SENATE

Tuesday, September 06, 1994

The Senate met at 10.00 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LATE ARRIVAL

Mr. President: Senators Prof. John Spence, Michael Mansoor, and Diana Mahabir-Wyatt have indicated they will be a little late for today's sitting of the Senate.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, brought from the House of Representatives [*The Attorney General and Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings. [*Hon. K. Sobion*]

Question put and agreed to.

PAPER LAID

The Defence (Rates of Pay and Allowances) (Amdt.) Regulations, 1994. [*The Minister in the Ministry of National Security (Sen. The Hon. Russell Huggins)*]

SELECT COMMITTEE REPORTS

Constitution (Amdt.) Bill

Presentation

Sen. The Hon. Camille Robinson-Regis: Mr. President, I have the honour to present the Final Report of the Special Select Committee of the Senate appointed to consider and report on the Constitution (Amdt.) Bill, 1994.

Mr. President, I wish to inform hon. Senators that accompanying this Final Report is the Minority Report of the UNC Opposition Senators of the Committee. The Minority Report was circulated this morning to all Senators as it was not previously available.

Thank you, Mr. President.

Indictable Offences (Preliminary Enquiry) (Amdt.) Bill

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I wish to present the Report of the Joint Select Committee appointed by the Senate and the House of Representatives to consider and report on a Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

Hon. Senators will recall that at an earlier stage of today's proceedings, the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill was read the first time. I wish to take this opportunity to inform the Senate that that Bill was amended by the other House to the extent as it appears in the report referred to in the Appendix to that Report.

COMPANIES BILL

Sen. Ainsley Mark: Mr. President, I wish to present the Report of the Joint Select Committee appointed to consider and report on the Companies Bill, 1993.

ORAL ANSWER TO QUESTION

Mrs. Yvonne Bobb
(Qualifications and Emoluments)

The following question stood on the Order paper in the name of Sen. Muntaz Hosein:

66. Would the Hon. Prime Minister please state:

(a) the present salary of Mrs. Yvonne Bobb, who is employed in the Trinidad and Tobago Embassy in Washington;

(b) (i) the job description for the position which she occupies;

(ii) the job specifications, including the skills, qualifications, knowledge and abilities required for the job?

(c) (i) whether Mrs. Yvonne Bobb is in possession of the qualifications and experience required for the job;

(ii) the amount of sick leave Mrs. Bobb has taken for 1994, thus far;

(iii) the name of the person who performs her duties when she is absent.

Sen. Dr. The Hon. L. Saith: Mr. President, I regret that the answer to this question is not ready, and I seek a deferral of one week.

Sen. Wade Mark: Mr. President, the Leader of Government Business is aware that this may be our last sitting and therefore this question is going to lapse. We have given this Government so many weeks in terms of postponement.

Mr. President: Sen. Mark, you are not even the person asking the question. As I said before, if we do not defer it for a week we are no better off than we are at the present time. Obviously, the Minister is not ready to answer the question.

Is it the wish of the Senate that Question No. 66 be deferred for one week?

Sen. Hosein: No.

Mr. President: I think we have no alternative but to defer question No. 66 for one week.

Question, by leave, deferred.

CHILDREN (AMDT.) BILL

House Of Representatives Amendments

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I beg to move the following motion standing in my name:

Resolved:

That the House of Representatives amendments to the Children (Amdt.) Bill, 1993 listed in the Appendix be now considered.

Question proposed

Question put and agreed to.

House of Representatives amendment read as follows:

New clause 4	Insert the following new clause 4 to read as follows:
"Section 2 amended	4. Section 2 of the Act is amended by substituting for the definition of "place of safety" the following:-
	'place of safety' means, any place appointed by the Minister to be a place of safety for the purpose of the Act, or any hospital or other suitable secure

place the occupier of which is willing temporarily to receive a juvenile."

Mr. K. Sobion: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Question proposed.

Question put and agreed to.

10.10 a.m.

*Clause 11(11) (*as re-numbered).

House of Representatives amendment read as follows:

"Insert a new paragraph (f) of section 15(11) to read as follows:-

'(f) a situation where any child or young person is being used as a drug mule and drug pusher by those having his custody, charge, or care'."

Mr. Sobion: Mr. President, these amendments came from the other place as noted in the Order Paper. I would, however, wish to propose an amendment to this section, to delete the word, "mule" as appears in line three, and to substitute, what I consider to be a more elegant term, "courier."

Question proposed.

Sen. W. Mark: We have an objection to that. We are not convinced that the word should be changed.

Mr. President: Do you want to debate the question? I do not want anybody to behave stubborn like mules, you know. *(Laughter).*

Sen. W. Mark: Mr. President, we really see no basis for this change here at this time. I do not know why the Attorney General would come to this Senate with amendments from the other place and then have them amended when we are supposed to accept these things. I see no basis for wanting to change "mule" to "courier." Is it more elegant? I do not understand it. We have no problem with the term, "mule". A mule is a mule, and let us go with that. Why do we want to change that?

Sen. R. Huggins: Mr. President, I had suggested to the Attorney General that we make this amendment because the term, "courier" has a wider connotation

than "mule." The term " drug mule" is not really a term of art. It is a term that was developed by the police to refer to a situation where someone conceals drugs on his person, and I was seeking to have a term used which would provide wider coverage than simply somebody concealing a drug on his person. I think it would make the legislation stronger. At least that is what I hope we all want.

Question put and agreed to.

Clause 16.

House of Representatives amendment read as follows:

"Insert a new clause 16 to read as follows:-

"16. Where under sections 3, 5, 6, 8, and 9, a person is convicted of an offence, the Court shall have the power to make an Order for the convicted person to be submitted for counselling."

Mr. Sobion: Mr. President, I beg to move that the Senate doth agree with the House of Representatives in the said amendment.

Question proposed.

Question put and agreed to.

BAIL BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I beg to move,

That a Bill to amend the law relating to release from custody of accused persons in criminal proceedings and to make provision for legal aid for persons kept in custody and for connected purposes, be now read a second time.

Mr. President, the long title of this Bill expresses, quite clearly, the intent and purpose of the Bill, which is commonly referred to as the Bail Bill of l994.

Before moving towards an analysis of the provisions of the Bill, it would be useful if we were exposed to the purport and intent of the Bill, and given some idea, as well of the history of this legislation. The Explanatory Note says:

"The existing law relating to bail in criminal proceedings is to be found partly in the Common Law and partly in various statutes. There is no single piece of legislation dealing comprehensively with the subject. There is a dearth of statutory guidelines governing the exercise of judicial discretion for granting bail in such proceedings.

> Whilst it is clear that the bail decision must ultimately be discretionary, the identification of relevant criteria in legislative form would be of assistance to judicial officers..."

This Bill, therefore, seeks to establish statutory guidelines for the grant of bail as its prime intent and purpose. These guidelines, by and large, follow the case law development which had been applied by our courts over the last few years, but they are now put in a clear statutory form, which would then lead the judicial officers and legal representatives of accused persons and the prosecution, to a situation where they can be guided in terms of their presentation of arguments for bail, and the judicial officer, in the determination of such applications.

The Explanatory Note continues:

> "The object is to strike the right balance between, on the one hand, the principle that no one should be deprived of his liberty unless and until his guilt is proved and, on the other hand, the community interests that persons accused of criminal offences should not easily avoid trial and that no one is released who cannot be released on bail with comparative safety."

So what we are doing, as well, in this Bill, is seeking to balance the interest of the wider society at large to enjoy the freedom to exist in society with a certain degree of security, as opposed to the right of the accused person to his liberty, having regard to the fact that his activities outside the law may impinge on and affect the normal, average, law-abiding citizen.

10.20 a.m.

Before looking at the detailed provisions of the Bill, I may signal as well, that we have sought in other ways to balance that interest by ensuring that the accused person also has certain other rights, including the right to appeal, based on a written decision of the judicial officer who determines his bail application.

At present, a judicial officer who denies an accused person bail is not required to state any reasons in writing. So that on appeal from that decision, an accused person will normally be faced with a difficulty in that he would not be certain as to exactly why his application has been refused. In balancing the interest of the accused as against the interest of the wider society at large, we have not necessarily sought, as has been suggested, to limit the rights of accused persons, but to afford some measure of increased protection for their right to liberty in certain other areas.

I said that before examining the specific provisions of the Bill, I would make some reference to the history of the Bill. It is noted in the Explanatory Note that there was no clear or specific code relating to the grant, and guidelines for the grant, of bail. This is a matter which has been of some concern for many years and in 1983 the Law Commission started work—including the necessary work of investigating other jurisdictions and so forth—in order to prepare draft legislation. That draft legislation was completed in 1986 but did not see the light of day until 1988 when, in fact, two draft bills were published for public comment.

Those two draft bills received a very torrid reception from the general public, the media, the Law Association and a number of other institutions within the society who considered the measures to be bordering on the draconian.

I may add that the two draft bills also suffered from comments made by the Constitution Commission which reported in 1990. I refer to item 104 of the Report of that Commission, which states:

> "Before passing on to deal with the other submissions on the fundamental rights, the Commission wishes to comment on the matter of the granting of bail to an accused person, if only because of certain events which transpired while the Commission was engaged in the taking of evidence."

Although the report does not say so, it was obviously referring to the public debate which was taking place having regard to the publication of the two draft bills in 1988.

Item 105 states:

> "Section 5(1) of the Constitution provides that—
>
> > 'Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.'
>
> And section 5(2)(f)(iii) provides that—
>
> > 'Without prejudice to subsection (i), but subject to this Chapter and section 54, Parliament may not deprive a person charged with a criminal offence of the right to...bail without just cause.'"

Item 107 of that Constitution Commission Report states:

> "In 1988 draft legislation was prepared and published by which it was sought to introduce, *inter alia*:

(1) a statutory presumption in favour of bail to an unconvicted defendant in certain cases;

(2) a definition of the circumstances in which a court may exercise its discretion to deny bail in respect of certain prescribed offences; and

(3) a substantial addition to the list of non-bailable offences of murder, treason and piracy."

The report states that:

> "Public comment was highly critical of the measure to remove the Court's discretion to grant or refuse bail in such a large number of cases and, in the result, the draft Bill was not proceeded with in Parliament."

There are two points of note here. In looking at the history of bail legislation, one would note that legislation of this type has always been a subject of comment by the general public and by specific institutions and organizations. In fact, the Constitution Commission itself received reports from over 40 organisations, over 128 individuals and in addition to those memoranda, a further 22 organizations also made presentations to the commission by attending its meetings; and a further 25 individuals made similar contributions to the work of the commission.

The first point of note is that legislation of this type has always received a significant amount of public comment. Rightly so, because it affects the fundamental rights of the individual as enshrined in the Constitution, and, more particularly, the right to liberty.

The second point of note is the difference between the 1988 draft Bills and the 1994 Bill. The 1988 Bills sought to add to the offences of murder and treason which would then be non-bailable. It was a significant addition to the list of offences which would not lead to even a grant for application for bail, whether or not a person had demonstrated a history of deviant activity. If a person was charged for the first time for any of the numerous offences which were contained in that legislation of 1988, that individual would have been denied any right to bail altogether.

What is informed in the 1994 legislation is the philosophical concept of dealing with repeat offenders. What we have sought to do in this legislation is to find a proper base for limiting the right of an individual to bail. What we have considered, and looked at, is the concept of persons who by reason of their past, and continuing conduct, pose a threat to the society at large. All of that is

encapsulated in the term "repeat offender." We have sought to target those persons as being persons who, in a sense, can be said to have forfeited their right to liberty.

10.30 a.m.

It therefore causes me to turn specifically to the principal provision in the Bill which deprives a person of liberty. If I may start from the end, you would note in the First Schedule the circumstances in which persons are not entitled to bail. Essentially they are murder, treason and the other two which follow, piracy or hijacking, and any offence for which death is the penalty fixed by law. The other two, (c) and (d), are the only two additions to the circumstances when there will be a refusal to grant bail. A person is not entitled to bail if he commits any of those three offences at (a), (b) and (c), and any other such offence as may later be prescribed where death is a penalty fixed by law.

The second part of that Schedule which, in the amendments passed in the other place, has now been redesignated as specified offences instead of offences for which bail may not be granted, is a list of offences from (a) to (n). In the original Bill it runs only to (m), but there is an amendment coming from the other place which introduces a new offence, that of receiving stolen goods. It appears on the list of amendments which has been circulated.

We have sought to identify and isolate the kinds of offences which have become prevalent in the society and which impact on the peace and good order of the normal life of law-abiding citizens. We have identified, in so doing, the offences which have had a deleterious effect on the society as a whole, and I refer specifically in this instance to drug trafficking, which has serious spin-off social effects quite apart from the persons who are actually engaged in criminal activities.

We have identified those two offences which we consider to be the major problems within the society, and the areas in which criminal activity has become heightened. They run the gamut, but I would not list all of them: 'trafficking in narcotics, or possession of narcotics for the purposes of trafficking; possession and use of firearms, rape, sexual intercourse with a female under 14, buggery, robbery with aggravation, larceny of motor vehicles and so forth—the kinds of offences which have a serious impact on the lives of law-abiding citizens.

As the Bill has now evolved after public comment over the last few weeks, and after debate in the other place, the amendments which now appear before us, substitute a new clause 5 which preserves the non-bailable nature of the offences

listed in Part 1 of the First Schedule. The significant amendment appears in subclause (2) of clause 5. I will read the entire clause:

> "A court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions:
>
> (a) of any offence; or
>
> (b) of any combination of offences listed in that Part unless on application to a judge he can show sufficient cause why his remand in custody is not justified."

There is at the outset a prohibition on the grant of bail to persons who fall within the description of clause 5(2). In balancing the interest and right of the individual to liberty, we have opened an avenue for such a person to make an application to a judge. His first appearance will be before a magistrate, where he would have been denied bail, but he can then make an application to a judge, and the onus will be on him to show good cause why his detention is not justified.

Again, recognizing that there may be some instances where there has been an element of reform in relation to the accused person, we have limited the calculation of those prior convictions to a time within 10 years of the last charge, and that is the substance of subclause (3) of the amended clause 5.

We have, therefore, met with the second purpose of this Bill as I had outlined when I read from the Explanatory Note. That is, to see about ensuring the balance between the right of the society to exist with a degree of security to conduct its normal business with that sense of security, and to ensure that whatever limits are put on the individual's right to liberty, are done with a certain degree of balance at all times.

There is one other observation that I ought to make in relation to this clause particularly. It is an observation which, no doubt, will apply to the Bill as a whole. It is an observation which I chose to make upfront, because I know that there will be those who will come with pre-recorded messages that this Bill does not or will not deal with the incidence of crime.

One has to understand that dealing with crime and criminal activity, seeking to bring down the rate of crime and criminal activity is not going to rest on the passage of any single piece of legislation. As a matter of fact, it is not going to even depend on the passage of a series of legislation. It is going to depend on a number of factors, factors which this Government well understands and factors

which this Government has been implementing over the past two and a half years. I have had cause on other occasions to seek to demonstrate quite clearly the Government's approach to crime.

10.40 a.m.

Sometimes in my absence, I am criticized when I make the pronouncements that people should not become hysterical about crime, and that what is required is a reasoned and measured approach towards dealing with the problem.

In our approach to this problem, we have said that one has to look at the phenomenon of crime in its three phases. There is a fourth phase which is perhaps the earliest phase of all, but I would not deal with it at this point. There are really three phases. For brevity, I would try to incorporate the earlier into what would be the second. If one analyzes it into three stages—there is the pre-trial stage, the trial stage and post-trial stage.

The pre-trial stage would involve several preventive aspects. There are those who have argued quite eloquently that what is needed is an analysis of the economic circumstances of the country; that poverty needs to be addressed, and a number of other factors which lead, perhaps, to a person turning to a life of crime. There are those who are more greatly influenced by the religious aspect of things and would say there is a need to return to a higher degree of morality and religious teaching. There are those also who would argue that there is a breakdown of family life, and that there are a number of causative factors. One has to address those measures not only in terms Governmental; the other institutions within the society have to address, as well, given their sphere of activity, those areas of causation which have been identified.

Over the last few years, the Government for its part has sought to introduce some measures which would go some way in addressing some of those causative factors. I would mention briefly the expansion, increase and intensification of programmes such as YTEPP, On-the-Job training, the Civilian Conservation Corps and the Apprenticeship Schemes. These are measures by which the young people are brought together within the kind of environment where they can be taught social and moral values, in addition to productive skills. The approach of the Government has been to start with even the causative aspects of crime.

The pre-trial stage would necessarily involve the question of the arrest and apprehension of persons who commit offences. Of course, you would recognize immediately that no amount of legislation could deal effectively with the question of increasing the efficiency of the investigation and arrest stage. What the

Government has recognized very early is that one of the problems with the enforcement agency, and specifically, the police service which is charged with that civil responsibility, is the major problem of management.

For that organization to effectively perform its functions, there must be an improvement in its management capability. We recognize that in two areas. In the hands-on area, there was a dearth of management in matters such as human resources, finance, fleet management and, most importantly, the management of the transportation arm of the police service.

It is a common criticism of citizens that they call the police station and the response that they receive is that the police have no vehicles so that the criminal manages to make good his escape. I have seen criticisms based on numbers that there are 560 police vehicles and about 200 are in working order. Nobody has really taken the time to do a serious analysis of what exactly are the particular needs of the police service.

It made little sense continuing to purchase vehicles for the police service on the basis that if there are 500 and only 50 per cent are working, you need to increase by another 50 per cent. No thought was given to how these vehicles are being dealt with in terms of what sort of management at the station level is taking place, whether vehicles are being abused or used for the proper purposes. We thought it necessary to introduce that kind of skill and expertize into the police service to deal with that aspect of the crime phenomenon, so that a civilian fleet manager has been put into the police service to deal with that area of criminal activity thus increasing the efficiency of the police service.

Quite apart from those hands-on areas, I have identified the question of human resource management, transportation and finance. We have also embarked on the computerization of the police service to aid in the tracing and tracking of criminals, and ensuring generally and basically that the needs from an investigative point of view are met.

We have also sought to improve the level of equipment in terms of weaponry which is available to the police service. We have sought to introduce improvements in communication equipment. In the pre-trial stage of the crime phenomenon, there are a number of initiatives by this Government, quite apart from legislation, which have been put in place. That is what we call the reasoned and measured approach.

At the higher level of management we have recognized that there is a problem relating to and which affects the whole question of morale. It starts with the

operation of Service Commission which is the higher level of management of the police service. We have introduced legislation, as Members would be aware, to deal with that area of management in the police service.

In the trial stage, after post apprehension of the criminal—you would recall that in March 1992, we made recommendations for the appointment of a committee to look into the question of delays in the administration of justice, and to report within six weeks of its being so commissioned. Since that time we reported to this Parliament from time to time that the report of that committee is now subject to an implementation team within the office of the Attorney General. That implementation is proceeding as fast as we hope to achieve it, having regard to the financial constraints which the Government faces, and some of the problems which arise in dealing with institutional change at the administrative level.

10.50 a.m.

