comes part and parcel with what is being done by the amendment to the Summary Courts Act. If there is provision in the summary courts legislation to allow statements from persons to be admitted, if there are no objections, then there also must be what is the equivalent of section 10 of the United Kingdom Act. I do not disagree in anyway with what is stated in the proposed section 37A. I just want to make a few comments with respect to clause 4, which deals with written directions to the jury.

Clause 4, deals with the judge after consultation with counsel for the prosecution and counsel for the accused, providing written directions to the jury on matters of substantial complexity, because, as the Member for Princes Town said, we are not in the jury room, but sometimes jurors get it wrong. I am speculating, but you

might have one juror saying, "But I am sure the judge said X," and another juror saying, "I am sure the judge said Y," and then another juror may suggest, "Well let us go outside and ask for clarification," and another juror may say, "No, we will look stupid; let us sort it out." We do not know; we are speculating. If you know what is going on in a jury room, then something is wrong and that is a criminal offence in itself.

What is important and this is a concern I have always had, many jurors complain that during the course of a trial—and I do not know if the Member for Princes Town will agree or disagree, if it has been his experience—there are many jurors who have said that they would have liked the opportunity to take notes, because even though in the summing up by the trial judge he will give a synopsis of the evidence, there are some times when jurors want to make little notes for their own recollection as to how they found a witness behaved or how a particular explanation came out that they disagreed with.

Sometimes when trials take one, two or three weeks, it is only after the verdict that jurors sometimes indicate that they were concerned about a particular point. If this process is being suggested, I think it is a good one. Might I also say what has been done by some trial judges? I know one former High Court judge for whom I hold tremendous respect, Justice Melville Baird, before summing up, always allowed counsel, when it was appropriate, to make submissions on certain points that ought to be included or omitted, the legal issues. I thought that was an excellent process, because it meant that certain issues dealing with things like mistaken identity and whether there was corroboration were resolved and the judge listened to both sides and, of course came to his own conclusion, but it meant that counsel could be heard. I see this clause 4 as a step in the right direction.

There should be some consideration given to whether it is right or could be allowable for members of a jury to take little notes, because I know it is done in other jurisdictions. The notes are made, not to pass anything frivolous, but just for their own recollection, so when they go in the jury room they are better able, if the judge has not dealt with a matter, to refer to their notes; very much like a police officer who should look at his police diary to refresh his memory. There is nothing wrong in saying that we need to refresh our memories.

Many times we think that jurors are supernatural, because to sit in a courtroom, very much like a Speaker who might have to sit in the Chair and hear everyone, jurors are constantly listening and concentrating, and they are human. Even with breaks,

the concentration, focus, spell and ability is different, so allow them that. If there is need for legislation, let us just consider it; do not throw it out the window, because that is something which would be of tremendous benefit to jurors, to have notes and to have this particular thing.

There is another issue that concerns me with respect to juries. There was a recent case concerning Yasin Abu Bakr. Mr. Speaker, I am going to be exceedingly cautious, because I know the matter will still be considered sub judice, to a certain extent. There was a hung jury and, at the end of the day, there may or may not be a retrial. I am going with what was reported in the newspapers. There was a long process, in the first place, in choosing jurors. It was not a new process, because it was done in 1996 in the Dole Chadee trial. Many times based on the questions to potential jurors, the point was made by jurors—and I remember it well, because I was a junior prosecutor in the Dole Chadee matter—when they were being asked whether they would be able to sit—[*Interruption*]

Hon. Jeremie: Mr. Speaker, I wonder if the Member might give way. The Abu Bakr matter, as you know, is still before the court and there is going to be re-trial, so I ask the Member to exercise, as she ought to be aware, extreme caution with what she is about to say.

Miss G. Lucky: I gave myself my own warning. I have always said that I am my harshest critic and the harshest person to warn myself. I assure the Attorney General that I started with Abu Bakr and I indicated as the Attorney General has said, but I have gone back to Dole Chadee. That is why whatever I am saying will relate to the Dole Chadee trial. I do not think it is going to be objectionable but, of course, I am bound by what you say, Mr. Speaker.

The simple point I am making is that when we are looking at providing assistance to jurors, it is one thing to assist them in their role as sole judges of the facts. I know the MP for Princes Town was making the point that that is important, but there is another issue that one has to be concerned about and it is not limited to the Abu Bakr trial; it is a widespread and universal application that deals with high profile cases in which jurors want to get some kind of protection. This ties in with the witness protection programme that this Government, for some reason, is not implementing. There was an ad hoc system in 1996; the legislation was passed and we do not have a viable witness protection programme.

There were many jurors who indicated, based on the Dole Chadee trial, that they were so afraid, not for themselves because they were in secure positions, but for their families. Some of them said that they would not want to sit on the case,

because they were afraid for their families, even if they got massive protection. We need to revisit the Jury Act and, perhaps, contemplate what the business community has suggested, that for certain cases maybe we need foreign jurors coming from, in this case, the region; persons who would come and sit, hear the matter and then leave. That is the simple point I am making.

Mr. Speaker, perhaps, what we need to do is what was done in the Dole Chadee trial; the matter was heard in Chaguaramas. For high profile matters, maybe we need to take them to Tobago, maybe to some other island. This is the kind of thinking out of the box that has to be done. Giving jurors the best legal directions and the best security, without more, is not going to be enough. It has been considered in other territories; maybe we need a provision, as suggested by the business community, dealing with the ability to have foreign jurors sitting on the panel.