We have recognized that in order to deal with the phenomenon of criminal activity, attention must be paid to the area of implementation as well, in order to ensure that justice is meted out as expeditiously and as effectively as possible to persons who turn towards areas of activity outside the norms and regulations established by the society.

In that connection, I mentioned that the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill, which had its first reading here in this House today, is a measure which is of some significance in that regard, because it introduces—and I do not want to be accused of pre-empting a debate on the matter—a machinery whereby the hearings of preliminary inquiries can be expedited, dependent, of course, on the human element, the persons who man the courts, and the persons who represent accused persons appearing before the courts.

We are well aware that any system can be abused, and I can only urge that, once that legislation is passed, there is a degree of maturity in the way the legal profession approaches the application of that machinery.

Administratively as well, after consultation with the Honourable the Chief Justice, we have increased the number of operating criminal courts, we are seeking to increase the number of judges available to those courts, and we have sought, administratively as well—after discussions with the Director of Public Prosecutions and the Chief Justice—to establish a priority system whereby matters of greater urgency can be dealt with and expedited through the system.

I could go on and on. You would note that the one-way mirror facility has been established in order to ensure greater protection of witnesses and so forth. There are a number of administrative measures which have been put in place at the trial stage to ensure the expediting of matters at that level.

Nonetheless, I should add that you would have noted recently that seven new contract legal officers were taken on, in the office of the Director of Public Prosecutions in order to meet the shortfall of officers in that department.

The post trial stage deals with conviction and sentence. There have been concerns over the years about the ability and capability of the prison service to perform a rehabilitative function. It is a problem which is well recognized, but which, because of the inadequacy of the present facilities, has been very difficult to implement in as ideal a manner as one would have liked.

I may say, and I must commend the persons involved in the prison service. I have had the experience of merely visiting the facility at Golden Grove and one can see the work being done there in agriculture, in the trades, in industry; there is a properly functioning bakery which is manned by the prisoners and services a number of other institutions. So that, with all the inadequacies, there nonetheless exists a certain level of rehabilitative and reform work taking place in the prison service at the moment.

What we hope, what we expect and what our plans have told us we are heading towards, is an enhancement of that system, once the new facility is opened in October or November of this year. We are hoping that the design and so forth will provide the opportunity and the creation of space in some of the other institutions which exist at the moment, to enhance the rehabilitative and reform work that is taking place in the prison system.

As I said, some of the activities are administrative and some are legislative. You will note as well, that, during the course of this Parliament, on the legislative side, we introduced the Young Offenders Detention (Amdt.) Bill. The Act now provides an opportunity for young persons who are detained in places of detention to pursue educational courses outside the detention centres on licence from the Prison's Commissioner. The purpose of that legislation, simple as it then was, was to aid in the overall approach by the Government to deal with the crime phenomenon. The Young Offenders Detention (Amdt.) Bill which was passed, deals with the rehabilitation of young persons by affording them the opportunity to improve themselves.

I may note, finally, on this aspect, that the post-trial stage which deals with conviction and sentence is not designed to deal only with conditions which will

seek to improve the lot of persons who have been convicted; as an underlying support for our system of law, order and justice is the efficient and effective carrying out of sentences lawfully passed by the courts of our country.

You would recall that in the debate on the Corporal Punishment Bill, it was pointed out that persons were using the loophole afforded them by that legislation to avoid the sentences of corporal punishment which were ordered by the courts. That legislation affords the authorities the opportunity to ensure that sentences of the courts are carried out as effectively and as efficiently as possible, and that the system of law, order and justice is not undermined by persons who have no intention whatsoever of supporting the system of law and order.

I have said all of that to signal to those who, as I say, will be pre-programmed to criticize this Bill on the basis that it will not solve the problem of crime. It is not intended so to do, standing in splendid isolation; it must be viewed as part of the overall plan and programme, much of which I have described a short while ago.

It is in that scenario that one must view this Bail Bill of 1994, which seeks to put this matter on a firm footing once and for all, and which seeks to eliminate some of the difficulties which are created when one leaves too much of a discretion to individuals who may be operating from different social perspectives—you have disparities between one approach and another.

11.00 a.m.

I think from that point of view the significant aspect of this Bill would be those provisions which establish the guidelines which are to be used in determining whether bail should be granted or not. I therefore refer specifically to clause 6(2). The marginal note tells you that this deals with circumstances in which bail may be denied. Effectively, what it does is set out the guidelines which a court will have to address in determining a bail application. That clause says:

> "Where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment, it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

The circumstances are clearly spelt out. They include:

> (a) where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—

(i) fail to surrender to custody;

(ii) commit an offence while on bail; or

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person."

From the very outset we identify some of the prime concerns which a court will have to use in determining whether or not bail should be granted. I need not underline any of those factors; I think they all speak for themselves and have been the subject of much concern by all right-thinking persons in the society.

A number of other considerations follow, for example, whether the defendant should be kept in custody for his own protection. We are well aware that in these times of organized crime activity, persons who become part of gangs very often find themselves to be very expendable. *[Interruption]*.

Mr. President, Sen. Capildeo has just read my mind, completely, that there are some people who become expendable. It may be very necessary—

Sen. Hosein: Speak for yourself.

Hon. K. Sobion: Mr. President, some persons might have found themselves living a dismal existence were it not for certain events which led to the departure of a certain individual from the shores of Trinidad and Tobago.

We have sought to put guidelines in the Bill, some of which have been developed by the courts of law analyzing applications for bail in the common law system which has been operating without the statutory guidelines. There is a proper basis for the guidelines which are set out in clause 6. They are guidelines which are well known to the law and which are of prime concern to the citizens at large.

I want to draw attention to the provisions of clause 6 (3) which says:

"In the exercise of its discretion under subsection (2) (a) the Court shall consider the following:

(a) the nature and seriousness of the offence or default and the probable method of dealing with the defendant for it;

(b) the character, antecedents, associations and social ties of the defendant;"

and particularly:

(c) the defendant's record with respect to the fulfilment of his obligations under previous grants of bail in criminal proceedings."

There are set out in clause 6, guidelines for judicial officers who would sit and pronounce on bail applications; guidelines which are judicially recognized, clear and precise, and which would assist not only the court but also attorneys appearing for the accused person in knowing what criteria the court will consider in dealing with their application.

As I said earlier, as an additional safeguard to the appeal, we have provided that even if his application is refused, he has an opportunity to appeal to a higher authority. He is doing so not in a vacuum, as obtains at the moment where the court is not required to give reasons, but on the basis of a written reason from the magistrate to which he can then direct his specific arguments. The relevant clause is clause 9 which says:

"Where a Magistrates' Court—

(a) grants bail ...

in relation to an accused person then the Magistrate shall, in order to enable the accused person and the police to consider making an application in the matter to the High Court, give reasons for granting or refusing bail or for imposing or varying the conditions."

In order to assist the appeal and the prosecution, the magistrate must set out the reasons for his grant or refusal. When that clause is put in the context of clause 6 which sets out the guidelines, one would see how much easier the system would be to operate. The reasons must accord with the guidelines which are contained in clause 6. A person who is desirous of appealing would be able to identify clear and specific grounds on which his appeal can be mounted.

Some of these provisions have not really been highlighted as they ought to because of matters which appeared to take greater prominence based, as they were, on the constitutional right of liberty and so forth. These provisions are no less important to this Bill and to the operation of our system of law, order and justice and, indeed, to the system of the administration of justice as a whole.

I want to refer to one or two other provisions which seek to ensure the integrity of the system and that there is truly a proper balance of the rights of all persons involved in this process. I refer, as well, to the question of persons who seek to take bail as they see it on behalf of an accused person, and to indicate that the Bill provides that if his request to surety is refused he, too, has a right to

appeal that denial and for his application to be reconsidered at a higher level. I shall refer to the specific provisions in a short while.

11.10 a.m.

We have also sought, and I will say a little more about this later, to tighten up, to some extent—not as much as we would have liked—the whole system of the grant of bail, and I refer specifically to the role of bailors and the role of Justices of the Peace, etcetera. You would note that there is a form of statutory declaration to be sworn to by sureties, and in that form there is disclosure as to whether the property in question has been used on previous occasions for the grant of bail.

We are all well aware that there have been problems relating to the use of property on a number of occasions by bailors, with the result that it affects the integrity of the system. You may find one piece of property being used on several occasions. We have sought in preparing this legislation—but were not able—to incorporate some of the matters, because they need much more investigation, and I refer specifically to the concept of institutional bailors. That question is a matter which requires some long-term study and we are in the process of looking at that area as well.

Mr. President, I had not realized that my time was coming quickly to an end. I would merely want to say that we do recognize that the introduction of this Bill would potentially lead to an increase in the prison population; it would increase some of the difficulties which the authorities have at present—difficulties of transporting prisoners from the prisons to the courts—but I want to assure Members that this Government has taken those factors into consideration, that arrangements are being made to provide a system of transport of prisoners from the prisons to the courts which would meet not only the existing needs, but also the anticipated needs once this Bill becomes law.

We are also quite aware of the overcrowding problem; we have done some analysis of that and have been able to identify ways and means whereby the existing prison population can be so distributed, once the new maximum security prison comes on stream.

I may also add—and again I say this only because I have sought to put in perspective the Government's approach to this problem—that we are at the very early stage of preparation of a Criminal Justice Bill. I have a very early draft of this Bill which would deal with some of the other areas which have not yet been tackled, like evidence, the use of videotaping, particularly in cases involving rape, and so forth; community type sentences—community service orders—as they are

called in the Bill, establishing those kinds of systems which, at the end of the day, and given the Government's overall and comprehensive approach to the crime phenomenon, will put all the pieces together and eventually tighten the noose around the necks of those who engage in criminal activity.

I therefore beg to move, Mr. President.

Question proposed.

Sen. Surendranath Capildeo: Mr. President, permit me to begin by disabusing abused and confused minds. The United National Congress has not compromised its position on this Bill. Whenever the liberty and freedom of the citizen is involved, we shall honour our commitment to the Constitution even if it means committing political suicide. We shall resist any attempt by the Executive to interfere with the fundamental rights and freedoms as enshrined in the Constitution.

Our Constitution is quite clear and specific, Sir. I want to read Section 5(1) into the record, so that the country would understand the enormous burden that is thrust upon the Opposition in matters of this nature. It states:

> "5 (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.
>
> (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

and I quote the relevant section—

> "(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
>
> (f) deprive a person charged with a criminal offence of the right—
>
> (i) to be presumed innocent until proven guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;
>
> (ii) to a fair and public hearing by an independent and impartial tribunal; or

(iii) to reasonable bail without just cause;"

It is written into our Constitution, Sir—you shall not deprive a citizen of reasonable bail without just cause; and when you so intend to tamper with that section of the Constitution, section 54(2) says—

> "In so far as it alters—
>
> (a) sections 4 to 14...
>
> A Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House."

We here are, therefore, literally commanded, directed, enjoined, to ensure that as far as is reasonably possible, the enshrined rights as set out in sections 4 and 5 of our Constitution shall remain intact.

Now, Sir, contrary to opinions expressed elsewhere, there is no honour in this Bill, there is no greatness in this Bill, there is no magnanimity in this Bill. There is no majesty in the law here, Sir. There is a damning indictment on the brutishness of our society. There could be no clearer evidence of the criminality of our society. This is not legislation for the law-abiding citizen; this is legislation for the criminal.

So before we begin to congratulate ourselves and form a mutual admiration society between n the pressure groups and my Friend the hon. Attorney General we must understand that this legislation was initiated by the criminal. It has come on our statute books because of the criminal, and we must get that message clear and understand it before people are fooled into believing that any such legislation, or package of legislation, will solve the crime problem that is running amok in our nation.

11.20 a.m.

As the hon. Attorney General said, the irony is that this Bill will have no effect on the causes of crime. Because whilst we are busy plastering sores, the criminal eczema is spreading and ravaging the body politic, and the causes of crime are left untouched. I shall come back to that later, Sir.

Whether we like it or not, our law is rooted in English common law, and until our people make a conscious decision to break loose and revolutionize our approach to the law, we must, of necessity, trace our heritage of freedom under

the law through the English legal system. Permit me to quote. It is their spirit which the poet William Wordsworth immortalized in the words:

> "In our halls is hung
>
> Armoury of the invincible knights of old
>
> We must be free or die, who speak the tongue
>
> That Shakespeare spake; the faith and morals hold
>
> Which Milton held."

"We must be free or die," that is the heritage from our colonial masters, and until we revolutionize our society and break free, that is where we trace the roots of this Bail Bill.

Freedom of the citizen is the cornerstone of democracy, and that is the burden which the Opposition bears in this parliamentary system. You just do not lightly interfere with the concept. I want to quote one of the great English jurists of this century, Lord Denning, in his celebrated lecture, "Freedom Under the Law." He defined personal freedom as follows:

> "By personal freedom, I mean the freedom of every law-abiding citizen to think what he will, to say what he will and to go where he will on his lawful occasions without let or hindrance from any other persons. Despite all the great changes that have come about in the other freedoms, this freedom has in our country remained intact. It must be matched, of course, with social security, by which I mean the peace and good order of the community in which we live."

I must pause here and ask this House to reflect on the peace and good order of the community in which we live. I continue:

> "This freedom of the just and law-abiding man will be meaningless and of no value to him if it can be abrogated or infringed or if he can be preyed upon by rapists, arsonists, thieves or murderers. Consequently, every society must have the ways and means to protect itself from marauders. The ways and means are to be found in the laws of the country. It must have the powers to arrest, to search and to punish, either by imprisonment or as otherwise provided by law, all those who break the law. These powers properly exercised without fear or favour and with propriety are themselves the safeguards of this heritage of ours, our personal freedom."

But in the Republic of Trinidad and Tobago we have allowed the marauders to overrun our society. The right to bail stems from the fundamental principle that every man is presumed innocent until proved guilty in a court of law. That springs from the Magna Carta and the Bill of Rights. Bail is important and it is difficult. It is important because it affects the liberty of the subject. In fact, it is probably the only example in peace-time in which a man can be kept in confinement for an appreciable amount of time without a proper sentence following a conviction upon a proper trial. It is really the only exception to the law, so it is serious business that we are interfering with here today.

It has been difficult, because in the past the grant or refusal of bail proceeded on something less than certainty and in many cases without information which would be available upon conviction in a court of law. There is always, therefore, an unavoidable degree of uncertainty, and whenever there is uncertainty in the law, the citizen is in trouble. That is why the framers of our Constitution have gone to great lengths to identify our freedoms.

The Bench has to balance the rights of the public as against the rights of the individual, always bearing in mind that no man may be imprisoned except by due process of law. I am glad that the hon. Attorney General has referred to the philosophical basis of this Bill, because in the hysteria which preceded this Bill, we seemed to have lost sight of and we pour scorn on the --philosophical concepts, not only in the law but almost in every other field of life and endeavour in this country, which affects how we are going to shape our society.

In that respect, I seek your permission to quote from a book written by a Professor, Ronald Dworkin, who is one of the—if not the—foremost jurists of the 20th century. One of the reviews of the book says:

> "The most significant book on philosophy of law in this decade and surely one of the most interesting ones of the century."

One of the problems of our nation is that we are good mechanics but we are bad designers of concept. We can repair vehicles but we really cannot design them. So with your permission, I would like to quote from Prof. Dworkin, and I do it deliberately, to emphasize that in other societies, people think. It states:

11.30 a.m.

> "Lawyers lean heavily on the connected concepts of legal right and and legal obligation. We say that someone has a legal right or duty, and we take that statement as a sound basis for making claims and

> demands, and for criticizing the acts of public officials. But our understanding of these concepts is remarkably fragile, and we fall into trouble when we try to say what legal rights and obligations are. We say glibly that whether someone has a legal obligation is determined by applying 'the law' to the particular facts of his case, but this is not a helpful answer, because we have the same difficulties with the concept of law.
>
> We are used to summing up our troubles in the classic questions of jurisprudence: What is 'the law'? When two sides disagree, as often happens, about a proposition 'of law', what are they disagreeing about, and how shall we decide which side is right? Why do we call what 'the law' says a matter of legal 'obligation'? Is 'obligation' here just a term of art, meaning only what the law says? Or does legal obligation have something to do with moral obligation? Can we say that we have, in principle at least, the same reasons for meeting our legal obligations that we have for meeting our moral obligations?
>
> These are not puzzles for the cupboard, to be taken down on rainy days for fun. They are sources of continuing embarrassment, and they nag at our attention. They embarrass us in dealing with particular problems that we must solve, one way or another."

We, Sir, are embarrassed, beyond belief in this society, by the complete paucity of intellectualism in the aspect of law in this country. Totally embarrassed! Dworkin goes on to refer to another eminent legal jurist, Prof. Hart, whom he quotes as saying:

> "'Human society is a society of persons; and persons do not view themselves or each other merely as so many bodies moving in ways which are sometimes harmful and have to be prevented or altered. Instead persons interpret each other's movements as manifestations of intentions....'
>
> These statements unite the legal doctrines with a wide range of moral traditions. The principle they urge is that the government must treat its citizens with the respect and dignity that adult members of the community claim from each other. The government may restrain a man for his own or the general good, but it may do so only on the basis of his behavior, and it must strive to judge his behavior from the same standpoint as he judges himself, that is, from the standpoint of his

> intentions, motives, and capacities. Men generally feel that they have chosen to act as they have, but they do not feel this to be so in particular circumstances of accident, compulsion, duress, or disease. And each of us makes this distinction not only for himself but in judging how to respond to others he regards with any respect. Even a dog, Holmes said, knows the difference between being kicked and being tripped over.
>
> The criminal law might be more efficient if it disregarded this troublesome distinction, and jailed men or forced them to accept treatment whenever this seemed likely to decrease future crime."

He goes on, and comes to the root of this Bill:

> "Perhaps the principle Hart cited, that the government must show the minimum of respect even to accused criminals and treat them as humans rather than as opportunities,..."

That is becoming heresy in this land: that one must treat accused criminals as humans rather than as opportunities. The hysteria has almost moved into a lynch-mob situation. He goes on:

> "will help establish that a contradiction exists. This principle, for example, informs the doctrine that a man is innocent until proved guilty, and helps explain why it seems wrong to imprison a man awaiting trial on the basis of a prediction that he might commit further crimes if released on bail."

This is no commonplace Bill. This Bill—and the philosophical concept behind it—has occupied the mind of the foremost eminent jurist of the 20th century, both in America and in England. It goes on:

> "For any such prediction, if it is sound, must be based on the view that an individual is a member of a class having particular features, which class is more likely than others to commit crime. The prediction, that is, must be actuarial, like the prediction an insurance company makes about the likelihood of teenagers to have automobile accidents. But it is unjust to put someone in jail on the basis of a judgement about a class, however accurate, because that denies his claim to equal respect as an individual."

When one looks at the philosophy that is being enunciated—which we really do not have the time to go into—and then one looks at the poor magistrate who has to look at clause 6(3), and try to determine whether or not to give a man bail, one

would see how difficult the proposition becomes. It is not as simple as it is made to appear, that if we pass a Bail Bill, lock up the criminals, crime will begin to disappear.

Let us look at the reality of our situation. Notwithstanding what the hon. Attorney General has said—it seems to me that that was a magnificent effort of trying to rehabilitate his position after the tremendous public outcry and what took place in the other place—our prisons are overcrowded and understaffed.

I am glad he referred to the Golden Grove Prison. That prison has a multi-million dollar history of scandal, mismanagement, inefficiency and waste; money which could have been used to rehabilitate, I do not know how many, hundreds of prisoners—even when that prison is built, we shall still have the problem of overcrowding.

It brings into focus the entire prison system which from all reports is in a primitive and barbarous state, not something that the country could be proud of 32 years after we became free. Our prisons have become graduating schools for juvenile and hardened criminals, and the primary and secondary institutions through which they pass to get to the school—the university, the tertiary institution that is the jail—are our courts of law.

Our courts of law, notwithstanding what the Attorney General has said, are in a state of disaster and the students are qualifying their common entrance examination in the courts of law and graduating into the jails and coming out with degrees of hardened criminals. Where are we going?

I want to call the bluff of the power groups—the ATAC and the Chamber of Commerce—to put their money where their mouths are. I want those people who in their hysteria have been condemning the United National Congress as obstructionists and an opposition party blocking every effort at legal reform, and reform of the criminal system. I want those people to put their money where their mouths are, and some of them have money. *[Interruption]* I have Adidas running shoes.

11.40 a.m

Mr. President, you will notice that I am not quoting from the *Guardian.* I am quoting from the *Herald* of Saturday, August 06, 1994. The headline is "Simpson's trial to be high-tech." I read:

> "It is a tedious exercise that eats up valuable time—the reading back of testimony after an objection or a question during a courtroom trial.

> But viewers of the O.J. Simpson murder trial will not be hearing much from the court reporter, because a computer system…

and we have been hearing about computer systems for four years now for the courts—"being installed in Superior Court Judge Lance Ito's courtroom will provide instant transcripts, video and graphics.

> The $50,000 system includes a digitally enhanced five-foot TV screen for jurors and smaller screens for lawyers, the judge, the court reporter, clerk and bailiff.
>
> "It's wonderful, but then I helped design it," said Superior Court Judge George Trammell, who had computer terminals installed three years ago in his courtroom and upgraded the system this year with a laser disc player and CD-ROM."

Mr. President, the point is—

> "Besides offering instantaneuous transcript, the system video-tapes witnesses and catalogs documents and evidence.
>
> But saving time is not the system's biggest asset, Trammell said. The set-up helps jurors to perform their fundamental duty, discerning the truth, he said.
>
> If a deliberating jury wants to review testimony, the court reporter must be summoned to read it aloud. Usually, the reporter has gone on to another trial, and a time must be scheduled for the reporter to return.
>
> Such read-backs are costly and time-consuming, and they do not reflect the witness' tone of voice or body language.
>
> "If you have someone who's lying, and their body language is giving them away, a juror can see that on the videotape," Trammell said. "You can't get that from a transcript."

I issue the challenge to all the support groups and the pressure groups "Put your money where your mouth is." It costs US $50,000 to effect a system like that. That is $300,000. They could make that from one shipment of something or the other, I do not know. That could be put in our criminal books and the criminals could be fast tracked through the courts and so ease the pressure on the bail system and the jury system, on the prisons, and on the police. Can you imagine the relief if we could get some of these businessmen who seem to be

parading all over Trinidad and Tobago attacking left, right and centre to raise these funds and put them in the first three criminal courts? We would solve our problem overnight. Talk is cheap, and the money is banked outside.

It is amazing to me that my Friend the hon. Attorney General could stand here for more than an hour and analyze all the causes of the problems. He could spell out everything that has gone wrong, but he conveniently forgets that he is a child of the PNM. The PNM has been there for 38 years—and he has the courage to come from 1956 to 1994 and trot out all these problems. He had the power to do something about it but did absolutely nothing. The thing is amazing. You hear the Prime Minister talking about election coming like a thief in the night. That was the last thing I expected to hear someone from the PNM talking about, a thief. Something is going wrong with the party, a party which has immortalized the words "All ah we tief." Let me not digress.

The paucity, the bankruptcy of this Government is reflected not only in mundane Bills like this which—most of them—are lifted wholesale from people abroad. The paucity and the bankruptcy is reflected in another article which I want to quote, to show just how far behind this Republic is in the context of law in the world. While we preoccupy ourselves with dotting i's and crossing t's and keeping criminals in jail, I wish to quote from the *Sunday Times* of August 28, 1994;

> "One of Britain's most senior lawyers has questioned a basic principle of the English legal system, challenging the notion that people accused of crimes are innocent unless proved guilty."

I am doing this merely to demonstrate how in the philosophy of law other systems are progressing and thinking while we are mired in the mud of almost primitive legal concepts.

> "Lord Donaldson, a former Master of the Rolls, has suggested a "not proved" category of verdicts, which he believes would prevent miscarriages of justice."

He argues:

> "...that the not-guilty verdicts are often mistaken for a declaration of innocence when there is simply not enough evidence to convict.
>
> ' A verdict of not guilty says nothing about innocence.' It simply says that the jury was not wholly sure that the accused committed the crime."

The judge said:

> "The defence is duty-bound to try to secure a client's acquittal. The prosecution, by contrast, has a duty to uphold the interest of justice. It is obliged to give the defence that casts doubt on guilt.
>
> 'In the result, as I know from personal experience, there are everyday miscarriages of justice,' he says. The reality is that a verdict of not guilty may mean that the jury considered that the accused was innocent, but is much more likely to mean that they were not sure."

So there is a system of law to which we are connected debating a concept in law from which we are light years away. I merely draw this to the attention of the honourable Senate to show just how far removed we are from developing ourselves in this country.

Although the hon. Attorney General attempted to placate us by saying that he is aware that the prisons will become overcrowded, that there will be problems in the legal system with respect to the transportation of prisoners and with respect to their trials, the country has no solid evidence before it that the enactment of this Bail Bill: one, in any way affects the incidence of crime whatsoever; and two, that the legal system can deal with the influx of prisoners who are going to be incarcerated as a result of this Bail Bill.

Absolutely nothing has been said about the rehabilitation of prisoners to prevent people from being incarcerated or being charged. Again, the cart before the horse.

11.50 a.m.

We are making absolutely no provision for the juveniles who would grow into hardened criminals, to prevent them from having to be brought in under this Bail Bill, but yet we are tidying up the law. We are hearing absolutely nothing of any relief programme being set in train. By that I mean there is not even a debate or the provision of statistics to this honourable House or the other place. The population is in the dark.

What is the cause of crime in this country? Has any research been commissioned by the hon. Attorney General or any other body? Have we put any professionals to work to find out why we are in this position? Why has crime suddenly overwhelmed this nation? Have we put any kind of research into that?

Do we have any of the statistics? Can we say anything? Is it unemployment? Can we say it is poverty or the breakdown of family life? Do we know why? Yet, here we are debating the merits and demerits of the Bail Bill.

Mr. President, bail or no bail, all of us are still living in jail!

Thank you.

Sen. Martin Daly: Mr. President, I mean no disrespect by beginning my contribution bending. I am just signing some amendments to the Bill which I wish to move.

I think it is now absolutely clear in the evolution of our young society, that we have now established quite firmly that we are not going to interfere with the presumption of innocence. That was the main focus of the debate on the Bail Bill which took place among the public in 1988. It was the main focus of the apparent agreement of the Government and Opposition in the other place. There is great difficulty with that because—I say this with no disrespect—it is unbecoming of politicians of any stripe to dismiss the concerns of the public as hysteria. I noticed that that word has figured in both contributions this morning.

May I say I support—subject to one or two amendments which I would seek to introduce—the deletion of the original clause 5 because I have agreed with those who believe we should, not even by the thin end of the wedge, interfere with the presumption of innocence. We cannot dismiss a major concern of the public which appears to be borne out by some statistical material that persons who do not have prior convictions, but are habitually involved in criminal activities, take the opportunity of the weaknesses in the legal system to commit further and graver offences while awaiting trial.

Whatever Prof. Dworkin may say, that is the reality of this society and it is a concern of the people. Therefore, if we are democratic, it is a concern that we must accommodate. It is not a hysterical concern because one can read repeatedly in the newspapers about offenders who have 10 and 12 cases pending before the courts and who are out on bail. The problem is how to deal with this in a practical fashion, given the fact that understandably both the Government and the Opposition would be, among other things; it is not the only thing—seeking political advantage out of the concerns of the public.

For example, I noticed that in the *Sunday Guardian* dated August 14, 1994, statistics were put in a tabular form and it was reported that the hon. Attorney General had provided them in another place. This showed that over 50 per cent of

those granted bail go out and commit more crimes. If that is statistically sound—I hope that the Attorney General is not misquoted—that means that for people to be concerned about that is not hysteria. It is demeaning to dismiss it as hysteria. The fact is, of course, that we do not really have the statistics. There is good reason to be concerned about persons committing more offences while on bail who do not have official criminal records in the form of a conviction.

Therefore, the first amendment I would be proposing to this Bill is to make some acknowledgement of the public's concern about the matter which I am describing. I do not want anybody to misunderstand what I am saying. I repeat that I am well pleased and I agree with the deletion of the original clause 5 of this Bill. Indeed, I really think it was foolish of the Government to bring the original clause 5, knowing full well from the 1988 experience what the result would be. Of course, they too would have had an eye and an ear on what people were saying at a time when murder most foul was in the air. I forgive them for that, but I think they knew the inevitability of what they were doing.

My amendment will be circulated in due course. I am proposing that we introduce into clause 6(2) a new subclause that would acknowledge the concern of the public about repeat offences taking place while persons having no convictions are out on bail. Basically, what I am proposing—it says it in *legalese*—is that without in any way limiting the discretion of the court, when it comes to decide whether to grant bail to consider any prior charges which a person has pending for any offence or combination of offences listed in Part II of the First Schedule.

I emphasize that I am not proposing anything like the automatic refusal of bail. I think the time has come in this country—I cannot speak for anywhere else—to focus the minds of our judicial officers on this problem of persons continuing to commit offences while out on bail. That is all I am doing. The clause makes it absolutely clear that if the magistrate or the court is unimpressed by the fact of prior charges pending, they can ignore it. It would be in no way tying their hands.

I believe it is important to acknowledge this deep concern of the public. We cannot dismiss it as hysteria and claim to be democratic. It is a widespread concern shared by everybody. Therefore, I think it is important to find some further balance in this matter to take account of this concern. What we have done is to raise everyone's expectation wrongly with the original Bail Bill. Now we are in danger of passing a piece of legislation which the editorial writers have all said

was a magnanimous act, which really would hoodwink the public, because it is not going to do any of the things about which we raised their expectations.

12.00 p.m.

I think it is very important that when we have a crisis situation we do not, in the interest of seeking political advantage, fool people. Therefore that is one amendment which I am proposing, Mr. President.

I noticed that the Attorney General was very careful in anticipation—he does use some unfortunate language sometimes, about pre-recorded messages and so forth. I think there are many debates that go on in society where people have different points of view which they maintain over a long period. It is a little unfortunate when one talks about things like that. But I noticed that he spent much time putting this Bill into a historical and other context. Well, I am glad he did it, because I think it is very important to do so.

I am challenging the Government right now, by asking the Attorney General: Is the new Human Resource Manager in the police service fully functional? Does he have an office? Does he have a telephone? Does he have a fax machine? Does he have staff? And is he enjoying the co-operation of the members of the police service? Because if he is not, then you are fooling the people to say the Government is not soft on crime, that the Government is doing that or the other about crime.

The point is: Is the Human Resource Manager in the Police Service working? And is he working effectively? We hear reports all the time of resistance, and the same questions apply to the Fleet Manager. Does he have an office? Does he have tools, if he requires them, and so forth? Is he getting the co-operation of the serving members of the police service? If not you are fooling the people.

While I think that the Opposition may have overstated the case about management of the news, I think that is a perfectly good example of managing the news to say: "We are dealing with crime as a management problem in the police service; we have appointed a Fleet Manager and a Human Resource Manager, but we do not know whether those persons are enjoying the co-operation of the members of the police service and may, in fact, just be ornaments." That is an example of managing news when you speak like that. I would like those questions answered.

I think it is very interesting that the Attorney General talked about a reasoned and measured approach. The Government must bear in mind, while it is treading

in a reasoned and measured way, that murder is still stalking the land in an unreasoned and an unmeasured way. Therefore, these are just words; we need to have practical solutions. That is why I will, in due course, take on some of the remarks the Attorney General made about the court system.

I noticed in his effort to anticipate some of what might be said by contributors to this debate, he referred to the undoubted links—about which we know so little—between crime and the economic situation in the country. I noticed reference was made to YTEPP, on the job-training, the Civilian Conservation Corps. Those emulative measures are all very well. The fact is that the Government has a responsibility, if it is not soft on crime, and if it is serious about tackling crime, to deal in a much deeper and meaningful way with the link between dispossession of the citizens and the prevalence of crime in the country.

I should like to refer to an article, which I think makes the point very well, and this commentator, too, emphasizes that we know so little, and we have so few statistics. Prof. Robert Reiner is the President of the British Society of Criminology and a distinguished Professor in Criminology and Criminal Justice. He talks about economic policies which may have the effect of increasing poverty, inequality and long -term employment among young people. And then he says:

> "An economically generated underclass has formed which seems permanently cut-off from legitimate opportunities. Many research studies have confirmed the relationship between relative deprivation of this kind and property crime, despite the frequent denials of conservative Home Secretaries."

And then he gives a basic reading list of the studies which establish this.

I ask the question, and I challenge the Government. Laudable though they are, are YTTEP, on the job-training, and the Civilian Conservation Corps. really going to deal with the problem of “an economically generated underclass permanently cut-off from legitimate opportunities?” Those are just fancy words for chronic unemployment, and therefore, if we are going to say that the Government is dealing with crime, and if the Attorney General is going to attempt to put it in this context, and it is his attempt and the attempt of his Prime Minister, then whenever we have an address to the nation about crime, I would expect to hear something about what the Government is doing about chronic unemployment. Talking about crime without making any reference to that, as far as I am concerned, is just trying to present a pretty image or to fool people. It is very important that we recognize that.

Is it not interesting that in the recent debate on the Crime Bill in the United States—the political division in the Congress there—the political division was centred around those portions of the Bill that made provisions for unemployment and midnight basketball, recreational activities? There was a big argument about whether they should provide funds for midnight basketball. It does not matter whether the Democrats or the Republicans were correct.

What we learned from that, is that reasoned and measured approach to crime, locates in the legislation or the measures that are being put in place, the relief of chronic unemployment and hopelessness. I would like the Government any time it tells us it is working on crime, to tell us what it is doing about chronic unemployment. I think that one is putting one's hand in a bees' nest if one starts saying, "Well, we are working on it; we have YTEPP and so forth." These are fundamental issues and we have to hear something about them. I am not at all impressed that that aspect of crime prevention is being dealt with.

Therefore, pre-recorded or not, I agree with the Attorney General, that no single piece of legislation or a series of pieces of legislation will deal with this problem. Whether it offends the Government or not, it has to be said in this debate, because underlying all of this is an attempt by the Government to pursuade us that it is not soft on crime, and that it is meeting the legitimate concerns of the citizens. No number of television addresses or fireside chats are going to alter these facts.

12.10 p.m.

One must try to listen to what the man on the Priority Bus Route says, and it is very interesting that no one in Trinidad has failed to understand that the real problem of repeat offenders in this country lies in the courts and the administration of justice. In another forum, I described it as a huge stinging nettle that must be grasped. No one wants to grasp it! Appointing a few more judges and making arrangements to fast-track certain types of criminal offences will not solve the problem, for each case you fast-track, you put one in the system further behind, thereby provoking a sense of injustice in the person who is losing his or her place in the queue.

Therefore, I agree with Sen. Capildeo that what we have to be talking about is computerization and other means of improving the situation in the courts. I do not know if we can go as far yet as having five-foot television screens; I imagine the great temptation to look at cricket on those instead of recording the evidence.

The problem lies in the courts. I challenge the Government to say when the computer-aided transcription service is going to be fully in place. I know there is

an implementation plan. The Attorney General was good enough to let us have copies when we were debating a Motion on crime. But when is it going to be in place? When are we going to complete training local persons to run the computer-aided transcription service?

It is managing the news to say that we are introducing computerization in the courts when, year after year, we are continuing to bring down United States nationals, on contract, to operate the system, and there is a dispute about the use of local persons that has reached the Industrial Court and on which a conciliator has made a recommendation. We have to get behind the window dressing. When are we going to have the computer-aided transcription service in all the courts, which is going to save the judges—I cannot estimate it—a considerable amount of time in the courts every day? We have to find out those things.

Likewise, the Attorney General talked about the *Gurley Report*, financial restraints and that sort of thing. But, you see, there are other things we have to do. We keep talking about whether or not there should be plea bargaining. Is it part of the Government's policy to have plea bargaining or not? Has the Government considered it, or reconsidered it, as a means of getting down the backlog in the courts?

Have we considered whether the ticket system has taken the traffic cases out of the magistrates' courts in sufficiently large numbers? It was supposed to. I believe the ticket system has, largely, been a failure. If a magistrate has 300 cases—I do not know. What are the figures? About 150 of them? When I practised in the magistrates' courts there used to be a magistrate doing nothing but traffic cases all day. A waste of judicial time! Are we looking at these things? Are we dealing with the traffic system?

Are we making any attempt to introduce no fault motor insurance so that we do not have highly-paid overworked long-hand writing High Court judges doing running down cases? We have a running down court deciding who bounces whom at an intersection in order to address liability between insurance companies. There are eminent judges sitting in their robes deciding who bounced whom at a junction. Are we doing anything to try to introduce no fault insurance? That is what I would like to find out.

Are we doing anything about improving our forensic methods? I have suggested, and I repeat the suggestion, that we ought to consider a programme of training persons to become medical examiners—who are short of doctors—that is to say, devising a course, whether it is two years, three years or whatever

duration. I cannot design the course precisely but what I want is a medical examiner, that is, somebody who goes to the scene of a crime and preserves the forensic evidence. One thing the O.J. Simpson case has taught us and has made everyone understand—something that lawyers had understood for many years—is that a finger nail, hair, small piece of flesh, socks, gloves, all of these things are vital.

Through no fault of anybody, when we visit a crime scene bodies are being hurled this way and that way; the injured is being dealt with in make-shift ways, being lifted, put in cars and that sort of thing. Any forensic evidence that is there is not being carefully preserved at the scene. I had to wait hours for the District Medical Officer (DMO) to arrive. When he or she arrives, he or she gives a certificate if there is a death before the body is taken away. Do we have anyone at the scene preserving the forensic evidence? Or, are we still trying to rely on confessions? No one tries to prove a serious criminal case on the basis of confessions any more. Maybe the medical examiners can be carefully selected policemen who are specially trained—as they are trained—in finger printing, firearms and all these different things.

The relevance of all this, apart from the Attorney General raising it, is that the Bail Bill is not going to work if the courts are overcrowded. I shall demonstrate that by reference to certain provisions in a moment.