It may be a ridiculous suggestion; it may be pie in the sky. Maybe the word "foreign" should mean "from Tobago", if it is tried in Trinidad or "from Trinidad" if it is tried in Tobago; maybe the whole case should be tried in Tobago or a high profile case in Tobago might come to Trinidad. These are things for us to consider; not to simply dismiss them and say, "Well, look we have a trial or re-trial coming up," that is the simple point. In my experience and from what has been said, some countries have abolished the jury system. I do not believe, unless persuaded otherwise, that we should abolish the jury system. I think that we should enhance it to the best of our ability; that is the simple suggestion.

I started off by indicating that I was not going to prolong the debate dealing with matters always canvassed by the Member for Princes Town. I think he spent significant time, and rightly so, in dealing with social factors and also the legislation required to boost the administration of justice. The recommendations have been made by the Member for Princes Town and myself; the ball is now in the court of the Government to make sure that it gets it right. If not, just a word of caution; if we do not get this kind of legislation right here and when it goes to the other place, there are accused persons who know enough law that they will talk about their constitutional rights being breached; they will talk about the fact that they did not get a fair trial and we would have gone against the very grain of the legislation.

It is in these circumstances and the suggestions that have been made, that I ask the Government and the Attorney General, specifically, to consider them. I thank you.

The Attorney General (Sen. The Hon. John Jeremie): Mr. Speaker, I propose to speak first to the contribution of the Member for Princes Town. When I rose to speak on the issue of crime deterrence and punishment on Monday, I spoke after the Minister of National Security had outlined certain specific measures to deal with the high incidence of crime in the country. The Minister spoke to Executive action which the Government was proposing to take in relation to crime; there was no public fanfare. We are not responsible for how the newspapers reported it; we are not responsible for anything of that nature. We stated the Government's resolve to deal with crime in unambiguous and forthright terms.

The Member for Princes Town misstated what I said on that occasion and what I said at the beginning of the debate in relation to these two measures this afternoon. He did so, in my view, in defiance of the plea which I made on Monday that we should consider these matters irregardless—[*Interruption*]

Mr. Imbert: Regardless.

Sen. The Hon. J. Jeremie:—regardless of where we sit in the House. The question here to be decided is not as the Member for Princes Town seeks to raise, as to whether the PNM is the proper party to be in office. We are here by the democratic process and the democratic will of the people of Trinidad and Tobago.

Mr. S. Panday: Thuggery!

Sen. The Hon. J. Jeremie: The Member for Princes Town paid me the high compliment of repeating many of the words which I had stated in my address to this House on Monday. What he did not state, and my difficulty with his address this afternoon, is that the measures which we propose to introduce are holistic in nature and are merely a first step. Every journey begins with a first step and this is a first step. As I said on Monday, we intend to engage in this war against crime to its finality. The legislation is not going to do the job on its own. Legislation is but the infrastructure which allows the Minister of National Security to take the Executive action which is required to treat with the difficulties that the nation now faces.

Mr. Speaker, the Member for Tabaquite did not state—[*Interruption*]

Miss Lucky: Princes Town.

Sen. The Hon. J. Jeremie: The Member for Princes Town did not say that we started here, because we are serious about crime; he did not say that when we deal with the other measures that the support of the Opposition is going to be required.

His statements here today make it seem as if the battle begins and ends with the difficulties which we experience in the Magistrates' Courts; that is but a part of the problem. I clearly outlined on Monday that we intend to take this battle to its finality and to confront the Members on the other side with the issue of bail in relation to kidnapping, drug offences and the possession of firearms and ammunition; that shall require the support of each Member of this House, regardless of where we might sit.

For years the Magistrates' Courts have lagged behind in terms of technological development. What we seek today is to improve the system as it applies with respect to the courts. We do not seek to hinder the courts; we seek to improve the system of the administration of justice as it applies to the magistrates' courts. We gave the hon. Chief Justice the respect which he is due for having set up the Mohammed Committee of which members of the Attorney General's Office were also participants.

In relation to the magistrates' courts, the Member really did not object to any of the proposals made. His objections were rooted in the politics and matters which, really, are beyond the scope of the debate here this afternoon. As with the magistrates' courts, so too with the Criminal Procedure (Amdt.) Bill. All I can say to the Member for Princes Town is that he misstates the position if he says that this is the end of the process. It is not; it is the beginning of our process. His vision, perhaps, is not ours, if his vision is that this is the end of the process. It is his duty, as a patriot, to be ashamed of his contribution in this House today. If he is a patriot he would unite with us and say that the legislation is good and that he anticipates the legislation which is to come and that he would support it, because it is critical in our battle which each of us must engage in to defeat the criminal elements. [*Desk thumping*]

At the end of the day, I will tell the Member for Princes Town—and I am sure that I am not making a mistake; it is not the member for Tabaquite; it is the Member for Princes Town—he should ask these four questions of us: Did you have integrity? Were you unselfish? Did you have courage? Were you consistent? On all those, I think that the Member for Princes Town fell down.

In relation to the contribution of the Member for Pointe-a-Pierre, the point raised in relation to section 63(a)(5) of the Summary Courts Act, it was different in tenor and tone from that of the contribution of the Member for Princes Town. What I propose to do is to treat with certain of the concerns she has raised at the committee stage.

Mr. Speaker, with those few words, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee. [*Interruption*]

House resumed.

Mr. Speaker: The Attorney General will report progress.

Hon. Jeremie: Mr. Speaker, I beg to report that the Bill was considered in committee stage and progress has been made. [*Interruption*] An amendment is to be circulated, which is not ready and I propose that we consider that after tea.

Mr. Speaker: Hon. Members, an amendment to the Summary Courts Bill, will be circulated after tea.

4.21 p.m.: *Sitting suspended*.

5.02 p.m.: *Sitting resumed*.

Committee resumed.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Sen. Jeremie: Mr. Chairman, I beg to move that clause 2 be amended as follows:

A. Delete subclause (3)(e) and insert:

"(e) none of the parties or their attorneys-at-law within seven days from the date on which the copy of the statement was given to them, serves a notice on the party so proposing, objecting to the statement being tendered in evidence under this section."

B. Delete subclause (5) and insert?

"(5) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statements was served, may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings require that person to attend before the court and give evidence."

Question put and agreed to.

Miss Lucky: I just want to begin by indicating my gratitude to the hon. Attorney General for considering the suggestions as made and, certainly, the proposed amendments reflected in the terms that I had asked. There is just one thing that I wish to bring to the AG's attention.

In the 1967 legislation, provision was made with respect to what is being proposed as paragraph (e). Right after it there is one line in the UK legislation which says:

> "provided that the conditions mentioned in paragraphs (c) and (d) of this subsection shall not apply if the parties agree, before/during the hearing that the statement shall be so tendered."

The reason for that line is that there is recognition that a party might have opposed; in other words, they would have, perhaps, put in the opposition as stated in (e) of the proposed amendment. But in the UK they recognize that a party might subsequently change his or her mind and, therefore, that particular line was put in. The advantage is if we also include it as an amendment, it would mean that even if a party objected initially, within the time frame, or even if there was not service by the prosecution or the defence in a timely fashion, because the UK's paragraph (c) and (d) would now become Trinidad and Tobago's (d) and (e)— I am just asking if the AG would want to give consideration. It just means that it would leave that level of consent coming, even if it is later in time, which is, as they do it in the UK, just before or during the hearing. There may be a change of mind to facilitate it; being admitted, that is.

Sen. Jeremie: Mr. Chairman, at this time we are not prepared to do that, but it is something we can look at in the future.

Miss Lucky: As you please AG, because this really represents the thrust of what was there.

Clause 2, as amended, ordered to stand part of the Bill.

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

House resumed.

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

CRIMINAL PROCEDURE (AMDT.) BILL

Order for second reading read.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 4 ordered to stand part of the Bill.

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

House resumed.

Bill reported, without amendment, read the third time and passed.

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL

Order for second reading read.

The Attorney General (Sen. The Hon. John Jeremie): Mr. Speaker, I beg to move,

> That a Bill to amend the Evidence Act, Chap. 7:02; the Larceny Act, Chap. 11:12; the Bail Act, 1994; the Negotiable Instruments (Dishonoured Cheques) Act, 1998; the Forgery Act, Chap. 11:13; and the Electronic Transfer of Funds Crime Act, 2000, be now read a second time.

Mr. Speaker, the introduction of this Bill demonstrates the Government's continuing intention to pursue the goal of modern governance in pursuit of our Vision 2020.

The Bill seeks to further modernize the process of the administration of justice by proposing further reforms to the system of criminal justice in this country. The Government is committed to effecting reforms, as the previous two Bills demonstrate, in the administration of justice, as a matter of priority in relation to the balance of the year and in relation to the emergency package of legislation which I laid in this House on Monday. The measures contained in this Bill are necessary in the view of the Government to further fight against crime.

The main purpose of the proposed Bill, as its short title indicates, is to amend certain pieces of criminal legislation; these are: the Evidence Act, Chap. 7:02; the Larceny Act, Chap. 11:12; the Bail Act, No. 18 of 1994; the Negotiable Instruments (Dishonoured Cheques) Act, 1998; the Forgery Act, Chap. 11:13 and the Electronic Transfer of Funds Crime Act, 2000.

This Bill comprising 26 clauses is divided into six parts and requires a simple majority. The Government decided that the various lacuna in the criminal justice system, some of which require urgent action, can be remedied by including all the proposed changes in one bill as was done in 1996, rather than attempting a multiplicity of bills.

Part I of the Bill, clauses 2 to 5, proposes to reform certain aspects of evidence in criminal matters by seeking to amend the Evidence Act. The Bill proposes two procedural changes to that Act. Where the police seize dangerous drugs, other substances or things in the course of a criminal investigation, at present they are required to keep them safely and to present all of them as evidence in court. This is a very inconvenient situation, particularly when the drug or other item is in great bulk. It creates problems of storage, security and transporting it to the court. The Barbados model in that country's system is contained in the Evidence (Amdt.) Act of 1997. Clause 3 of the Bill will allow the State to use a sample from the bulk of the evidence to be admitted in evidence.

I will ask hon. Members to note that clause 4 of the Bill provides numerous safeguards to protect this bulk system process. The bulk is weighed or counted, as the case may be, and a sample is taken from it. It is weighed and secured in a container which is sealed and initialed by the police officer, a justice of the peace (JP), the accused or his attorney-at-law or agent. It is to be noted further that this process of taking a sample from the bulk and weighing it, is done in the presence of the accused, a JP, his attorney-at-law or agent. The police officer must then issue a certificate, as provided in the proposed Fourth Schedule, that a sample was taken from the bulking and that the certificate is signed by his attorney-at-law or agent and a copy of the certificate given to his attorney-at-law or agent.

Finally, when the scientific report or certificate is issued by the Forensic Science Centre, a copy of that report or certificate is to be served on the accused, his attorney-at-law or agent. These are the safeguards which protect the accused person. It is only when the certificate or report has been issued, that the Commissioner of Police or the court may order that the bulk of the substance or thing be destroyed.