The backlog that we have in our courts now is beyond human endeavour. I have said that repeatedly, and I say it again. Therefore, concomitantly, in introducing some of the reforms, which I am suggesting, we have got to make a decision about whether we would cut our losses and call up some of the really old cases and get them off the list. It may involve some compensation to people who do not want their cases thrown out without a full trial, but I do not believe that if we stay with that backlog we would ever clear up the situation.

And why is that directly relevant to the Bail Bill? We now have a situation where under this Bill magistrates would have bail hearings and give reasons. They are given more work to do at a time when they are drowning in what they have to do. If that is a pre-recorded message, I am sorry. The fact is, there would now be bail hearings with reasons and appeals using those reasons as the grounds of the appeal. Therefore, I am saying get rid of the traffic cases, and cases that are over five years old that do not involve very serious crimes—do not let me be misunderstood—and let us clear the decks for the magistrates in the courts to operate this new system. As I understand it now, this is a new function which magistrates would have to perform.

While I am on that, may I say that it affects clauses 9 and 10 and I am proposing two amendments which I will deal with in committee. I would like to see an amendment to deal with how an application is to be made to the High Court if the magistrate, for some reason, does not give his reasons. I am proposing an amendment to deal with that.

In clause 10, I am somewhat concerned that it seems to be assumed that the court having the bail hearing is the same court that would be trying you. I think that is something to be avoided, if possible. If the magistrate has a bail hearing and, later on, he has to try you, he would hear all kinds of unproven and unsubstantiated allegations about your past and what the police say about you and so forth; and he might be the same person who has to try you later on. While I recognize that it may not be possible to always have a different person from the one who had your bail hearing try you, I do not think it should be assumed, as clause 10 appears to, that it would be the same person.

I am glad that the Attorney General has raised these matters and I really would like to see the Government getting on with the serious business of the reform of the administration of justice in some of the ways which I have suggested; otherwise this Bail Bill and some of the other things that are being trumpeted as though they are important, would just be a means of fooling people, and the crime situation would continue unabated. There have to be reports about how these things are working.

12.20 p.m.

If anything is pre-recorded it is the statement dealing with management in the police service. Mr. President, did you see that wonderful ad with CTC Electronics where the model goes like this? [*Senator makes several nods to the left*] Well, if anything is pre-recorded, it is that we are improving management in the police service [*Nodding*] and we have appointed a Fleet Manager [*Nodding*] and we have appointed a [*Nodding*] Human Resource Manager. If anything is pre-recorded it is that. So if we are going to conduct serious debates in that fashion let me say that it is pre-recorded—Fleet Manager, [*Nodding*] Human Resource Manager [*Nodding*] pre-recorded. [*Laughter*] And we do not know if they are working.

So let us forget the petty politics; let us get down to brass tacks. Are these management reforms working? Is the Fleet Manager working? That is what we want to know, and it really is not the best way of conducting a debate with these life and death issues to dismiss people's concerns in that way [*Nodding*].

I say all this in support of the sentiment that the Bill will help, but you must have quick justice, and I am not satisfied that the appointment of a few judges and fast-tracking a few cases are taking us in that direction. All of this is by way of agreeing with the Attorney General that no one piece—or pieces—of legislation is going to take us very far. In fact, I would recommend to the Government that it read carefully the judgment given by Mr. Justice Hamel-Smith in the Guerra v. Wallen matter where he, on his own and by quotations from the Chief Justice, describes very meaningfully and poignantly the life of a judge in the Third World, beset by lack of staff and equipment. I would recommend that very strongly.

I think Mr. Justice Hamel-Smith has set down a wonderful challenge for the Privy Council to answer: how to apply some of the standards which they are laying down, with which I happen to agree, in countries that are, perhaps, not so well off. I know it will cause discomfort, so I will put away the papers dealing with the failure to train locals on the computer aided transcription service. I only hope that my information that the people with the contract to introduce the service have a subsidiary company doing private jobs using the same nationals that they bring down here, is inaccurate information.

These matters are important because, otherwise, the Bail Bill simply will not work. That is why we have to locate it in its proper context and insofar as it is said to be part of a package of measures, then it must be judged in the way in which the Government is putting it forward.

The question that the Director of Public Prosecution's Department and, indeed, the lawyers in that Department, will have an important part to play in the administration of this legislation. Now, I notice that the Attorney General has reported that seven new contract legal officers have been appointed to the DPP's Office. That is very good, but my question is—and I would like to hear some information about it—apart from the numbers, does the DPP's Department have the right mix of experience?

I am told it used to be the practice that one did not prosecute in the Assizes until one was a State Counsel III, and the reason for that was very important, because one would need to have the requisite amount of experience, putting a case for the prosecution. I will refer to the United States again. Prosecutions in the United States are referred to as "The People" in order to remind us who is being represented in a prosecution. Now, do we have the right mix of experience in the DPP's Department, so that when these cases which are being fast-tracked are being heard there will be some kind of balance between the participating lawyers?

If the DPP does not have the right mix of experience, are we sending inexperienced prosecutors, however bright they are, to face the wiles of much more experienced general practitioners? Have we evened up the balance in favour of the people whose prosecution it is? Otherwise, fast-tracking the cases will just fast-track the criminal out onto the street. We have to even up that balance.

So it is very superficial to talk about seven new contract legal officers in the DPP's Department. There are other things we need to know, other things behind the news that seven new contract legal officers have been appointed. Otherwise, we would just be fast-tracking the criminals back onto the street. They, again, will be the beneficiaries of some of these measures.

To underline a point I was making earlier, there is great confusion in the minds of the commentators about the relevance of the Bail Bill. On April 25, 1988 in the context of the 1988 Bail Bill, the *Guardian* editorialized as follows:

> "There should be no law so framed that it endangers the inherent freedom of our citizens or makes it easy for an innocent person to be arrested and kept in jail against his will for any length of time. We must also take into account the dreadful slowness of our legal system when we consider matters like the denial of bail to accused persons."

But in 1994 the same institution, if not the same commentator, was saying in another editorial that, perhaps, with the benefit of hindsight the 1988 Bail Bill should have been supported. That is before the debate in the other place; and then we wake up on Independence morning and, in two out of the three daily newspapers, we see these rather self-consoling editorials about what a good job the Parliament did in reaching a compromise.

What they should have been examining, in my respectful view, is whether the Parliament had reached a practical or workable compromise. I refer to this not to embarrass the editors or the commentators, but to show the type of confusion that exists in people's minds about the question of bail. Although I do not think, either, anyone who has referred to hysteria really needs any help. I do agree that legislation passed at the time of public panic—and panic is a very different thing from hysteria. Panic may have a legitimate reason. We do well to remember that these panics break out from time to time.

I read another quotation from the same article by Prof. Reiner. This is what a commentator was saying about crime in England:

> "'The Whole City... is alarm'd and uneasy. Wickedness has got such a Head, and the Robbers and Insolence of the Night are such that the citizens are no longer secure within their own Walls or safe even in passing their Streets, but are robbed, insulted, and abused, even at their own Doors...The citizens are oppressed by Rapin and Violence.' So wrote Daniel DeFoe (author of Robinson Crusoe) in a pamphlet addressed to the Lord Mayor of London in 1730."

So people have been panicking about crime, perhaps, with good reason in relation to the standards at the time. People have been panicking about crime for a long time. It is a legitimate concern and it should be a legitimate concern of our rulers and our Opposition. I am quite sure that there are many persons in this society—indeed, some religious groups have had rallies to try to exorcise the wickedness. I think many people in Trinidad would say that it is not at all hysterical to agree that "Wickedness has got such a head." In fact it is rather ironic that 'head' has now come to mean something else in colloquial parlance which fits this quotation from 1730 so well. Wickedness really have a bad head in this society, and we have to recognize that. [*Interruption*] I did not say big head, I said a bad head. Wickedness has got such a head.

Now, in relation to some of the other small amendments which I am proposing, I will not detain my colleagues by dealing with what I regard as the more cosmetic ones, such as changing "transactions" to "incidents." I dealt with the one dealing with the magistrate inquiring; and the one dealing with absence of reasons not preventing an application being heard.

12.30 p.m.

I am proposing—and this is also in the area of controversy—that the clause dealing with convictions does not go far enough, and that instead of it being three convictions over a period of 10 years, it should be two. I say, for example—assuming it is possible that someone could be convicted three times for rape and be outside prison in a 10-year period—I understand it is possible if you ask for offences to be taken into consideration, but I really do not think that if you commit rape, for example, twice within a 10-year period, the presumption of innocence—which I support as dearly as Prof. Dworkin or anyone else—I just do not think it is practical to hold up Prof. Dworkin's book in relation to two rape convictions in 10 years—I simply do not think it is practical.

So to that extent I am proposing an amendment in that area of controversy. I am also proposing an amendment to do with extradition. It is in the amendments that have been circulated and I need not detain Senators with that.

So that, basically, I am in agreement with the two speakers who went before. This is only a small measure in a much bigger picture. I think if one borrows the language of the economists, this is a micro-legal instrument that has to be located in the macro-legal picture. I hope that I would pass muster with my colleagues, including Sen. Ainsley Mark, for that paraphrase, but I think that is what this is.

We have got to deal with the concerns of the public and with the administration of justice. We are getting closer and closer to the point where the delays in the courts, "the dreadful slowness" as the *Guardian* called it, cannot, in my view, any longer be ignored, otherwise this Bail Bill, not only will not work, but, in fact, will also create more difficulties for the court system.

Of course— I repeat it again, and I will repeat it every time the opportunity presents itself—what are we doing about the illicit profits of drug traffickers and others in the society who are flaunting wealth that their income tax returns do not support?

When am I going to hear a statement from the Government about the enforcement of the income tax laws? When am I going to hear a statement about that, which, in one fell swoop, will not only attack the profits—it is being said all the time that a lot of the crime is being generated because of the drug trade—when are we going to have a sustained and frontal attack by means of the income tax legislation on the ill-gotten gains of the high profile criminals in the society? Is it such a bad idea? Is this silence that is greeting it, the silence of a Government that is impotent to do something about it? Or does it think it is such a bad idea? What is it?

I know that I am in good company with the Minister in the Ministry of National Security because he has expressed his frustration about it over time, and maybe he could impress upon the Minister of National Security the importance of enforcing the tax laws in the context of the Government's overall assault on crime.

There are two other points which I would like to raise. I really think that it is very important that we recognize, not only the frustration of the public with regard to the—quoting the *Guardian* again—"dreadful slowness of the courts," but we recognize why it is so important. In a recent lecture given by the Lord Chief Justice of England, he said as follows:

> "There may not be many votes or economic gains in funding the justice system adequately, but to deprive that system endangers the very framework of our society. If the rule of law and citizens' rights are not safeguarded, the result may be not only injustice but even unrest, especially during high unemployment."

Imagine the Lord Chief Justice of England and all, as we would say, sees the link between high unemployment, the justice system and crime. That really is the wheel turning a full circle.

I ought to mention as well, that we must have a quick justice, as said by the senior citizen on the "Man in the Street" programme. Appointing judges is one thing, but are we going to look again, as I have recommended, at the system and how judges are appointed? We may appoint 30 judges, but if they are not appointed by reference to sound criteria, where is that going to take us?

So that these quick fixes—

Hon. K. Sobion: Mr. President, I wonder if Sen. Daly would indicate whether he is saying that judges are not now being appointed according to sound criteria.

Sen. M. Daly: The Attorney General knows perfectly well that I will not fall for such a loaded question. What I will say is what I said on previous occasions, and I think it is shared by Members of this Government—that the present system of appointing judges is too closed and too locked in, and there is great concern about that out there with the public. And I have recommended that we publish criteria so that we know the basis beyond the minimum requirement of 10 years as a lawyer; so that we know what the criteria are.

I have recommended in another debate that people be encouraged to apply, once the criteria are published so that we know that the system is as open and as transparent and as un-clublike as possible. If the Attorney General does not hear it in Mayaro, I can assure him that I do. Persons are concerned about how judges are appointed and what connections you must have in order to become a judge. All the Government has to do is to publish criteria, and that will solve the problem. It may be a phantom concern, but it is a concern that has to be addressed.

I therefore say that all of these measures which the Government says are moving in a reasoned and measured way are but scratching the surface of the overall crime problem, and, therefore, you have to link this Bail Bill and its success or failure in the overall context, as the Attorney General does. But in my respectful view, we have to go a little deeper.

I am aware that I have batted beyond the break and, therefore, I think, with those remarks, I need not detain anyone any longer.

Thank you very much.

12.38 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

Sen. Pundit Ramcharan Gosine: Mr. President, I rise to give my wholehearted support to the Bill before the Senate.

It is my view that this Bill provides the citizens of this country with a tangible instrument for dealing with crimes committed by persons out on bail, that is to say, effectively removing known criminals, persons who have been previously convicted on three occasions of any of the offences listed in Part II of the First Schedule.

To be honest with my colleagues, I should have liked to see a denial of an entitlement to bail to anyone who has been convicted on one occasion. So, I would have liked it if Sen. Martin Daly had chosen to go with one instead of two previous convictions. I would have agreed to one, because, the offences listed in Part II of the First Schedule are really heinous crimes against the society.

While I am mindful that most persons regard a first offence as a mistake, and are willing to forgive the doer; the second offence is thought of as being wicked, and they are still willing to forgive the doer, but by the third offence, people begin to regard the repetition as being habitual, and are not so willing any more to extend the hand of forgiveness.

Perhaps, it is this kind of thinking that pervaded the minds of the framers of this Bill. However, if one looks at the crimes mentioned in Part II of the First Schedule *inter alia* rape, buggery, shooting or wounding, armed robbery, arson and shooting or wounding with intent to do grievous bodily harm, one sees that these are not misdemeanors where one can say it is a mistake the first time, wicked the second time or habitual the third time, because people suffer seriously—some are maimed for life, some become vegetables. I ask: Where is the justice? How many more must suffer? How many more must die before we, as a society, come to our senses?

It grieves me no end to see this Government—a Government dedicated to law and order in our society—trying its best to meet the needs of the people with limited resources, trained/skilled manpower and up-to-date technology, losing out because our Government does not command the required majority in the other place and has to, therefore, water-down the effectiveness of proposed legislation before it is passed. For example, one may well recall the piece of legislation which was passed in this honourable Senate and which failed to get the required majority in the other place.

Our society needs to come together in appreciating the problems and then provide the required mandate for giving effect to what it wants achieved. It is not

good enough for some sections of our society to want the Government to act swiftly and decisively when the instruments to do so are lacking, and the power to provide these instruments being in their very hands in the first place, was exercised inappropriately.

In this regard, too, there have been numerous comments and I want to refer to the *TNT Mirror* dated Friday, September 2, 1994 in which the headline read "Sobion, Bhaggan—Bail Bill Losers." In that article it says:

> "Attorney General Keith Sobion and Chaguanas MP, Hulsie Bhaggan, were the big losers Monday night when an amended version of the controversial Bail Bill was voted into law.
>
> Just last weekend he told a session of party faithfuls that 'all right-thinking people will support the legislation. We are correct'.
>
> He slammed critics of the Bill, and told party loyalists they should not expect 'criminals' to support the legislation, 'whether in or out of Parliament'.
>
> Sobion had initially refused to budge on the much-criticized Clause 5, which denied bail to repeat offenders or mandated that they spend six months behind bars before they can make a bail application."

While I respect the comment of others, I feel that not much analysis went into all the circumstances surrounding the passage of the Bail Bill in the other place.

In the first place, the Government's side does not command the required majority for the passage of such a Bill, and it is not blessed with independent-thinking luminaries who will support a bill on the grounds of its usefulness in achieving the goals of the society.

Our Prime Minister, our Attorney General and indeed the independent thinking Member for Chaguanas, all had to agree to a watered-down version of the Bill and the deletion of clause 5. I want to say that I am in full support of clause 5 and I ask the question: Where is the innocence of a habitual offender of rape? How many more must be raped before we come to our senses?

So that Sobion and Bhaggan were not the Bail Bill losers, as the *TNT Mirror* claimed; the losers were victims, when known criminals charged with the heinous offences mentioned in Part II of the First Schedule, are allowed to roam our streets as free men, and the law abiding citizens are made prisoners in their own homes.

I am honoured to be in a party which puts the welfare of the people and the safety of our citizens before themselves. My Prime Minister is a humble man, and I salute him for that. A wise man must work with the material at hand. He may not achieve the goal that he has in mind, but he will approximate it.

The passing of the Bail Bill in the other place must be seen as astute Government policy to compromise, to bend backwards for the welfare of all the people of Trinidad and Tobago. Remember, half a loaf is better than none. The passing of the Bail Bill in the other place is a real victory for the Government, and a victory for the majority of citizens of this fair and beautiful isle.

This Bail Bill also provides for emotional security for the relatives of the victims of such crimes, not to mention the emotional support which can now be afforded the victims that, at least, the perpetrators are not out on bail to repeat their wicked acts against the victims. Witnesses to such crimes would also feel an easing of the tension within them and would be more willing to come forward to give evidence.

I wish to reiterate some of the circumstances in which bail may be denied by the court. Clause 6 is very pertinent and I wish to read it into the record:

> "(2) Where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment, it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:
>
> (a) where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would—
>
> (i) fail to surrender to custody;
>
> (ii) commit an offence while on bail; or
>
> (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;"

Persons who are witnesses to such crimes can really find some comfort in knowing that something positive is being done on their behalf.

> "(b) Where the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
>
> (c) Where he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(d) where the Court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against him;"

2.10 p.m.

"(e) where, having been released on bail or in connection with the proceedings for the offence, he is arrested in pursuance of section 13;

(f) where he is charged with an offence alleged to have been committed while he was released on bail, or

(g) where his case is adjourned for inquiries or a report and it appears to the Court that it would be impracticable to complete the inquiries or make the report without keeping him in custody.

Subclause 4 states:

Where any offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment, it shall be within the discretion of the Court to deny bail in the following circumstances:

(a) where it appears to the Court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail and the Court believes, in view of that failure, that the defendant, if released on bail, would fail to surrender to custody;"

In Trinidad and Tobago there are many cases where people have absconded out of this country and cannot be found; and, perhaps, some are still in hiding here in Trinidad and Tobago. It goes on:

"(b) where the Court is satisfied that he should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;

(c) where he is in custody in pursuance of a sentence of a Court or any authority acting under the Defence Act;

(d) where, having been released on bail in, or in connection with, the proceedings for the offence, he is arrested in pursuance of section 14."

I agree with one of the statements made by the Opposition Senator, Suren Capildeo, who spoke about—

Sen. Capildeo: Be careful before you get into trouble.

Sen. Pundit R. Gosine: Wait until you hear what I have to say. The operative words that he missed were "law-abiding citizens." I believe he was quoting Lord Denning. He was saying that law-abiding citizens must be protected against persons who perpetrated crime against the country. This is what this Bill is about, to protect the law-abiding citizen from the perpetrators of continuous crime or repeating crimes against persons.

Sometimes when you hear something, it is always subject to the operative word in the statement being made. Therefore, it is important that we look at these things. Further, the Bill does provide a reasonable balance for the protection of innocent persons and the conditions of granting or not granting bail have to be spelt out by the presiding judge, where circumstances other than those stated in the Bill prevail.