Secondly, at present, government experts such as scientific officers are being underutilized at the Forensic Science Centre; this is so because these individuals have to accept samples of things or exhibits submitted to the centre by the police for scientific analysis. This is a waste of professional services in what is a mere administrative matter and the Government proposes, as the Director of the Forensic Science Centre has requested, to make an amendment to the Evidence Act to allow her to use her non-scientific staff to receive exhibit evidence from the police. So clause 5(a) of the Bill will allow the Director of the centre to authorize any of the other employees to accept an exhibit, submit it to the centre for examination, analysis or report and thus allow the scientific officers more time to do their jobs.

It is expressly provided in the proposed section 19(2)(d) that this administrative reform would not, in any matter, render the certificate or report of a government expert inadmissible in evidence. The Director is concerned that an inordinate and, indeed, quite unnecessary amount of time is spent by scientific officers in physically receiving exhibits from police officers, thereby greatly diminishing the available time to perform pressing and, in many cases, overdue analytical work. The reform will help to reduce the delays in the administration of justice by having expert evidence readily available to the courts. The Director of Public Prosecutions, the police service and the Law Reform Commission are all in support of this proposal.

Mr. Speaker, the proposed clause 5(b) seeks to extend the category of government expert, as stated in section 19(4) of the Evidence Act, to include a finger print technician from the criminal records office of the police service. Officers from the fingerprint department are often in court giving expert witness testimony, which may be discredited by defence counsel when their training and certification is challenged. This situation arises because these officers are forced to testify as expert witnesses under section 22 of the Evidence Act and not section 19. Section 19(2) allows for the admissibility of certain documents under the hand of a government expert, but section 19(4), which defines a government expert, does not, at present, include fingerprint officers.

When the court admits the certificate or report of a government expert under section 19(2), it is admitted without proof of the signature or appointment of the government expert and without the presence of the expert. No such protection is available under section 22. Section 22 provides that every document issued by or under the authority of any department of government or is a record of such department, may be received in evidence in legal proceedings by the production of a copy or extract which is certified by an authority as specified in the Second Schedule of the Act. In this case, the certifying authority is the Commissioner of Police.

Part II of the Bill, clauses 6 to 8, seeks to amend the Larceny Act to extend the limitation period during which a complaint may be laid in relation to housebreaking offences. These offences are found in sections 28, 29 and 30 of the parent Act, from six to 12 months, as requested by the police service. Section 19 of the Administration of Justice (Miscellaneous Provisions) Act of 1996 amended section 28, that is, housebreaking and committing an arrestable offence; section 29, housebreaking with intent to commit an arrestable offence, and section 20 being found by night and/or in possession of housebreaking implements of the Larceny Act, by making these offences formally indictable offences, summary offences and, therefore, triable in the Magistrates' Court.

5.20 p.m.

There is no time limit for laying a charge or making a complaint for an indictable offence, but under section 33(2) of the Summary Courts Act, Chap. 4:20, a complaint for a summary offence must be laid within six months from the date of the commission of the offence. By reason of the amendment in 1996, those offences, now summary offences, are now subject to this limitation period of six months. The police service has pointed out that because of the nature of the offences under sections 28, 29 and 30 of the Act, it takes usually more than six months to complete the investigations which centre mainly around fingerprint evidence. The police, therefore, have suggested that the period to lay a complaint in respect of these offences be amended from six to 12 months and it is a proposal which the Government has accepted.

So that this amendment, as seen in clause 7, would allow the police more time to conduct their investigations and, therefore, to bring a successful prosecution. These offences are now governed by the six-month limitation period which is applicable to summary offences. The proposed amendment is necessary in the interest of justice because it will allow the police officers to complete their investigation within a reasonable time and it would also eliminate the normal six-

month limitation period as an escape route for offenders under sections 28, 29 and 30. This measure is urgently required in order to strengthen the administration of criminal justice and respect for the rule of law.

To address the concerns of the police service, clause 7 of the Bill provides, therefore, a one-year limitation period. Clause 8 of the Bill also seeks to change the offence of receiving stolen property under section 35 of the Larceny Act from an indictable to a summary offence. The amendments effected by section 19 of the Administration of Justice (Miscellaneous Provisions) Act of 1996 to sections 28, 29 and 30 of the Larceny Act have also affected the charging of persons with receiving property under section 35 of the Larceny Act, in that a person who receives any property, knowing the same to have been stolen or obtained in anyway whatsoever, including housebreaking, must, as the law now stands, be charged on indictment. However, when section 35 is read in consonance with the amendment to sections 28 and 29, it can be seen that an anomaly is created because housebreaking is no longer an indictable offence and, therefore, a person who receives the fruits of a housebreaking, cannot now be prosecuted under section 35 since the principal offences under sections 28 and 29 are now summary offences.

As a consequence, an amendment to section 35 of the Act is required to change the offence of receiving from an indictable to a summary offence. Without the present amendment the existing law contains a lacuna through which persons who are charged with receiving stolen property as a result of housebreaking, would go unpunished because the principal offence of housebreaking is now a summary offence.

Part III of the Bill, that is to say, clauses 9 to 12, will amend the Bail Act of 1994 in a way which is not inconsistent with the provisions of the Constitution. Clause 9 seeks to amend section 6 of the Act by removing the application of this section to a convicted person and to give a court the discretion to consider certain specified matters when deciding whether or not to grant bail to an accused person.