I therefore find this Bill to be one of the more important ones in the Government's effort to pass laws which will assist in the prevention of crime.

Thank you.

Sen. Diana Mahabir-Wyatt: Mr. President, having taken a look at his Bill along with the various amendments which have been proposed by the Attorney General, and by Sen. Daly—I did not, unfortunately, get those by Sen. Daly until today. Having looked at the others and having a fair amount of consultation with people who are involved in criminal law, I realize that this really is a matter for people who are trained in the ins and outs of criminal courts and criminal law. I do not presume to comment on technical details of what is an extremely technical Bill.

In fact, I was more than a little concerned over attempts made publicly to over-simplify the Bill for public relations purposes, which has led to a rather exaggerated response from some sectors of the public who are justifiably concerned over the crime situation, but feel because of the over simplifications that a simple response is going to provide an understanding of the entire situation, which I do not think is the case.

While I share the resulting concern of a large number of people in the population and the Opposition about people's civic rights and the possibility of misuse of those

rights by unscrupulous people for nefarious purposes and, while I agree that the present Bill before us is certainly an improvement on the less than precise previous situation where magistrates did not have very precise guidelines as to when to refuse bail or when to allow it, certainly under this Bill they do have clear signals when to grant and not to.

I have a certain concern about the amendments which were made to this Bill in the House last week. Sen. Daly did refer to some of these concerns. I should like to emphasize certain aspects of them. I resent the implications made in the press and by the public as a whole that once a Bill has gone through the other House it is over and done with—as if the Senate is just going to rubber-stamp it and go off and have tea. Whether this is an indication of the lack of faith people have in the political process, or whether it is a lack of knowledge of the political process, I am not quite sure. I think that we should make it quite clear that the concerns of the Senate are genuine.

I get the feeling, having listened to some of the debate in the other House that, with the greatest respect to the claims for the great compromise that was made in terms of these amendments, it in fact, watered down the Bill to the point where it may prove to be not as useful as it was intended to be when the Bill first came out, and indeed, in 1988 when a similar Bill came before us.

While I accept, and I do support the idea of the Bill, I am still worried. I think that we need to look at further changes. I should like to support Sen. Daly's amendments which we have had time to study in the intervening hours. I am particularly worried about provisions which talk about the necessity for three convictions in 10 years before bail can be denied.

When one talks about convictions, I am particularly concerned about convictions in relation to rape. I will not even get into the others because I think this is a good example and happens to be something about which I am particularly concerned. I have had to deal with a number of instances where women have been subjected to rape and had to face the courts.

2.20 p.m.

Sen. Daly touched on the unlikelihood of somebody actually being convicted three times in 10 years, then getting out and being charged again for rape. How long is one sentenced for rape? I know sometimes a sentence is ridiculously low, but even if it is as low as four years, after 10 years can somebody be convicted three times for rape? The statistics indicate that by the time someone is actually caught, charged and convicted for rape, it is extremely unlikely that it is the first time he has committed rape.

I notice in the *Sunday Express* a criminal lawyer, Mr. Israel Khan, seemed to be trying to take in front before "in front" took the Senate. He commented that it is very common to have criminals with several matters pending for years, and when they are found guilty of the first matter they agree to plead guilty to the others. Thus a man could get five convictions within a period of a few weeks. This is an instance where it could happen.

One of the first things I was taught when I first got involved in this Parliament was that you do not try to legislate for exceptions; you try to legislate for what is the rule. What could happen here is that someone could commit rape; he could be charged and get bail. Because of the crowding of the courts—and Sen. Daly was eloquent on this—he could be charged today, but the case would be heard in March 1996. If things are okay, even in March 1995. The following month he could be caught again on a rape charge if the police are quick, and be out again on bail, because he has not yet had a conviction. Between then and February 1996, that person could in fact rape; get out; rape and get out again. There is nothing to say that he cannot be given bail. The magistrate has a discretion.

I am particularly concerned about the case of the rape of a child, and in those instances where people prey on children to rape. It is because of this that I am particularly supporting Sen. Daly's amendment. In clause 6 (2) (a) (ii), I do note that it is within the discretion of the court to deny bail to the defendant where the court is satisfied that there are substantial grounds for believing that if the defendant is released on bail, he would commit an offence while out on bail.

One would hope that would mean that the courts' record system would be quick enough to catch someone who commits an offence and is charged in Point Fortin; commits another offence and is charged in Sangre Grande, and another in Arima. All this would go onto the computer so that as soon as somebody is charged with rape in Port of Spain, one can immediately access the current number of charges against that person and have that information available.

In a crowded magistrate's court where, as I understand, sometimes as many as 100 to 200 cases have to be heard in a day, that magistrate can turn to his handy computer and tap in the relevant person's name and immediately see the charges that are outstanding against him. I am sure the Attorney General will understand what I am talking about. Under the current system, the court may not know where those handy computers are, and that there are several other charges on rape that are outstanding against that particular individual. Since no convictions had been

recorded, the court may not feel that it has substantial grounds which would be evidence for believing that the defendant would commit an offence while on bail.

I am strongly supporting Sen. Daly's amendments. I think that perhaps his amendment to clause 6 (a) (ii) inserting (d) may go a little way towards helping this. I would really like to have assurance from the Attorney General in the instances of rape, particularly that of a child—the sort of instances that I have outlined—the guidelines set down in this Bill (for the magistrates are in fact tight enough), so that a magistrate would understand from this Bill that only in the most extraordinary circumstances where someone is being charged with, particularly, the rape of a child, but rape of any kind, would the court use its discretion to grant bail.

I think it is really important in terms of the public's need to have a certain amount of confidence. Lately, we have had far too many instances of raping of women while they are walking home from work or in the evening. Recently, there was an incident at 11.00 a.m. where a young girl was attacked in her bedroom. Where somebody is charged, if he is ever caught—in many cases he is not caught—he goes on to commit yet another offence.

There was a recent report in one of the newspapers about someone who, in fact, is now dead; he committed suicide while in prison. They think he was the 'Red Cap' man who was suspected of having committed at least 12 rapes. In that instance, although the police thought he was the rapist, the fact that 12 rapes could take place without the person being denied bail and still be allowed after the 11th to be out and around, makes one wonder about those young people whose bedrooms were broken into at night and were attacked in their own homes, where at least they should have some safety.

While I am supporting this Bill and the amendments put forward by the Attorney General, I should also like to support the amendments put forward by Sen. Daly. I ask the Attorney General if he could assure me that my fears are unfounded, and that by virtue of this Bill, someone who has been charged with rape once, or even twice, would not, in fact, even under these provisions, be granted bail again by a magistrate; that the guidelines are tight enough.

Information should be available to magistrates so that they would have enough grounds, so that it does not matter how much pressure is put by the person who is charged, his family, lawyer, friends or community, whatever inducements are offered, he would not have the discretion to allow such a person to be back out on the streets or in the bushes to climb over into children's bedrooms at night.

Thank you.

2.30 p.m.

Sen. Muntaz Hosein: Mr. President, I am very pleased to join this historical debate today. But in looking at the Bill, it is necessary that we examine how our country arrived at the state it is in now, and why it is necessary to have this Bill brought before the Senate. If we examine we would see that from 1992 the Opposition in this Parliament, both in the other place and here, made suggestions to the Government, but these suggestions were ignored. You have been here for most of the period, and you would have seen this happen. It is so unfortunate that the Government chose to ignore the suggestions made by the Opposition. Had it not done that, we might have arrested the situation much earlier.

It is only because certain Bills like the Maxi-Taxi (Amdt.) Bill, and this very Bill that is before us today, require a special majority that the Government sees the light, and the need to take the Opposition's suggestions seriously, and to desist from playing politics with the running of the country. Whenever suggestions were made to the Government—and in every single debate we have put forward suggestions on how we believe that it could have been done otherwise—unfortunately, the Government looked in every corner and saw a dragon, and as a result it reacted to a presumed dragon.

The hon. Attorney General in piloting this Bill today spoke of the breakdown of family life as one of the causes, perhaps, and I think he is correct. The breakdown of family life today is in part responsible, for the kind of breakdown we have in the society—the breakdown of law and order and of the institutions. But we must not stop there; we must examine the breakdown of family life and try to find out why this has occurred. I am certain that if we examine, we would find that whereas, husband and wife were working, were able to pay their bills, and were living a decent life with their children, today, one or both of them are unemployed. And that has not abated.

Can you imagine a husband working for $1500 per month, coming home to his family on evenings and finding that the money he gave to his wife for groceries, simply could not get beyond the second week? You add to that, the frustrations of the job, and the frustrations of the road. Can you understand what frame of mind this husband would be in? Can you imagine what would happen in a family like that, where inevitably there will be difficulties? And what of the children that they will bring up?

I am suggesting that this has occurred within the last eight years, moreso than ever before. We have to seek to address this situation. If we do not do so, I think we would not be doing our duty, and therefore we would not be able to get rid of that problem.

The hon. Attorney General also mentioned the breakdown in religious values as one of the reasons. Again, I find that we seem to be thinking alike today—not very often we do—and I must agree with him. When you examine the breakdown in religious values in the society and you see, only recently, people trying to bring up their children in a particular way to respect the wishes of their Lord, and to dress in a particular modest way, what does the Government do? From 1992 to now it has not yet made a decision. As simple a matter as this—and the government comes before this House to talk about religious values—when the chips are down the government is found wanting.

We must chart a course, not rhetoric, and our course must be based on values in the society. We must not use it conveniently one day and when it does not suit us we throw it through the window. If we continue to do that we would be missing the mark completely.

Let us look at our prison system and see whether this Bill, when enacted, would be as effective as we want it to be, or whether there will be the need to look at all the other areas. The Attorney General made quite a few points regarding this, and we all agree with what he said.

Again, Mr. President, you will know that since 1992 to now, I have had a running battle with the Members opposite with regard to what they say and what they do. There are two distinct things. They say one thing today, but their action is another matter. We are spending a great deal of money to keep prisoners behind bars. The United National Congress has suggested to the Government on several occasions in this honourable Senate, that the way we ought to go is to so develop the prison system in such a way that it would become self-sufficient, and it would not rely on the coffers of the exchequer.

Although the hon. Attorney General mentioned some small way that they have started, I am suggesting to him that we need to go much further, but we cannot do so at the pace which the Government is going. The government has passed mid-term, it is into the second term and if I understand the signs *[Interruption]* You have passed mid-term and continuing.

If I understand what the hon. Prime Minister was saying, the Government may be looking at an election very soon. The Government should consider it and make

haste to do all that it needs to do quickly, because those Members would not be here after that period, at least not on that side.

2.40 p.m.

We do not need to go to the United Kingdom, the United States or Europe to reform our prison system; we have the expertise right here in Trinidad and Tobago. If only we had the will to get it done quickly, we would have saved much money that could have been used in another direction. We need money—there is no question about that—and our problems are many.

If you took the time and went to Golden Grove to observe what happens there, if you went to visit someone there, you would have been placed in a musty, poorly ventilated office. When your turn came to visit that individual, you would have been taken inside to another area where the detainee, prisoner or whoever would have been brought to you. Having done all that waiting, you might have been told that the prisoner could not have any visitors that day because his or her quota of visitors was exhausted. So you wasted time to go to the prisons, you wasted time sitting in that musty office, and the prison officers' time would also have been wasted.

A simple thing like the system. Why could the system not be at the gate end where when you come in they simply check to see if the person could have a visitor on that day? Why is the number of visitors a person could have per day or per week not made available to the public so that someone could pick up the telephone to call and find out? Very important people have found themselves remanded in custody but not guilty of any crime. It could be mistaken identity. It could be being imprisoned for standing up for one's right.

Mr. President, the women's section of the remand section of the prison is so overcrowded that they sleep on mattresses on the floor.

Sen. Huggins: That is not true.

Sen. M. Hosein: There are some fifteen of them in one room.

Hon. Senator: That is not true. You lie.

Hon. Senator: Is that word parliamentary?

Sen. M. Hosein: Mr. President, no amount of denial will change the fact.

Sen. Callender: That you are lying.

Sen. M. Hosein: Mr President, when you get to the front of the prison you would observe that there is a fence that has seen better days. A section of it looks

like if you hit it a hard kick it would fall. It is in urgent need of replacement. One wonders if prisoners are housed in that place, why the Government is not looking at the upkeep of the prison. I understand why so many prisoners escape custody.

Mr. Sobion: How many you last heard?

Sen. M. Hosein: Mr. President, the Attorney General asked me how many I last heard. He is asking me questions the answers to which he ought to know.

Mr. Sobion: You are making statements that you do not know about.

Sen. M. Hosein: We read about it in the newspapers all the time.

Mr. President, if the hon. Attorney General wants to exchange places with me, I would not mind. If he cannot do his job, certainly I would do it for him.

Mr. Sobion: Mr. President, on the question of statements that are not accurate. At the Women's Prison the total number of female prisoners is 130, and it has a design capacity of 120. This talk about overcrowding and mattresses all over the floor and so forth—

Sen. M. Hosein: Mr. President, I do not think that the Attorney General was listening. I said the remand section. The information I have is first-hand.

Hon. Senator: Were you there?

Mr. Sobion: Call numbers.

Sen. M. Hosein: *[Interruption]*. The Senator wants to know how? All right, I shall tell him.

It is all well and good to deny bail to people to whom we believe it ought to be denied; to people who we believe would abscond or might be dangerous and might repeat the offence. It is laudable. The problem is, if the cases of these people when they come up before the courts are not determined quickly, we would be wasting time.

Recently I mentioned the question of people taking advantage of the court system and purposely fleecing other people of their money, because they know that if you take them to court it would be a minimum of five years before that matter comes up. Therefore, you do not bother with it and people go scot-free. What we are doing is encouraging white-collar crime and we are doing so by not taking care of the judicial system.

As a matter of fact, I have a friend who is a judge and who told me recently how he was able to speed up cases that came before him. We know that there are quite a few lawyers who take on more cases than they can handle and, as a result,

they keep postponing cases. This judge had a unique way of dealing with it and he was able to get through all of his cases quickly. Do you know what he did? Those cases that came before him, and were adjourned more than once, he told the lawyers, "This case would start on Monday, whether you are ready or not." As simple as that! Those matters were dealt with quickly. Perhaps, the powers that be might want to encourage those officers of the court to do likewise. I ask the question: What of the night court that was so much talked about?

Sen. Barrack: In the dark.

Sen. M. Hosein: What about the gun court that was so much talked about? What about the drug court that was so much talked about? Perhaps, if we had these other courts we would have been in a better position to speed up these trials. You would hear the Attorney General asking: What suggestions have you all made? Many have been made in my short contribution, so far, and there are more to come.

Mr. Sobion: I mean serious suggestions.

Sen. M. Hosein: Mr. President, to make fun of a serious Bill like this is very sad. We come here in the Parliament and talk about breakdown of family values and so forth, and we perpetuate it by behaving in that manner. If we had a visit of school-children here and they were looking at the Attorney General behave in that manner, they would leave here thinking that we are "kicksing", and that the calypsonian was right when he sang about "kicksing" in Parliament.

2.50 p.m.

Mr. President, one cannot help but take, with the proverbial pinch of salt, those statements made by the Government. You would remember that as early as 1992 I suggested to my colleagues opposite that there should be one-way mirrors installed for identification purposes. Only in l994 was it discovered that the one-way mirrors were here in Trinidad since l990—doing nothing. If nothing was a disgrace and a shame, that is. In other democracies Ministers of National Security—if this was found to be the case—would have resigned honourably. But no such thing happens in Trinidad and Tobago. But I am very pleased that the one-way mirrors are being installed, however late it might be.

Witnesses in this country are being gunned down with regularity. If you read the newspapers, you would see many cases of this. I hope the people would change their minds now, but you need to educate them that it is safe to identify people, because they are not used to the one-way mirror. I have heard many

people say, "if I see a crime where somebody is killed, do you think I am stupid to point out and touch anybody for them to come and kill me or my wife and children?" This is the situation in Trinidad and Tobago. No wonder we have difficulty getting witnesses. So I am very happy that these mirrors are being put in place.

But in all of this, we have the policemen to deal with, because they are the ones who walk the beats, who face the gunmen with the sophisticated weaponry, while they are still using their .38 revolvers.

I had an observation recently. I passed in front of the police headquarters and saw a sentry standing there with what I presume is a bullet-proof vest over his shirt. Should that not be worn under the shirt? Why are we telling the would-be shooter to aim for the head, or from the navel down, vital parts included? I wonder whether the Ministry of National Security might want to change that, because I think that is too elementary a thing to happen in l994. I am hoping the Minister would get up and tell me that it was not a bullet-proof vest.

When we look at the grouses of the policemen, we see that they are working in police stations which are in disrepair—floor boards which are old and cracking and termite-ridden roofs which are leaking; disgusting and unhealthy toilet facilities. How can we motivate police officers when we put them into police stations in that condition?

Is it any wonder that so many police exhibits have disappeared? Not so long ago my colleague Sen. Merritt spoke about rats eating the cocaine. The O'Dowd team saw the need since l990 for clear instructions regarding the issuance, handling, storage, transit and the return of exhibits to the owner. Perhaps the Deputy Minister of National Security will join the debate and assure us that this [*Interruption*]

You have heard, and have read in the newspapers, of exhibits disappearing, remaining in the police station for years, and by the time they come forward they are useless. Why can we not take photographs and use them as the exhibits? Perhaps we could do that in order to speed things up and we would not need so much space to keep all of these exhibits.

We heard so many reports about the civilian fleet manager working in such primitive surroundings—no phone, uncomfortable office, no support services, no co-operation from the staff members—

Sen. Robinson-Regis: If the Senator would give way. Mr. President, I know you have said that you allow a certain amount of latitude, but I seek your ruling in this case. I am submitting that the Senator is totally irrelevant and has been so for the better part of his contribution. I seek your ruling, Sir.

Mr. President: Are you on a point of order?

Sen. Robinson-Regis: Yes, I am, Mr. President.

Mr. President: I tend to agree with you, but I realize it is a sort of back-in-time speech, recalling some of his more valuable contributions, so I will allow him to continue.

Sen. M. Hosein: Mr. President, with the greatest respect to all concerned, the Attorney General made mention of the civilian fleet manager and I am responding. I ask your ruling once more, to be a little clear. Am I irrelevant?

Mr. President: When the Minister rose on a point of order, she was not speaking specifically about the fleet manager as being the point that was irrelevant; she was dealing, I think, generally, with your speech. That might have been the most relevant part, as a matter of fact.

Sen. M. Hosein: Mr. President, I will resist the temptation.

3.00 p.m.

So you see, Sir, the hon. Attorney General comes to the Senate and tells us about the civilian fleet manager, but what he failed to do was to inform us of the conditions under which the fleet manager is operating.

This Bail Bill has to do with crime. It has to do with imprisonment, liberty. This is what it is all about. Therefore, we must examine the conditions under which this Bill is brought to the Senate. We have to examine white-collar crime. We must examine what is happening with the drug connection in Trinidad and Tobago, because this Bill impacts on all kinds of crime. You hear about all kinds of drug mafia in this country, about people with fast patrol boats. We have not been able to catch one of them yet. So when you catch them, this Bill is operative. Therefore, we must deal with all that surrounds it.