Clause 11 would provide a new section 6(a) to grant a right of appeal to a convicted person who has filed an appeal, or to the police, against a decision by the court to grant or to refuse bail. Clause 12 will provide a new section 11(a) to grant a right of appeal to an accused person who is denied bail by a judge of the High Court, or to the police, where bail is granted and the decision of the Court of Appeal would be final. Under the law as it exists today, that is, under sections 133(a) and 134 of the Summary Courts Act and section 11 of the Bail Act of 1994, when a person is convicted by a magistrate and he files an appeal to the

Court of Appeal, he may apply for bail to a judge who may or may not grant him bail. If he is not granted bail by that judge, he may apply to any judge for bail, but the law does not expressly provide a right of appeal to the police or to the convicted person against such a decision of a judge.

The Bill, therefore, seeks to confer such a right equally to the convicted person or to the police, as the case may be. There is a practice which is not legislated for, by virtue of which persons who are denied bail in the rare instance, seek to approach the Court of Appeal on affidavit, but the provisions of this Bill will make the procedure clear and there would be no need to go without the basis of a legislative sub-strata.

Part V of the Bill also seeks to address the issue of an appeal against the decision of a judge under section 11(1) of the Bail Act. Under section 11(1), a High Court Judge may grant or refuse bail to an accused person who was denied bail by a magistrate, or vary the conditions of bail as granted by the magistrate. But the law does not provide any right of appeal against the decision of the Judge under that section. However, the Bill seeks to create such a right equally to the accused person or the police, to the Court of Appeal, and it is proposed that the decision of the Court of Appeal should be final in this respect.

Within recent times, the need for this right of appeal has become very urgent, and I am sure the Members opposite would appreciate this point. The exercise of the discretion under section 11(1) by the High Court has raised great cause for concern by the police and the Director of Public Prosecutions. When, for example, much time and resources are spent by the State and the police to bring an accused person before the courts and upon refusal of bail by a magistrate that person is then granted bail by the High Court, this seriously affects the morale of the police and prosecutors and it seriously contributes to the problem which we face, of repeat offenders. That problem is going to be brought to this House for a vote, up or down, on the merits in a frontal way in the Bail (Amdt.) Bill which has been laid.

The, sometimes, unreasonable exercise of the discretion under section 11(1) threatens to undermine the administration of criminal justice and ultimately the rule of law. For example, notwithstanding the magistrate's refusal to grant bail and strong objections by state prosecutors to the granting of bail, the High Court has recently granted bail to the persons charged for kidnapping in the Camille Bobart kidnapping case. It has done so to a brother of Dole Chadee who was charged for possession of arms and ammunition, and recently to an attorney-at-law, Mr. Jagdeosingh, notwithstanding that he had absconded whilst on bail.

The Bill, therefore, seeks to, among other things, redress feelings of injustice by the public when persons accused of serious offences are granted bail and in some cases their own bail by the High Court and the State does not have a right of appeal to the Court of Appeal. Alternatively, the Bill also seeks to create a right of appeal to the Court of Appeal from a decision of a judge of the High Court who refuses to grant bail to an accused person and there are public feelings that significant injustice has been done. This cannot infringe on anyone's fundamental rights. Why? Because we are adding a right of access to the courts to appeal the decision which now resides in the magistrates and the High Court to the Court of Appeal.

Part IV of the Bill, that is to say, clauses 13 to 17, seeks to amend the Negotiable Instruments (Dishonoured Cheques) Act of 1998 which was passed during the term of office of the Members on the other side, to introduce certain measures as recommended by the police to strengthen the operation of the Act. The Fraud Squad has proposed various amendments to this Act after seeing how the Act has been used over the last couple years.

Clause 14 seeks to amend section 2 of the Act to provide that where a cheque is issued to replace a dishonoured cheque, that was lost, destroyed or cannot be found, the replacement cheque, if it is also dishonoured, is deemed to be the dishonoured cheque for the purpose of the Act. That has been a significant loophole and one through which many a horse has bolted.

Clause 15 of the Act seeks to amend section 3 of the Act to provide that the consent of the payee under section 3(2)(c) of the parent Act to stop the payment of a cheque, should be in writing for evidentiary purposes. This, too, has proven to be a difficulty in finding out when a stop payment has actually been issued. A new subsection (3) is also added to section 3 to clearly spell out the date when an offence is committed under the Act, that is to say, the time when it is presented for payment and the cheque is dishonoured.

Clause 16 seeks to amend section 4 of the Act to remove the discretion of the banks to issue the notice or protest informing the drawer of the dishonour and to require the banks to keep a certified copy of the notice or protest together with a copy of the cheque for a year. Clause 16(d) seeks to allow the payee to write to the drawer informing him of the dishonour and this written notice can be used in evidence, and if the drawer makes a written confession, the requirement to issue the notice or protest is not afterwards required.

Clause 17 seeks to amend the Act by proposing a new section 8 to provide that the limitation period to prosecute a summary offence under the Act would be one year, instead of six months, to allow the police sufficient time, again, to undertake

and to complete an investigation, for the reasons which I have advanced before. Because of the uncertainty surrounding these matters the Fraud Squad has pointed out that these amendments are needed in order to implement the Act smoothly.

Part V of the Bill, that is to say, clause 18, would amend the Forgery Act, Chap. 11:13. Clause 18 seeks to insert a new section 5(a) to the Act to provide that it is a summary offence, punishable with imprisonment for five years for a person to make, purchase, use or have in his possession, a forged driving permit, provisional permit or learner's permit issued under the Motor Vehicles and Road Traffic Act, Chap. 48:50, or a national identification card issued under the Representation of the People Act, Chap 2:01. The Fraud Squad of the police service has pointed out that the issue of identity theft is a serious national problem, which is growing.

Part VI of the Bill, that is to say, clauses 19 to 26, would amend the Electronic Transfer of Funds Crime Act, No. 87 of 2000. This, again, was passed while the Members opposite held the reins of power, but has proven to be largely ineffective. The amendments which the Government propose today shall make the Act effective. The amendments which we propose arose from consultation with the Fraud Squad. Clause 20 seeks to amend section 2 of the Act to apply to a person who is a cardholder but whose name does not appear on the face of the card.

Clause 21 seeks to amend section 4 of the Act to apply to a person who is authorized in writing by the cardholder to use the card. Clause 22 seeks to insert a section 4(a) to the Act to address the cases where a person lawfully obtains possession of a card but unlawfully retains it with the intention to use it to obtain money, goods, services or anything else of value. This offence is punishable summarily. The punishment is $50,000 or five years in prison, or on indictment, $80,000 or seven years in prison.

Clauses 23 and 24 seek to amend section 11 of the Act to make it an offence where a person uses force to get a cardholder or a person in possession of a card to use it to obtain money, goods, services or anything else of value, or to disclose the card number to him or another person in order to obtain money, goods, services or anything else of value. This offence is punishable summarily as well; $50,000 and five years or, on indictment, $80,000 or seven years in prison.

Clause 24 seeks to amend section 12 of the Act to make it a summary offence, $30,000 and two years for a person authorized by a creditor to furnish goods, services or anything else of value or an agent or employee of such an authorized person to intentionally remit a record of sale to the creditor, showing a purchase by a cardholder when, in fact, no such sale took place.

Clause 26 seeks to provide that summary offences committed under the Act would be prosecuted at any time within a year of the commission of the offence and not within six months as is normally the case in relation to summary offences.

This Bill seeks to make numerous reforms to the criminal justice system which is necessary in protecting the innocent and convicting the guilty. It is a necessary piece of legislation if we are to continue to reform our system of criminal justice and to modernize our system of governance. It seeks to introduce key measures in the fight against crime.

With these few words, I beg to move. [*Desk thumping*]

Question proposed.

Mr. Subhas Panday (*Princes Town*): Mr. Speaker, I will start over again. We have looked at the Bill and clause 3 speaks about taking a sample from a bulk and using that as the evidence. The law, as it stands, does not take into consideration the composition of the sample. For example, if the bulk is one big block, you may wish to take a sample from that block, but like in the case of *Paul and Others* in Arima where they found a container in a warehouse with various boxes in the container, these persons were charged.

If one goes into a container and by mere observation tries to determine what is the content of each box and the contents are different, or the quality is different, or the composition is different, what happens is, if one takes a small quantity from one box, then somebody might be given a heavy sentence for evidence which is not before the court. Therefore, what we need to do is to amend this section to include a situation where the bulk of the exhibit is contained in different containers.

I humbly submit that if that is the case, a sample must be taken from each box. So we will deal with the legislation as it stands. The other part about the sample in a container that is wrapped, and whatnot, we ask the question today: What infrastructure is being put in place to deal with such a situation? What the hon. Attorney General is saying is that it may be too difficult and cumbersome to take the bulk to the Forensic Science Centre for it to be examined. That means that that would be left at the property keeper's room in a police station or some place in the jurisdiction of the court.

That, I humbly submit, creates a situation which could be exploited, in that you have heard on many occasions that exhibits disappear. Further, you hear there are complaints from the population which state that "police planting things on me." The reason for that is it is difficult to really give an account of the bulk of the exhibit while it is in police custody. Further to that, what kind

of scales do the police use to weigh drugs? They use very coarse or rough instruments that merely give you averages. For example, if they are going to weigh some cocaine of about four kilos, they use a shop scale with the little thing moving up and down, or they use one of these spring scales and they take average weights.

So we ask the Attorney General: What has been put in place to ensure that the weights synchronize with that weight that would have been given had the whole bulk been sent to the Forensic Science Centre? Because if the weight is not properly taken, then that exhibit could be interfered with and policemen could use those exhibits to plant drugs on people. That is a situation which we need to take care of.

It says at clause 3(4):

> "The Commissioner of Police shall send the sample to the Trinidad and Tobago Forensic Science Centre for analysis."

It also says at a later stage that the Commissioner of Police shall dispose of the remainder of the substance for which a sample was taken, by destroying it or otherwise dealing with it. There have been cases where the police have tampered with drugs. I am certain you will remember the La Tinta Enquiry in which drugs were found and up to now some of the drugs cannot be accounted for and no sort of enquiry, no sort of investigations have gone into that incident of the disappearance of those drugs.

Further, there is no mechanism in place to ensure that what goes for destruction is, indeed, the drug. There is evidence that after you go to court and you tender the exhibit, the court probably would find you guilty and would say: "The exhibit is to be destroyed by the Ministry of Health." The same complainant takes the exhibit from the court after the case is finished and he is supposed to return it to the property room, but he could put a piece of dinner mint in there; he could put flour and take it back to the property keeper's room and weigh it. So if they try to catch him by weight, the policeman's weight is all right. And he takes the drugs and then recycles it. Either he sells it or he plants it on other people.

What is necessary is that each inventory is supposed to be taken from every court in Trinidad and Tobago as to the weight of the drugs which are returned to the police and that exhibit should be tested to make sure that it was authentic before you destroy it. This is a serious lacuna in the law that we need to take care of. Although this sample from the bulk is an attempt to do away with the problems in transport, I humbly submit that justice must not be sacrificed at the

altar of expediency, because the sentences for drug offences are very, very severe. For trafficking, you could get up to lifetime imprisonment. We must make sure that this exhibit is so important that we do not let it slip out.