A year or two ago I spoke to this Senate about [*Words excised*] and Government's involvement, and I was made to look as though I did not know what I was talking about, that the information that was made available to me on that subject was incorrect. But you know, recent developments will show that my information was very close to home.

Sen. Chamely: On a point of order, Mr. President. I object…[*Words expunged*] Unless he can prove what he is saying, I object to a statement like that.

Mr. President: I was waiting to hear what the Senator had to say. He referred to that expression which is generally accepted as being unacceptable, but apparently he was preparing to bring forward some sort of evidence to support such a claim. If he is not bringing forward evidence now to support that statement which he made a few years ago and has repeated now, I will rule it out of order.

Sen. M. Hosein: Yes, Mr. President.

Mr. President: Are you bringing evidence?

Sen. M. Hosein: You see, Mr. President, I was referring to what had transpired before in another debate, and I believe the hon. Senator perhaps took objection because he is Syrian—I did not even know he is Syrian—but it is no aspersion on all the Syrians in Trinidad and Tobago. This matter was in the newspapers [*Words excised*] So it is no big deal about that; it is not the first time it is being heard in the country.

I was saying that I brought this matter to the Senate and some Senators felt that I ought not to have done so. I was simply saying what was told to me on that occasion. As a matter of fact, I understand that a resignation from the other side is imminent. I heard so. I am surprised that I am seeing all of them here today, because I was told that a resignation is imminent. I want to assure the Senate that I do not wear Reebok sneakers. I prefer Nike.

In order that we can appreciate what this Bill is all about, we need to see what steps the Government has made to arrest the crime situation in Trinidad and Tobago. We go to the Scotland Yard fiasco—

Mr. President: Tell me something, are you off the subject...?

Sen. M. Hosein: Long time, Sir.

Mr. President: Well then, I shall have to ask you to withdraw. I will excise it from the record because I am not satisfied that you brought forward any evidence.

Sen. M. Hosein: With the greatest respect to you, I made no charge, Sir.

Mr. President: No. You are talking about [*Words excised*].

Sen. M. Hosein: Well, you do not read the newspapers, Sir.

Mr. President: I am talking about the Parliament. I am not concerned about the newspapers.

Sen. M. Hosein: Well I made the point that I was speaking about the newspapers. Perhaps you were not listening to me.

Mr. President: No, no. You have made the statement in Parliament and I am saying that such language should not form part of the record unless you can substantiate such a statement. That is all. There is a difference, you know. The newspapers have freedom of the press. But if you are off that subject—I saw you wave a headline and I did not—

Sen. M. Hosein: That was quite accidental, Sir.

Mr. President: I know, but it does not enter the record because it was not said. That is why somebody was about to get up as you picked up the newspapers and no charges were made—quite correctly. But I will excise the reference to *(words excised)*

Sen. M. Hosein: Shall we replace it, Sir, with, "certain illegal people?"

Mr. President: You can always make such a statement. It would not have any meaning.

Sen. M. Hosein: So the question of the Scotland Yard fiasco would show that this Government brought down the Scotland Yard people. I do not know the exact figure. We were not told what it cost the Government of Trinidad and Tobago. I am told that it was some $10 million, but perhaps the Minister would give us the exact figure. Perhaps while he is at it, he would let us know what we got for the money we spent.

It pains that a report was submitted and that 100 police officers were thought to be corrupt, yet up to today I have not seen any one of these officers charged, removed or suspended from the police service. They are still there.

3.10 p.m.

Sen. Merritt: That is why they moved Russel; he did not suspend them.

Sen. M. Hosein: Mr. President, I quote from the article by Omatie Lyder in the *Sunday Express* of January 29, 1993:

> "'The difficulty that is being faced by the investigating team is the collecting of cogent evidence that will put us in a position to bring criminal proceedings against these corrupt officers. Let me assure you, however, that work will continue by the investigating team and I have every confidence that we will succeed in rooting out the corrupt ones.'"

These are the words of the Minister of National Security.

Hon. Senator: Which one?

Sen. M. Hosein: The one present. This is the assistant prime minister who was then the Minister of National Security. This was one year and eight months ago, and, perhaps, it is time that he give us a report on how many corrupt officers he has rooted out of the police service.

There seemed to be a deliberate attempt to interfere with the effectiveness of the Scotland Yard officers when they were brought here.

Sen. Huggins: Mr. President, on a point of order. Whilst we can agree with some latitude, I think my Friend is now becoming more and more irrelevant.

Mr. Sobion: If that is possible.

Sen. M. Hosein: Mr. President, let me quote from the *Trinidad Guardian* of June 20, 1993, and hear what one of the Scotland Yard officers had to say when interviewed by Mr. Clevon Raphael:

"Q: Mr. Seaby, before we go further, you have just made a very serious allegation here...that limitations have been deliberately put in your way. Can you explain that?

SEABY: That is not an allegation. That's just a statement of fact....

Q: Can you give an instance of somebody or something deliberately hindering your work here?

SEABY: There is one, quite serious. And that is: we have not come here with any status..."

Sen. Huggins: Mr. President, again I rise on a point of order. My colleagues have deserted me. *[Laughter]* This irrelevance has to stop, and I seek your ruling on it before the whole Front Bench disappears. *[Laughter]*

Mr. President: Let the Senator finish his quotation.

Sen. M. Hosein: Mr. President, sometimes it is very difficult for the Senators of the other side to take their medicine. The Bill before us has to do with crime, bail and the circumstances surrounding that. Let me continue:

or authority to carry out an investigation. We have not come here as police officers. We have come here as foreigners trying to do a job and we have been treated as foreigners."

He went on to say:

"We have not been invested as police officers.

No we are just private citizens. We are not even private citizens...we are not citizens of Trinidad and Tobago...we are visitors.

Look, we have come here at the request of your Government. Your Government has requested of my Commissioner that we come here and that we carry out investigations.

The only authority we have is the authority that has been given to us under the terms of reference which we have agreed to with the Government."

Mr. President: The speaking time of the hon. Senator has expired. I do not know if anybody is willing to bail out the Senator. *[Laughter]*

Motion made, That the hon. Senator's speaking time be extended by 15 minutes. *[Sen. C. Merritt]*

Question put and agreed to.

Sen. M. Hosein: Mr. President, no amount of stumbling blocks put up by the other side will prevent me from doing my duty as a Senator, for which I have taken an oath, and which I intend to carry out to the best of my ability.

When the Government makes its blunders and fiascoes, it does not wish to be reminded of them. It is hurtful to be reminded of them. Perhaps, that is one of the reasons that some people have been demoted. I know it is very hard for them to take it, but take it they will have to.

The article goes on:

And with the support, for example, of the Commissioner in stating that officers should cooperate with us and should assist us."

I read that in order to point out to this Senate that taxpayers' moneys were used to bring foreigners into our country and there seems to be no return for moneys spent. These people have left our shores, and it seems to me that we are no better off now than before they came.

In other democracies the Minister of National Security, who is responsible, would have had to resign for spending taxpayers' moneys in such a reckless fashion. That is one of the things the other side does not want to hear.

In this country people are gunned down mercilessly. One can be in one's bedroom, drawing room, at a party or simply walking the streets when the

perpetrators carry out these acts. How are we going to apprehend them? What kind of protection is there for the ordinary citizens in Trinidad and Tobago? When the police are called, when one is faced with a bandit with a gun, cutlass or both, they say point blank that they have no vehicles so they cannot respond.

I made an appeal 12 years ago for the Government to look into the issuance of firearms for businessmen and upright citizens. I must make this request once more because people ought to be able to defend themselves.

It is not only the issuance of the licence for firearms, but there are people who presently own firearms and have never fired them. If faced with a situation, one may not know what to do. One may be so scared when the gun goes off that one may faint or be killed and the gun taken away. I am saying that the system of issuing licences for firearms is wrong. What we should do is to have a psychological evaluation of persons when they apply so we know that those who would be issued with a firearm are stable. As a matter of fact, we should have periodic evaluation of persons who already have firearms licences.

3.20 p.m.

We should be insisting on training for people who are holders of firearms in order that they might protect themselves. Sen. Gosine talked about up-to-date technology for the police, and he stated that the Government has instituted up-to-date technology. I ask the question: Is Sen. Pundit Gosine living in Trinidad, or was he not listening to Sen. Capildeo who was talking about what up-to-date technology in the courts and in the police service is all about? He would have realized if he was listening and if he was aware of what our system is, that we are working under primitive conditions in Trinidad and Tobago. Making such a statement that the Government has instituted up-to-date technology is incorrect.

I do not understand how Sen. Pundit Gosine could come to the Senate and talk about his support for clause 5. I am disappointed that he would seek to support the draconian clause 5 that was put into the Bill before, and quite contrary to his Government's stand, because his Government saw the light and amended, withdrew that nefarious clause 5. I am happy that the Attorney General is back; I know he would ask what suggestions were made.

We on this side of the Senate are suggesting that the Government float a bond issue to get the necessary funds to arm the police and to get all the vehicles necessary for them to do their job. We are not only telling them to do it but we are also telling them how they can get the money to buy the vehicles and the weapons. Only if it does that will we be in a position to catch *[Interruption]* Sure

we have to pay. You borrow money for things of far less importance than that. The security of the state and the security of the citizens must be ranked number one. If you are shirking your number one responsibility, I think you have missed the point. They do not understand why they ought not to be there.

Mr. President, thank you very much.

Sen. Rev. Daniel Teelucksingh: Mr. President, this new Bill seeks to amend the law relating to the guidelines for the custody of accused persons. It has already generated much debate. It has had parliamentary and public scrutiny; in my opinion it is now going through what I would call its anti-climax stages.

This Bill, which I support, is merely a small step in the march against crime, a step that is so necessary, and most welcome. I believe that this Bill and its accompanying amendments have ensured that, indeed, persons can be granted bail. Public opinion is almost unanimous that we cannot and must not imprison persons for long periods while they are awaiting trial. We certainly should not encourage inordinate delays in court hearings while persons are kept in custody pending the determination of their cases. Some such persons may even be innocent.

I join in the chorus of the many who say we must speed up trials. The answer is there has been the system existing before this Bill was drafted. Magistrates always had the discretion to grant bail or to withhold it. Now some additions have been made to the existing system, and they have been given certain specific guidelines.

The new Bill with its accompanying amendments, I feel, is already a paper tiger since the wheels of justice are not moving purposefully and speedily. I do not see in the very near future the kind of changes that are necessary that will make this a very powerful Bill. I see that this Bill and this exercise that has taken up so much time and energy of Parliament and the nation, could degenerate into a piece of very feeble legislation. We would be back to square one if our court system is not improved immediately; and this is most important. We should have been working on the improvement of the courts before a Bill like this was dealt with. This Bill is only going to be put on paper as a set of amendments to something that existed there. We have always been asking ourselves though, if magistrates had been given the discretion to grant bail or to withhold, why have they not been exercising that discretion? It is a question that the entire nation has been asking. If this had been done I wonder if this Bill would have been necessary.

The society will be asking what provisions we are making to monitor the activities of persons who are on bail. The society is already very uncomfortable, having among them, persons charged with offences, particularly the more terrifying recent experiences, with those who have had previous convictions but are on bail.

I believe that the Bill should have been addressing this question of what we should do with persons on bail who are a part of the society. The time has come when we need to monitor very closely such offenders. Is it possible for probation officers or social workers, or, maybe, the district police, to assist in monitoring the activities of persons on bail? Is it possible for persons to report to officers of the law during the time they are on bail having been granted the privilege of being in society?

3.30 p.m.

I am very happy that the hon. Attorney General made reference to bailers and justices of the peace. The activities of certain professional bailers seem to be questionable. Today we call for an inquiry into the role of bailers within our judicial system. There appears to be the need for—and a very long time this has been noticed by our community—the re-examination of the role and function of bailers and their qualifications.

We are faced with a very serious dilemma, which is the real focus of this Bail Bill. How do we protect society? How do we protect law-abiding citizens from habitual offenders? The challenge of protecting the community from the indiscretion of career criminals is one of the main issues of the 1994 Crime Bill being discussed by the Congress in the United States. The direction of that legislation is that third time convicts would be imprisoned for life. In Trinidad, we need to address that question of the career criminal. The society is calling for protection.

This Bail Bill is not answering that question. The society must be protected and therefore we need to go a little further. We need a habitual offenders law; maybe not as severe as the US Crime Bill. As a society and community we need to formulate further legislation beyond the Bail Bill to address this question. Going with it, I must add this: There is the need to pursue the unfinished task in ensuring that there is humane confinement at all times for those who, at least for some period, should be removed from the community since they require special care and counselling.

I should like to make a suggestion to the hon. Minister. It has to do with the list of offences in the First Schedule of Part II of the Bill. The suggestion is because we have had some cases of kidnapping and abduction; that if these are not included in the list of offences we should include them as additional charges.

I close by suggesting and reminding that we continue to spend more of our time, energy and resources in addressing crime in its totality. If we do not seriously tackle these problems, which make fertile ground for lawlessness, then we would be in serious trouble. I agree with Sen. Daly and the others who pointed out that the number one enemy is really unemployment. It is a very important matter that needs re-emphasizing.

We are losing our teenage population, especially our young men, as almost all of them involved in criminal activity are unemployed. Many of them are school drop-outs; some did not even attend high school; they come from broken homes, and teenage lawlessness is now a national illness. It is a national scourge that must be addressed. We have to continue to search for answers pertaining to what the hon. Minister mentioned; he spoke about causation.

I think more time should be spent on analyzing the causative areas of deviant behaviour, particularly of those who are inclined to be involved in the various types of criminal activity. I agreed with the Minister when he called upon everybody in the society—the parties that share political power; the non-governmental organizations, individuals, to be involved. Crime is not only a governmental problem; it is also a national problem.

Thank you.

Sen. Everard Dean: Mr. President, I rise to support this Bill only because it is needed. I would have preferred very much to support the Bill with the original clause 5.

I am very happy to see the manner in which some agreement on this Bill was reached in the other place. In my opinion, this Bill is not about government and opposition; it is about what is best for Trinidad and Tobago. I think the bipartisan approach without any visible flip-flopping is something that we must all commend and hope that in the other areas of legislation, where a special majority is needed, we would have this kind of objectivity in coming to good and happy conclusions.

To my mind, crime is the most important problem facing the country today. We must address it and the Government has taken the lead because ultimately it

has a responsibility to the country. Then, whatever has to be done, the Government must do it.

The Bill as amended is written to please everybody. Notwithstanding that, like other Senators who spoke before me, I think the administration of justice must be looked at because it would be pointless in having a Bail Bill, when criminals continue on their expedition in crime, and as a country we are not expediting the process of law.

I think it is important that justice be swift and fair. I know to incarcerate people without bail—and others would argue—is not the best thing to do. I believe that some people have argued that recidivism is so high that it is better to be safe than sorry. To my mind, this Bill is much better than the *status quo* because at the moment, the measures that obtain are inoperable.

To me, the police, the prosecutors and the administrators of justice want this Bill and, most importantly, the citizens of Trinidad and Tobago need it. I hope that the reason for bringing this Bill before Parliament was not the hysteria of the population, because it would then be an emotional piece of legislation.

3.40 p.m.

With the coming of this Bill, do we have sufficient places for these people whom we would deny bail for legal reasons?

It seems to me that the Government may have to re-think the whole question of the Carrera Prison, whether we should scrap it, or whether we should make it a little more habitable. At the moment, we have almost 100 persons convicted of murder whose sentence has been changed to life imprisonment. Almost immediately we have to find places for almost 100 persons for the rest of their natural lives; add to this, the spate of crimes in this country, and the number of people—

Mr. Sobion: Mr. President, I did not want to interrupt Sen. Dean, but for the official record, it is not 100 persons who have had their sentences commuted; it is approximately 50 of the 108 who had their sentences commuted, as a result of the Privy Council's decision.

Sen. E. Dean: Mr. President, I am very grateful for the Attorney General's explanation because newspapers have a way of guessing, and, I think it is very nice of him to put that into the records.

The Attorney General spoke about freedom of the law-abiding citizens to exist in the society. I would want to change that word from "exist" to "live" in the society, because it is one of the Government's first responsibilities to ensure that

the population go about its business with the minimum of dislocation as far as crime is concerned. I understand, that the final draft came from a significant amount of public comment.

I am gratified to see that Bills of this nature really encourage people to speak their minds. Sen. Daly alluded to television clips some time ago, and I think those of us who have the time to look at that question-and-answer piece on television, will find it to be very educative and informative.

I want to close, Mr. President, by simply stating, that side by side with this Bail Bill, the rehabilitation and reform of prisoners should continue, in the sense that after their incarceration they could properly fit back into the society. Like Sen. Teelucksingh, I have a problem. To my mind, clause 19, reflects on how we deal with the bailors. That clause is not harsh enough, because I think the professional bailors flourish on the gravity of the offence. And the price they charge these people who need and want bail! I would want to look in the future at the whole question of dealing with these professional bailors.

Sen. Ainsley Mark: Mr. President, when the debate on this Bill started some weeks ago, I did not intend to make a contribution; I felt that my colleagues, particularly those in the legal profession, had done justice to the Bill, a Bill that is so urgently needed in Trinidad and Tobago at this time.

A couple of weeks ago I was in Vancouver at a meeting with some Canadians, and we were talking about what is happening in Trinidad and Tobago. They were quite impressed with what the Government was doing in terms of opening up the economy, making foreign investment more acceptable and so forth. Quite naturally, the question of crime arose.

Some months ago the bodies of two Canadians were found in Blanchisseuse, and that incident made headlines throughout the length and breadth of Canada. My response when that issue was raised, was, well, the information that I have is that there seemed to be some kind of drug link with those two individuals, and that in fact, the drug scourge has enveloped almost the entire world. The response of one of the people at the meeting was, we accept that crime is a worldwide problem, but the more important issue is just what is your Government doing to address it.

It is in that context, that I rise to support this Bill, because while it certainly is not a panacea for all the issues of crime, it certainly is an important element in regaining control of our society from the criminals.

It is important also that at that meeting one of the gentlemen spoke about a project that he had lined up in Colombia, where there were plans to do some foreign investment. And after the World Cup when the footballer, Escobar, was shot; notwithstanding the fact that the project was a very profitable one—the rates of return were in excess of the normal hurdle rate for his company—he decided that he did not want to operate in that society.

3.50 p.m.

To the extent that we do not control crime in Trinidad and Tobago is, to my mind, the extent to which we would not be able to attract the domestic and foreign investment that is so necessary for economic growth and development and, most importantly, job creation.

I thank Sen. Daly for making available to me the article that he quoted from this morning—*Crime and Control: An Honest Citizen's Guide* by Prof. Robert Reiner.

"Causes of rising crime

> Why has crime increased so spectacularly, and what can be done about it? Debate on this has so far been blighted by partisan polarization. Much heat but little light has been generated by the conflict between right-wing explanations blaming permissiveness, left-wing analyses stressing social conditions, and the Home Office civil servants' emphasis on rising criminal opportunities. These positions all contain at least some germ of truth, but need to be integrated into a more balanced and comprehensive synthesis."