Another thing is, they say you must take a sample from the bulk. The offences for these criminal drug charges are based, apart from the other elements of the offence, upon weight. Therefore, in borderline cases, what do you do? For example, below one gram of cocaine and below one kilo of marijuana, it is called possession simplicita. I think the fine for that could be $50,000 or five years imprisonment. And if you go to 1.1 gram of cocaine, it is lifetime imprisonment. So what must be the size of the sample which is taken from the bulk to ensure that, since the bulk would surely catch you for possession of narcotic for trafficking? I humbly submit that we include in the legislation that the sample should be more than one gram. Because if the sample is less than one gram and all the amount is diluted, then somebody might be going to jail for trafficking, when in truth and in fact, it is a situation of possession simplicita.

These are the points we have on possession of narcotics for taking the sample from the bulk. No amount of certificate of sample, or sealed substance from bulk; the weights, kilograms, grams, et cetera, could give the protection that is necessary for the society against policemen who are unscrupulous, and we must devise a system to ensure that does not take place.

It also went on to say that the director of the Forensic Science Centre may authorize any one of the administrative staff to accept this exhibit. The reason you have this designated scientific officer is when you take this exhibit to the Forensic Science Centre—a Mr. Walker—he opens the exhibit in front of you; he takes it out the bag that you have; he takes the markings that you have on your bag and he gives the bag a marking; he puts his signature on it and he seals it. So you are sure that what you give the scientific officer: "I give it to you; you are responsible for it", so when the policeman returns to the Forensic Science Centre, you do not go to any officer for this, you know; you go to the officer to whom you gave this. There is no third man to say: "I miss it; rat eat it; it fall somewhere." That officer is responsible for this exhibit from the time it leaves the hands of the policeman until it returns to the hands of the said officer. He signs for it; the officer signs for it, so the exhibit is secured. That person is somebody who is trained. So he cannot come sometime later and say: "It is a mistake I made." He is trained to carry on his job.

What happens now is that when you authorize anyone, as it says here at clause 5(a):

> "Where any substance or thing required to be submitted to a Government expert for examination, analysis or report, that substance or thing can be lawfully received by any person duly authorized by the Director of the Trinidad and Tobago Forensic Science Centre…"

We humbly submit that although you are saying that you are underutilizing scientific officers' time for them to receive that exhibit, we must ask ourselves: How long does it take to receive that exhibit? You go to the counter at the Forensic Science Centre; you just hand it to him; he signs; you sign; he gives you a document and you go. I humbly submit that such a procedure does not take up much time and it is dangerous to allow non-scientific and non-qualified persons to tamper with these exhibits, because it is too important and it plays an important part in the trial of any matter.

The issue about maintaining records—do you remember, Mr. Speaker, at one time at the Forensic Science Centre that cocaine had been brought to the Centre and the scientific officer just left it there and it disappeared? I think the cleaner picked it up and left. If you want to protect this exhibit very securely, then you could only put that responsibility in the hands of a few, not anybody else, like the administrative staff. Therefore, we need to look into this system to find out whether there could be any abuse.

In clause 5, what we are trying to do in this Administration of Justice (Miscellaneous Provisions) Bill is to say that any document from the fingerprint technician from the criminal records office could be admitted into evidence without his signature being in question. When one looks at the Evidence Act, one would see that it deals with DMOs, coroners, senior pathologists, pathologists, government chemists, et cetera. This is the class of persons that we could admit the evidence without the persons being there. The rationale behind the law is that that evidence is a type of formal evidence and that we do not want to have doctors coming in court and sitting for long periods, so you say: "Look, a doctor's report, a DMO's report, let it come in." But when it comes to a fingerprint technician, you ask the question: What is a fingerprint technician? What is his training? Is he a professional to allow him this facility that you will give a trained DMO or a senior pathologist, or a pathologist or a government chemist?

I humbly submit that this fingerprint technician should not be brought within that category. Furthermore, the police is the investigator; the police prosecutes and the police is using one of their own to give expert evidence. So that fingerprint technician

is not really an independent witness like, say for example, a pathologist. A pathologist comes from a different stream; a DMO comes from a different stream from the Ministry of Health. So what you have here is a fingerprint technician who, in reality, is not an independent witness being given that privilege of a DMO. Also, we think that to bring in a fingerprint technician from the criminal records office is really reducing the standard of qualification and if we continue in that way, we may go down and down and anybody would be permitted to tender their documents without having to be there. I humbly submit that that should not be so.

Further—Part III—The Extension of Time to Prosecute Certain Summary Offences, the hon. Attorney General says that we want to extend the time from six months to 12 months for the offences under sections 28, 29 and 30. We must be careful when we do that because what is happening is, if you allow too much time to lapse for the investigation, what happens is that the investigation would slow down in the beginning and pick up in the end and, in any event, as time goes along, it becomes more and more difficult to investigate. Because if you ask somebody: "Where were you so and so night?" If you ask him two weeks after, he might be able to tell you; three months after, he might be able to tell you, but at the end of 11 months if you ask him: "Where were you so and so?" Most likely he cannot help you. So what we should really do, instead of giving more time to the police to investigate matters, is give them more resources, more assistance, and ensure that the matter is dealt with within the six months so that we could have the expedition of the criminal justice system. What we should do is to try to upgrade the system rather than saying the system is not working and give an excuse here for the failure of the system.