One of the truly significant things about the PNM Government is the comprehensive manner in which it approaches the problems in this society. I am not going to treat with the legalese and the rights of the citizens and whether clause 5 should be left in or taken out and so forth. I would treat with the issue of the other things that this Government is doing to address the question of chronic unemployment, as Sen. Daly so aptly put it.

May I say from the outset that I do not subscribe to the view that poverty is an excuse for lawlessness. I want to make that very clear. I think that position flies in the face of all the families, people of very humble origins, who have risen above their circumstances and who are standing and productive members of our society.

If we have to deal with crime, then we must address what is happening in the society. As the article "Crime and Control" states:

> "The crime explosion corresponds closely to the adoption of free market economic strategies (not only here but in many other countries, most evidently Eastern Europe which has also experienced a massive rise in crime.) These policies have increased poverty, inequality, and long-term unemployment especially amongst young people."

That is a view. I do not necessarily subscribe to it but there might be some truth in it.

In Trinidad and Tobago today, we have an economy that is in transition. Over the past two and a half years this PNM government has been charting what is in effect a new economic course for our country.

Sen. Prof. Spence: Mr. President, it is not a point of order but I just want to ask the hon. Senator whether he realizes how he is expanding the scope of the debate. I have no problem with that, but he, certainly, is opening up into a much wider sphere to which some of us would want to respond.

Mr. President: Other speakers that are still to come—

Sen. Hosein: No smart comment from the other side. Very irrelevant.

Mr. President: The matter has been raised by more than one Senator—the connection between crime and unemployment— and the Senator is attempting to deal with it.

Sen. A. Mark: Mr. President, in charting this new economic course this Government has been guided by the country's need to prosper in the new world economic environment of mega trading blocs, GATT, and the resultant opening up of markets. In order to compete and prevail in this new environment, the Government has embarked upon a policy of liberalizing the economy. We have put in place a number of measures, including trade liberalization reforms, which have been complemented by liberalization of the exchange regime. We are concerned with strengthening and enhancing the domestic financial market and improving the investment climate through legal and institutional reforms.

It is important for us to understand that in an economy like ours, which is striving for economic growth and development, we require a large amount of capital investment as an important element in the development process. Let me cite one example—the tourism sector—which I hope would give you an indication of the magnitude of the capital investment we are talking about. In the tourism sector, the construction of 5,000 additional rooms would require approximately US $500 million in equity and loan funds. The statistics indicate—

other Caribbean territories—that seven jobs are created for each room. It is in the development of this sector that we see the possibility of creating jobs for some 35,000 to 40,000 of our people.

Certainly, if we just take the tourism sector, if we just take one sector in an attempt to create 35,000 to 40,000 jobs we should appreciate that domestic investment can finance only a relatively small proportion of this capital requirement. We must access the foreign capital and international bond markets to complement investment funding to meet the country's investment requirements. Crime, therefore, and the perception of how the Government is treating with crime, would impact on the success that we have in accessing those foreign funds.

The Government has also been using its divestment policy as an instrument for promoting investment through the stimulation of direct foreign investment and the broadening of local share ownership.

4.00 p.m.

Let me just quote from the *Quarterly Economic Bulletin*, Central Bank of Trinidad and Tobago, Volume XIX No. 1, March 1994, Page 1—Review of Economic and Financial Developments—First Quarter 1994:

> "Although economic conditions remained difficult in the first quarter of 1994, there were signs of continued progress in the adjustment efforts."

Lower down in that first paragraph:

> "...the economy witnessed its second consecutive quarter of positive growth on the strength of an improved performance in the petrochemicals arena. Moreover, the rate of depreciation of the exchange rates slowed with a concomitant deceleration in the quarterly rate of inflation."

Sen. Hosein: On a point of order, Mr. President, I do not see the relationship between the argument being put forward by the hon. Senator and the Bill before us. Could he please tell us to what part of the Bill he is referring?

Mr. President: Senator, as I said before, I think more than two speakers referred to chronic unemployment and its relationship to crime. They took part in this debate today. I think the Senator is trying to indicate what is being done to control crime, which is part and parcel of the Bill—to attract—

Sen. Hosein: There is a debate on that?

Mr. President: It is not a debate, but reference would be made.

Sen. Hosein: All right.

Sen. A. Mark: Continuing from the same document:

> The level of economic activity, as measured by the Central Bank's Index of Quarterly Real GDP increased by 2.9 per cent in the first quarter of 1994 following an increase of 3 per cent in the previous quarter.

And we can go on and on. The point I am making, Sir, is that the policies the Government has put in place have started bearing fruit.

Mr. President, you are, no doubt, aware of the severe criticism that has been levelled at this Government for moving too swiftly in respect of its economic development plans. These criticisms have come most forcefully from the organized groups in the society who use their voices to air their concerns to the detriment of almost every other group in the society. I am saying that the organized groups, unfortunately but quite expectedly, seem more concerned about holding their position, about not giving up any piece of their pie. But the unorganized, the unemployed, and the youth, have no voice, other than that of the Government, to speak for them.

Sen. W. Mark: You all are not speaking on their behalf at all!

Sen. A. Mark: Since none of the organized groups appear concerned about the unemployed and the youth, we have been experiencing in this society a level of resentment which is manifesting itself in some of the heinous crimes we are witnessing.

It is apparently not enough for them to rob you, to take your car, or your money, but in the process it appears that they are driven to inflict bodily harm on you. I am suggesting that they are harbouring some deep-seated resentment against every sector of this society, because as far as they are concerned, other than the voice of the Government, nobody really cares.

We have a situation where even the convicted murderers on Death Row have people all over the world making their case, but the only groups in this country talking out on behalf of the youth, the unemployed, and unorganized is the People's National Movement.

Sen. Hosein: You are having a bad dream.

Sen. A. Mark: This is why the Government has to continue on its course of economic development and growth. This is why we have had to make several

bold and courageous, but absolutely necessary, steps to reforming this economy. This is why the Government, at the risk of alienating many of its friends and supporters, has to institute reforms that have had our detractors saying that we are no longer the party of our great and glorious founder, Dr. Eric Eustace Williams. But we are clear about our role and purpose. We have been given the mandate to create a society where all of us, regardless of race, colour, class, religious or political persuasion, could live in relative peace and safety.

Sen. Hosein: But where?

Sen. A. Mark: To do this, however, the unemployeds and the youth must feel that they are an integral part of the society, that their concerns, dreams and aspirations are taken on board in all national issues.

Sen. Hosein: What year?

Sen. A. Mark: Sustainable jobs—and I want to repeat that, Mr. President—sustainable jobs—

Sen. Hosein: Like the "10 days!"

Sen. A. Mark:—and the security which they bring to one's life are critical in this regard. I am suggesting that these sustainable jobs depend, to a very great extent, on levels of domestic and foreign investment which we would not get if we do not get crime under control—which is why the Bail Bill is so important.

We understand that the Bail Bill is not a panacea for the crime situation, but it is one element, one strand in the entire tapestry of measures being implemented to combat crime in Trinidad and Tobago today. The lesson is absolutely clear—until we create a society where we are all free of hunger, suffering, and deprivation; a society where truth, justice and fairplay reign, in fact, until we live the adage "We are our brother's keeper," the criminals will see to it that none of us shall be free. And, Mr. President, it is that caring, wholesome society the People's National Movement is committed to building.

Mr. President, I thank you.

4.10 p.m.

Sen. Junior Barrack: Mr. President, because of the concerns that were raised by Sen. Gosine, Sen. Mahabir and one or two other Senators, it is important that we get an understanding of the position of the United Congress as it relates to the Bail Bill.

The United National Congress' position is not that we must allow criminals to go free or to take advantage of innocent citizens in our society; our concern is that

the rights of innocent people in our society are not trampled upon. This is the fundamental argument that the UNC has been carrying on and will continue to do so. When we speak of the Bail Bill, we should not consider it in a vacuum, in a society where the people who will have to implement this piece of legislation are angels.

We are carrying out our analyses within a context where we have a Government, we have Ministers of previous governments, we have individuals in the police service, some making accusations which have created situations that have stirred our Government to act and to bring people from as far as England to act upon those accusations. We have a situation where you can say with certainty that if certain measures and privileges are allowed certain members of the protective services and the Government, these privileges can and will be abused.

We see in clause 5 of the original Bill—and this is the part that many people would like to be retained—certain crimes and offences which, if someone commits—I would like to read clause 5(1):

> "A Court may grant bail to any person charged with an offence except—
>
> (a) a person listed in Part I of the First Schedule…"

Which has to do with treason, murder, piracy and the like. Also in clause 5(b) it says:

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

Mr. Sobion: Mr. President, I wonder if the hon. Senator will tell us which Bill he is reading from, because my clause 5(1) and (2) appear to be somewhat different from the document to which he is referring.

Mr. President: Just for purposes of clarification, there were some amendments circulated which show the amendments made in the other place, and clause 5 had quite a few amendments made in the other place, and clause 5 had quite a few amendments to it. So the original clause 5 appearing in the Bill has been changed appreciably.

Sen. J. Barrack: Mr. President, may I seek your guidance on this? Am I prevented from quoting this clause here?

Mr. President: You are talking about quoting the original clause 5?

Sen. J. Barrack: Yes.

Mr. President: Well the point is, the Bill before you now is clause 5, as amended.

Sen. J. Barrack: Yes I know that, Sir. But I am quoting the original clause 5. Am I permitted to do that?

Mr. President: You can make reference to it. I think everybody has a copy of the Bill. You do not have to go into details, but if you feel it is necessary, go ahead, but I do not think it is necessary.

Sen. J. Barrack: Thank you for your ruling.

What I was getting at is the fact that many people are still uneasy and dissatisfied with what they consider to be a watered down version of the original Bill. Sen. Daly is in the back there and is saying, yes, he is dissatisfied. What they are dissatisfied with is what they perceive to be the escape of some people from incarceration on the mere laying of a charge by a police officer for the commission of offences listed in Part II of the First Schedule.

If it is not that, then why do you have a problem with the present amendments? It will be seen that if there is a situation where we do not protect the rights and freedoms of the individual in our society and do not ensure that the safeguards are there, intact, we would run into severe problems. I would like to quote from an article by the Chamber of Commerce published in the *Express* of Wednesday, August 31, 1994.

In that article the Chamber lamented that because of the present frustration that exists in the Judiciary, they would like to see the measures passed in the Parliament as were originally put forward by the Government. It continues here, where they are talking about the judicial system being organized in such a way so that after 12 months hardened criminals cannot just be released on us and we do not have a mechanism to deal with it. In quoting Mr. Allum, the Chamber went on to say:

> "'the Bill betrays a lack of confidence in the Judiciary' and 'it is true that judges have not been exercising that (discretionary) power.' No doubt judges have been reluctant to deny bail in the light of delays in the judicial process. While one can empathise with their unenviable dilemma, in the light of their acknowledged reluctance to come down on the side of the vast majority of decent citizens by acting against a small band of serious repeat criminals, that discretion must, albeit reluctantly, be removed."

That argument seems to be persisting, that we must put away for at least 12 months these people whom we consider to be repeat offenders and who may have

committed one crime before and are arrested. Or, as listed in the second part of the First Schedule, those people who commit these acts must be put away for 12 months or a particular period. If the Government wants to do that, it has a remedy in the Constitution. It can easily deal with matters such as detaining people without access to a judicial authority by simply calling a state of emergency, because that, apparently, is what you want to do.

Mr. Sobion: Mr. President, I know I made the observation earlier, but certainly, it is not the Government's intention, based on the Bill that is before this Senate, to do any of the things that he has suggested, and that ought not to form part of this debate.

Mr. President: I agree with you, but when you tell people what the position is, they insist on doing the opposite, and if you come down and say, "Look here, resume your seat; end your contribution," they would say you are muzzling them. All that he is saying is that clause 5 has already been amended. The clause 5 before you is the amended clause 5. You may say that you agree or disagree with the original clause 5, but to go into the details of the original clause 5 and comment on them in this Senate is out of order. That is what I am trying to tell you.

4.20 p.m.

Sen. J. Barrack: Thank you, Mr. President, I bow to your ruling.

The view that we, as a party, have done our duty is beyond question. The fact that we were able to stand up in the face of attempts to rally the public against us on this Bill, the fact that we did not pander to public opinion, that we stood our ground in defence of what is right; the fact that we have not allowed the Government's propaganda to interfere with our resolve to defend the Constitution and the constitutionally guaranteed rights in sections 4 and 5 of our Constitution—that we did all this, is indeed commendable.

I want to publicly thank the Leader of the Opposition in the other place for the way in which he has stood his ground and shown that he is a man of principle and integrity. *[Interruption]* It seems as though the Senators of the other side have always had a problem with my tenure of office, but I have never had one. *[Laughter]* What the former Minister of National Security must review is his tenure of office. In view of the spiralling crime situation he has been a total failure as exemplified by his dismissal from the job, and he must understand that these petty talks would not get him anywhere. I have said in this Parliament before that he is totally incompetent, and this has been seconded by the Prime Minister.

I would like to bring the attention of Senators to what I consider to be the reform of the prisons—because part of the effect of this Bail Bill is that there will be an upsurge in the population of the prisons—the conditions existing in our prison system, where accused, not convicted of offences, are kept in the most degrading, dehumanizing conditions that one can imagine.

There are nine, 10, sometimes 11 and in other cases up to 15 persons in a cell six by nine feet. The toilet facility in each cell is a bucket which they all have to use. This bucket is emptied every 24 hours.

It is reported that the putrid scent that emanates from that bucket, even when it is empty, is unbearable. And prisoners have to eat in that cell. That is a fact. We are about to go for tea and the description is so graphic that it will affect Senators eating this evening, but these people have to stay in that cell and take it.

I would like to quote a proposal from *A Charter of Civil Society for Caribbean Communities* brought before this Parliament. Article 2 on human dignity says:

> "The signatory states shall, in the discharge of their legislative, executive, administrative and judicial functions, ensure respect for, and protection of the human dignity of every person."

I want to make it abundantly clear that it is an incalculable wickedness that is inflicted on people who are merely accused of a crime, to be placed in that holding centre, and have to live in such subhuman conditions.

The PNM has had a brief interruption of five years in its reign, but no one in this society should sit idly by and allow conditions of that proportion to continue without mentioning it and doing something about it. It just goes to show what the PNM thinks of our citizens. How could they, as an executive, preside over prison conditions like those? It is almost unimaginable.

This is a fundamental point. People believe that if a man is accused of a crime and sent to prison, all sorts of wickedness must happen to him there. It is expected that the man must be buggered in jail, and it is reflected in the way prison officers react when they hear the screams of individuals at night; they use terms like "Let the man…"—I will not use the last word. It has to do with a total disrespect for the human being and personality.

4.30 p.m.

This has been continuing unabated in our prison system for over 35 years. [*Interruption*] I do my research. Let me say that that is the breeding ground of

criminals. When a criminal sees what is taking place and how the society is treating him in such a situation, he loses all respect for the society. Some of them are first time offenders; some of them are in there because they were accused of a crime. Many of them are released because they were found not guilty. When they return to the society they come out with hatred. They understand the society more clearly. Some people believe, and it seems that this Government believes and governments before it believed, that if you create a situation in the prisons that is so intolerable, people would not want to go there, and as a result, there would be a situation where there would be a lessening of criminal activity.

If that is part of a rationale why the prison system is so despicable, we must change it. Because more and more crimes are being committed. When offenders and accused persons go to the prisons they come out worse. It has been the report of everyone who has carried out an analysis of Trinidad and Tobago prisons. I want that point to be understood. In the final analysis when an accused person is apprehended and put into these holding centres, we must know that they are not held there forever. They will return to the society.

We must be very concerned with the type of people that return to freedom in our society. If we are not mindful of that—and I believe this is one of the reasons for the upsurge in criminal activity, a man goes in for a minor offence and when he is in the prison he has to become a criminal to survive. He has to either pretend or actually involve himself in acts tantamount to criminality in prison to keep a man off his back. This is a situation that the Government has presided over for many years. It is a blatant disrespect for the dignity of human beings. We on this side will not tolerate that in any way.

Mr. President: Are you going to be much longer?

Sen. J. Barrack: I will just take about 10 minutes, Sir.

Mr. President: All right.

Sen. J. Barrack: It is absolutely important that we get an understanding of how we view the solution to crime. I have heard the hon. Attorney General speak about the high rate of crime solution. One of the ways in which crimes are solved in Trinidad and Tobago is merely by making an arrest. There is a situation where, sometimes, 15 crimes are committed in a particular area, one man is accused of the 15 crimes, he is placed on a charge and the police say they have solved 15 crimes. There are even more sinister sides to this definition to the solving of criminal activity.

There was a situation that existed in this country, that a man would become the most wanted man in Trinidad and Tobago, and every crime that is committed of a particular nature, from the time the man became the most wanted man to the time he is normally killed by the police in an exchange of gun fire, is pinned on him, and all those crimes are solved when the man dies. This is a situation that has to be looked into because it does, in fact, make the criminals laugh at us.

Sen. Merritt: As 'Lizard' is laughing.

Sen. J. Barrack: Probably. He is reclining now as the Attorney General is. The situation is such that the solution of a crime must be determined by securing a conviction of the offender. I do not want us to have any doubt in our minds that if we are going to deal effectively with the measures that are proposed in this Bail Bill—and most of them we on this side are totally in agreement with. [*Interruption*] The English language escapes some people. Others, we are just in agreement. [*Laughter*] They are passable. You can live with them. As far as compromising to the Government is concerned, no retreat, no surrender!

Where the fundamental rights of the citizens of Trinidad and Tobago are concerned we will not back down. We will risk our political future, but we will not back down on that. We are the guardians of the innocent, and we are going to ensure that everything the Government does—because it is not to be trusted—will come under very close scrutiny. And, whatever it does, it would have to answer for it.

Sen. A. Mark: Before the Senator closes, I would like to get something clarified. I just want, for the record, to be certain. Did he state a short while ago that the police wrongfully charge individuals, and then kill them in shootouts, what he called an exchange of gunfire?

Sen. J. Barrack: Mr. President, I suspect that the hon. Senator was sleeping. I developed a certain argument and I said that the definition of the term "solving a crime" is giving me problems. In that context I spoke about when a policeman charges an individual, that crime is considered to be solved, a definition which I understand the Attorney General made, or I have read in a newspaper or somewhere about. I do not want to misquote him. Am I correct?

Hon. Sobion: I thought you were quoting from—

Sen. J. Barrack: As a result of that particular definition, I also extended it into the area where it took on a more sinister side, and I said that a man who might become a most wanted man, from the day that he is designated as "most wanted" to the time he is either arrested or killed in a shootout, all crimes that

were attributed to him during that period, and which are normally all the major crimes that occurred in the country at that time, are solved. I am saying that the definition is dangerous, and I am also saying that the definition of "solution of crime" should be based upon securing a conviction for the offence.

I thank you, Mr. President.