The hon. Attorney General spoke about clause 8 where it says that a person who receives any property, previously he was charged indictably, now he has brought it as a summary conviction. Instead of making housebreaking and larceny a summary offence, make it an indictable offence as a hybrid offence in Chap. 4:20 in the Second Schedule, so that you have all the time as an indictable offence because you do not have any time limits on it. So when you bring it under the Indictable Offences Act, you take your time and investigate a serious offence, but at the same time you slip it into the Second Schedule, Chap. 4:20 as a hybrid offence. So when you go to the court now, the police could say: "Look, we recommend summary trial". And the accused, nine out of 10 times, accepts it.

We could do the same thing—instead of having to go from indictable to summary, we could have changed the housebreaking into an indictable and make it a hybrid offence. Also, it says that:

"…on summary conviction, to imprisonment of five years."

I know there is a scale that a certain fine goes with a certain term of years. I wonder if the Attorney General could add in the alternative to the compulsory incarceration.

On the question of bail, we agree with that, in that what happens at the present time is that if a magistrate under section 6(2) of the Bail Act refuses bail, you go to a judge in chambers, and when you go to a judge in chambers, the judge may grant bail or he may refuse bail. Section 132 of Chap. 4:20 says that if bail is refused by a judge you cannot go to any other judge for bail, but you must come back to the same judge and show a change in circumstances. The law as it stands does not provide for an appeal and I think that an appeal is a good thing, in that you allow both the prosecution and the defence, if they do not like what the judge has done, to go to the Court of Appeal.

The hon. Attorney General spoke about the High Court granting bail where the magistrates refuse. It seems to me that the magistrates have complained. But when you go before a judge in chambers for bail, the police is present; the Director of Public Prosecutions is present there, and the question the judge asks is: How long has this man been incarcerated? If it is six months, he would say: "No, no, no. Have it done early." Sometimes he just says: "No bail". But he puts an onus upon the prosecution to have this matter started within three months from today. And he says: "If this matter is not started within three months from today, come back before me." And when you return to him and he asks the prosecution: "Why has it not started?" No answer. "When do you expect it to start?" "Don't know". It is then that the judges use their discretion and grant bail.

So what we need to do is really to have the administration of justice system in such a way that there would be no need to go to the Court of Appeal, but that the matters be started and dealt with. So what we are really trying to do here again is to patch the system; put a band aid on the system which is due to inefficiency in the system. I wonder, however, why they say that the Court of Appeal is final. But be that as it may, this piece of legislation is, indeed, an improvement on what we have. This, I humbly submit, will deal with all the problems. I do not know if the

Attorney General realized what happened here. This piece of legislation will deal with the issues that he anticipates will crop up in the Bail Act, because this here deals with the issue. Because if you do not like when a man gets bail, take it to the Court of Appeal and you will have your views ventilated there.

At present the law says that if—you are speaking about hardened criminals getting bail, but section 6(2) says that if you commit an offence while you are on bail, the court has the power not to grant bail and it is in these exceptional circumstances that the court grants bail. As a hardened criminal, there are certain offences like drug trafficking, arms and ammunition which fall under the Second Schedule of the Bail Act which says that if you have convictions in those matters, that you cannot get any bail at all. Therefore the Act as it is deals with the situation and if the prosecution who is at present at bail hearings does not like it, why do they not take it up? So you put in this plug here to use the Court of Appeal so now you have all the remedies you need for the Bail Act.

I am almost finished. The rest is really procedural. Under the Forgery Act it says that somebody who commits forgery by using a driving permit, et cetera, is liable on summary conviction to a term of imprisonment for five years. I think under the present law of forgery that the fine is up to ten years. However, it has an alternative. But I agree with this because using drivers' permits for identification and using false identification is a serious matter and I am certain it would affect most of the Grenadians you have brought here, using false ID cards.

With those few words, I humbly submit that most of this Act is procedural. Thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. John Jeremie): Mr. Speaker, I rise once again to speak to my friend. I am really fond of him; that is why I call him my friend, the Member for Princes Town.

The Member started his contribution by saying he was rising again and that he was speaking again. I, too, wish to say that I am rising again and I am speaking again to his contribution. What I want to remind the Member is that in his contribution he failed to appreciate the significance of the statements made by the Minister of National Security and the Attorney General on Monday which really set the tone for everything that we are doing this afternoon and everything that we are about to do.

The Member does not appreciate the fact that the crime levels in the country require us to be innovative; the crime levels require us to be courageous; the crime levels require us to be decisive; the crime levels require us to action. The liberty of this country and its people will not be secure if we continue to do business as usual. We must be representatives in the truest sense of history, looking to the welfare of all of our people and to the future interest of the country.

The legislation provides all of the appropriate checks and balances which other territories with similar constitutions have thought to be appropriate. Our legislation provides for these checks in relation to bulk evidence and also in relation to the chain of custody concerns raised by the Member for Princes Town in relation to the custody of evidence and the freeing up of resources at the Forensic Science Centre.

In relation to the extension of time to prosecute an offence, what we are doing is allowing the police to prosecute persons without an arbitrary and short period of time. We gave more resources, yes, but also we allow a greater period of time for investigation. The objective is to punish criminals. I am grateful for the agreement which he grudgingly gave with respect to the Bail Act, but it is really very little consolation in terms of the entire package of legislation which we present and which we propose to debate, particularly in relation to the Bail Act.

I thank the Member for his contribution. I say to him that we are working to finality with respect to our criminal package, and with these short words, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 26 (Parts I to IV) ordered to stand part of the Bill.

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

House resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move that this House be now adjourned to Friday, June 10, 2005 at 1.30 p.m. As Members are aware, on that day we would do the report of the Finance Committee as well as the Supplementary Appropriation Bill.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.14 p.m.