4.40 p.m.: *Sitting suspended.*

5.10 p.m.: *Sitting resumed.*

Sen. Prof. John Spence: Mr. President, I spent some time this morning wondering how it would be possible to discuss agricultural policies on the Bail Bill. [*Laughter*] I thought it would never be possible, but I have to thank Sen. Ainsley Mark for affording me that opportunity.

Activities to address the problems in the Bail Bill present one with a dilemma. Clearly, on one hand, one wants to restrain criminals who would become repeat offenders, and, on the other hand, as Sen. Barrack was quite correct in saying, try to protect innocent persons. Often, this is interpreted as one's wanting to protect criminals. Clearly, this is not the case.

The persons who are concerned with provisions that appeared in the original clause 5 are concerned about protecting innocent persons. One has to strike a balance between the two and I believe that the new version of the Bill does effect that. I could give the new version my support, which I could not have given the original version. I think Sen. Barrack is right to refer to the original version because it does indicate the Government's original intent. It is that intent I have had, and shall continue to have, some concern about.

I have been particularly worried by the reaction of many persons in the society to the upsurge in crime. In some ways which may sound strange, I have been more concerned with that general change in attitude and outlook of the population towards many measures such as the Bail Bill, than I am with crime itself. I do believe that with concerted and comprehensive action, one would eventually deal with crime. I think it is more difficult to deal with the complete change in culture, attitude and the way that the population as a whole conceives we should organize our affairs. That certainly causes me great concern.

There are certain countries in which I would not want to live because of their attitude towards their fellowmen. I do not want to see Trinidad go in that direction. One is hardpressed to make these comments because immediately one is accused of supporting criminals or being criminal in and out of Parliament.

Certainly, comments like those of the Attorney General worry me, because they express a certain attitude of mind, with which I do not agree and, as I said, give me some concern.

There are some bright points on the horizon. I think the bright points are the number of people, especially the young people, who have been concerned enough about the provisions in the original Bill to have organized discussion groups, and put forward points of view to parliamentarians that might modify the general trend into a harsher society, which I see taking place.

I must also say that I have much sympathy for the position Sen. Barrack has put forward on the conditions in the prisons. This also reflects the sort of society that one has. Before his intervention, in an earlier discussion, one had not really been looking at the issue of rehabilitation. After all, if one is looking at it logically—and in some sense Sen. Teelucksingh, I think, pointed to the logical consequence of the way that we are thinking—one is looking for preventive detention.

If one is going to keep people who may commit crimes out of society, then it must be done on a permanent basis. The Bail Bill may keep them out of society for a period, until they are tried, but if they are tried and found guilty, the period during which they have been incarcerated may be taken into account by the judge in his final sentence. They may still have a certain number of years in and then they would come out and commit the crimes again if they are repeat offenders—the logical consequence of an attitude of mind which says the only solution is to keep them out of society permanently. That is very costly. Perhaps, we could get to the situation where we would say the only thing is to eliminate them completely and have hangings for a large number of other offences.

Clearly, we have to think a little more carefully about the whole issue and how we want to manage our affairs. On one hand, we could control the crime situation, and on the other hand, change our whole outlook in society, so that in the long term we have lost a great deal and gained a short-term advantage.

Over the last few weeks I have been looking at the Macneil Lehrer News Hour show during the luncheon hour period between 12.00 noon and 1.00 p.m. This is one of the few decent programmes on the public television. It is not commercial television. There has been much discussion about the issue of how to address crime; the problem of repeat offenders and the youth. One female judge made the comment of having to deal with a 15-year old who came before her. He had been

hired to commit murder. At the age of 15 years he was a hired gunman and he was paid US $500 to commit the crime. It is a problem that occurs in many countries.

What struck me in that series of programmes is that at least there are groups in the United States that are addressing the problems and they seem to be sufficiently concerned to take action. It is not necessarily the case that the individual efforts would bear fruit, but people are exploring new possibilities and carrying out some measure of research and investigation into the causes. This is what we seem not to be doing. It was mentioned in one of the previous contributions that we need to have more facts about what is actually the situation.

It seems to me that we are not exploring new possibilities of having a more fundamental cure for the situation. The Bill that we are introducing is looking at particular parts of the system which we might want to control. We have to do that. From the very beginning of the discussions on various aspects of crime, I have taken the position that we should deal with it differently.

Quite frankly, we need to have a state of emergency. If there is an emergency situation, that is how you have to deal with it. By not doing that, we would be getting ourselves into the situation of putting measures on the statute books, which would be there for a very long time, after perhaps the emergency has passed. This is why in a previous debate I supported the first drug report that there should have been a state of emergency then. I still believe that this is how we should deal with it.

5.20 p.m.

There is a mistaken idea that a state of emergency necessarily means a curfew. It does not. It does not have to cover the whole country. One can select certain areas where one wants to take a particular thrust in addressing crime and just declare it in that area. And, of course, there are safeguards, as is being pointed out with the legislation, that govern states of emergency, which you may not be having in some little legislation that you want to put on the statute books on a more permanent basis.

I certainly think that there are other ways of dealing with the problem, but certainly, from my point of view, the Government is put there to run the country, and it has decided to act in a certain way; as long as I can live with the measures, I would certainly give my support. I would still give it as my opinion that this is not the way to tackle the problem.

On the more general issue raised by Sen. Ainsley Mark, I am very glad that he raised it, because I believe that we are missing an issue here, which needs to be

tackled. I think the issue is not so much poverty. Certainly, one makes the point that poor people do not have to be criminals, clearly that is the case, and nobody is suggesting that that is so.

What is being deduced from our present circumstances in different countries of the world where one seems to be having structural unemployment, permanent chronic unemployment, is that it is not just poverty in itself that is the problem; it is the relative poverty. So those countries which have poor people alongside a large number of well-to-do people—if it is just one or two very rich people that does not seem to matter so much because the relative difference is not so great. What many observers are finding these days is a relative poverty that is becoming a problem. It is not the absolute poverty that is the concern, but the relative poverty. Economic thrusts in many countries these days are creating just that situation—a situation where certain members of the society are becoming more affluent, and others are staying at this much lower level, and this is the issue that I think we need to tackle most severely.

This is why I keep on disagreeing with Government's economic policy because it is not taking this into account; it is acting on the assumption that the things that they will do will eventually lead—you could hear this from Sen. Ainsley Mark's intervention. His assumption is that the things the Government will do will eventually lead to jobs for all, and a more equitable society. The evidence is not there; this is what is happening.

The evidence is that the current thrusts are leading to chronic unemployment, and this greater relative disparity between the "haves" and "have nots" This is why I think we need to look at the general policy, which we have never done. We have not yet debated the general government policy. This clearly is not the time to do it, but it is critical that we do so, because this affects so many other things, including the crime in our society.

I would like to address more directly Sen. Ainsley Mark's points about the history of employment. He suggests that by building 5,000 hotel rooms he will get 35,000 jobs. Where is he going to build them? The hon. Prime Minister said that they will be built in Tobago. He said that they will be increased from 1,000 to 5,000 in Tobago. I put my head on a block that if you build 5,000 hotel rooms in Tobago, your system would not sustain itself for more than 10 years. If he is talking about sustainable employment and sustainable systems, he had better not talk about 5,000 hotel rooms in Tobago—in fact, the infrastructure there, and the possible infrastructure, can scarcely support the present number of hotel rooms.

I ventured to suggest to him if that is the way he wants to go, it is not by building 5,000 hotel rooms. He needs a completely different type of tourism for Tobago—a tourism which would supply jobs, which would supply employment, but which would look for a different type of tourist from the one that he would bring in the 5,000 hotel rooms; a type which would not disturb the culture of the society. Tobago, so far, has been relatively free from crime. Why? Because security systems in Tobago are very tightly knit.

Earlier this year, I spent a long weekend in Tobago. I spoke to various people, the taxi-drivers and so forth. They said, in Tobago a criminal is very quickly identified by the community in which he resides. But they said one thing: "If he goes to jail in Trinidad, we do not want him back here at all in Tobago. Because then he is finished—once he has been to jail there".

If you are going to have that development, you must say what kind of development you are going to have. Is it going to lead to greater crime in Tobago? Is it going to destroy that society the way the Trinidad one is being destroyed? Or are you going to go for a concept that will allow you to develop the whole system in a balanced way, going for a smaller number of tourists, but who spend more money and so forth. It is extremely important to explore these things, if that is being put forward as one of the solutions, which I think it should be.

The hon. Senator has mentioned the changes with respect to liberalization, including GATT. We were told a few days ago in the newspapers that Government has extended its policy of liberalization now to the agricultural sector, which has been protected by negative listing. This policy is now changed; there will be tariffs, instead of negative listings. The tariffs, which will be put on immediately, will be removed within a period of three years. We are told that this is so, because we have to obey the GATT thrust. The United States has not yet ratified the General Agreement on Tariffs and Trade, but we are being told that this is the way the world is going and therefore, we must rush ahead of the rest of the world to implement these measures. GATT has not been ratified by those countries which are telling us to do this. Why has the United States Congress not ratified the General Agreement on Tariffs and Trade? Perhaps, they will eventually but, to date, they have not done it. Does, in fact, the General Agreement on Tariffs and Trade say that we must make these reductions within four years? It certainly does not. The period is very much longer than that, but we are ahead of time. Why?

Mr. President, the 35,000 jobs which may be created by these 5,000 extra hotel rooms in Tobago for a period of, perhaps, five or 10 years, will be lost in the

agricultural sector long before you can build those hotel rooms. Where are we going? What is the point of creating jobs on the one hand, and losing them on the other? Certainly I have found nothing in the agricultural policy to imply that we will maintain those jobs at present in the agricultural sector. Can you imagine what would happen if the rural sector in this country collapses?

You talk about crime; think of when the people in the rural areas come into the towns. At the moment we have a reasonably secure situation, because we have a reasonable balance between our urban area and our rural area. It happens that there are different ethnic origins and that balance is pretty well maintained. I ask you to consider the situation when those rural folks have to come into town to look for jobs. Talk about crime! Your Bail Bill will be of no consequence whatsoever.

Let us understand what we are doing to our society when we decide that we must have an economic policy that is going to move forward in the way that we want it to. I agree with you. Yes, sure. There are certain things that we cannot avoid doing. But we do not seem to be doing them with any savvy. We are being constantly told as individuals, we must be independent, we must not have this concept about a job for life, and all the rest of it. Each of us must go and make our own living. We must all be business-oriented. We must each be self-sufficient. I agree with that entirely.

Why can the country not be also self-sufficient? Why can we not say, look, we are going to decide what is best for us. We know that there are certain pressures out there which we cannot avoid. We are going to negotiate as best we can with those measures. Perhaps, we are doing so, but certainly, there is no public evidence that we are. Perhaps, we are resisting these pressures quietly within the boardrooms, within the halls of the Twin Towers, or the halls of whatever department in the World Bank with which we are going to negotiate. Certainly, it is not apparent to me at all.

I would support this Bill, because the Government says this is what we need for going forward. I will support it in its present form, I certainly would not have supported it in its original form. I realize we have to do something urgent about crime. I would suggest, again, to consider a state of emergency in limited areas, and in limited effects. I am sure that many people have got to a state now where they would be glad for a curfew. They would not complain about having to stay in at nights—except, perhaps, a few party lovers, who are probably in the minority. Unless we also address particularly the relative change that we are undergoing—of all the Caribbean Islands, Trinidad has been very lucky.

Look at what is happening. For years in Jamaica there has been the violent crime problem. It is not today in Jamaica; it has been for years. But along with that was this great disparity in wealth—the difference between Trinidad and Tobago. In fact, many Jamaicans said that Trinidadadians did not know how to live. Because the houses were not as big, their affluence was not as evident.

What ruined us was the oil boom because then everybody threw his affluence around, and now that we have gone back to a lower level of income, the haves are still throwing their affluence around. The difference is more apparent to the population and, as one of the previous scientists said, you are getting hatred and resentment which you have to deal with in some way. I know one way of dealing with it is to get those people out of circulation so that they would not brutalize people.

5.30 p.m.

You know, Mr. President, it is absolutely amazing to me that we do not take the one medium that we—the Chamber of Commerce, the Government—have complete control over and that is the television. Every night on our television we look at bloody murders in rapid form, cuffing, beating, chopping, everything.

My colleague passed me a note to say that he had read a document recently which showed that in the United States by the time a youngster becomes a teenager, he would have seen 8,000 murders on the television and 100,000 cases of violent attacks. It is the same here because we get all the programmes here. If we did not believe that the television had an impact why would we advertise on it? Why do all the businesses advertise on the television? Obviously, because they feel that it influences people. How can the advertisements influence people but not the violence?

This is something we can do. The Chamber of Commerce is always talking about crime. Why does it—all its members—not refuse to put any ads with violent crimes on the television? That is why I cannot take the Chamber of Commerce seriously in its fight against crime. The one thing it has under its control to do, it does not do. The Government television station should know better. One of the others I think is closest to being, as it calls itself, a family station. Why do we not address the problem on the television?

The evidence suggests that the youngsters in violent crimes are getting younger and younger. In the United States an 11-year old has just been bumped off because he bumped off a 14-year old. The same thing will happen here. They now decide in the United States that unless they start at primary school—it is too late, the kids would have already been inculcated with violence. All I am saying

about rehabilitation in the prisons may be nonsense because it is too late. But we still have to try! We cannot just assume that it is too late. We must do something about the youngsters who are coming up now, and, certainly, addressing the television problem is one way to do it.

Thank you very much, Mr. President.

Sen. Dr. Edmund Chamely: Mr. President, I know it is getting late but I promised a three-minute contribution, so I hope we stay awake.

Crime is now rampant in Trinidad and Tobago and the average citizen no longer feels safe. We have all had to revert to self-protection with burglar proofing, dogs, weaponry, and so forth. None of us is comfortable when a member of the family is outdoors, and today this has extended to insecurity indoors. There has been an outcry—certainly not hysterical—from the public to Government to do something, and this outcry has swollen into an avalanche forcing Government to become active and, today, we have come here to debate the Bail Bill.

We have listened to the Attorney General, who has explained to us that this Bill is only part of his Government's effort against crime; and we accept this.

We, like John Public, believe that there are many criminals who are repeat offenders and we feel that the removal of these offenders from the streets would certainly reduce the crime rate.

I cannot agree more that the Bail Bill with its amendments is necessary and the rights of the public would have to take precedence over the rights of the individual, especially when the individual is a repeat offender.

I would leave the wranglings of the legal parts of the Bill to be worked out by the legal minds, to make sure that, except by due process of the law, a man would continue to be innocent until proved guilty and that all our citizens, including criminals, would get equal rights. I am certain that the legal minds among us will do justice to these high principles.

I want to go back to the aspect of crime which has triggered the Bill and this debate. I know that we do not have any formal statistics in this country, but we do have figures from abroad and some studies from our own country, and, certainly, facts emerge. The first is that 85 per cent of the street crimes in the USA are drug-related. Some of the other facts are that crime is related to economics—and we have heard the term "relative poverty" bandied about—unemployment, morality, which reflects spiritual breakdown; family life breakdown and lack of self-esteem.

It is therefore incumbent on the Government and all of us that in tackling crime all of these preventive measures must be dealt with. The drug problem, we all accept, is a menace and must be addressed. We know for a fact that the preventive aspects of any situation are always cheaper than the treatment aspects; and this we have proved in medicine from time immemorial.

Therefore, we exhort the Attorney General to put much effort into his pre-trial phase on crime. There are many competent people in Trinidad and Tobago who would be willing to spearhead programmes aimed at preventing crime. I am told that conditioning programmes can become very effective within a seven-year period, and we can make an impact on crime if we are serious about it and if we make a concerted effort.

Mr. President, I give my support to this Bill.

Thank you.

Sen. Wade Mark: Mr. President, I would try my best not to detain my colleagues longer than is necessary. There is an old saying that power corrupts and absolute power corrupts absolutely.

Hon. Senator: We heard that already.

Hon. Senator: Hear it again.

Sen. W. Mark: Sir, in Trinidad and Tobago we have discerned over the last two and a half years a pattern of repressive behaviour on the part of this administration. We are witnessing an intensification of a struggle between the haves and the have-nots, the privileged and the under-privileged, those who possess and the dispossessed.

The laws that are being framed today, including the Bail Bill, as my colleague said earlier, cannot be viewed in isolation; laws have a social basis. What we are seeing developing in our country today is a kind of struggle in which the poor and the down-trodden are being cast aside and our problems are being wished away. Many of the citizens representing particularly powerful interest groups seem not to care about the root causes of our malady, our crime scourge.

The philosophy of this Bill has to be looked at very carefully. If one examines certain aspects of the Bill to demonstrate what could easily be described as a kind of class prejudice, sometimes bordering on class hatred, by certain elements in the society, one would realize when one goes to a certain clause of this Bill—and I would like the hon. Attorney General to indicate to me what this clause really purports.

5.40 p.m.

Sir, if you look at clause 6 (3)(b), it says:

> "(3) In the exercise of its discretion under subsection 92)(a) the Court shall consider the following:
>
> (b) the character, antecedents, associations and social ties of the defendant;"

What does that mean? Does it mean that if somebody gets old, somebody is brought before the court, if that person comes from a particular community, if that person enjoys a certain rank in the society, he would get favourable treatment, as opposed to somebody who is poor? You see, even in our legislation it seems that there is a class prejudice developing and we have to be very careful. So I am asking him to explain to this Parliament and this country what he means by this particular section, seeing that he is the author, the instigator, of this particular piece of legislation. Maybe in his winding-up he will provide some clarification.

The point I am making is that there appears to be a growing viewpoint in this society that poor and dispossessed people must be jailed, must be cast aside. The Government is not attempting, as far as we are concerned, to do anything serious to address the social ills of our country.

Mr. Sobion: Mr. President, I should really like to respond to Sen. Wade Mark when I wind up the discussion, but if I can be guided as to where the problem of class and the discrimination against poor people are contained in clause 6(3), I would be better able to respond.

Sen. W. Mark: Mr. President, I simply sought to draw to the Attorney General's attention this particular clause and I ask him to kindly explain to this Parliament what clause 6(3)(b) means, in terms of "the character, antecedents, associations and social ties of the defendant." What does he mean by this? Is that not indicating something to the society? If a poor man is locked up and he appears before a magistrate, as opposed to a rich man's son, does that not connote some kind of difficulty in the mind of a magistrate, when you put such a clause in a piece of legislation? Maybe he can think about it and clarify it as he proceeds.

Sen. Daly: Mr. President, on a point of clarification, if the Senator would be good enough to give way. What meaning did the Opposition ascribe to this clause when it supported this Bill in the Lower House? Could he help me with that?

Sen. W. Mark: I am just seeking clarification.

We cannot have our cake and eat it. I am advancing that we live either by the rules, by established principles in our society—our society is based on the rule of law, on the principle that someone is innocent until proved guilty; that is the principle which guides our society. If we do not want that principle, we must toss it out the window. But you cannot attempt, as the Government was attempting, to strike, what they call, a balance, and in trying to do this, was seeking to deny innocent people of their fundamental rights and freedoms.

So we have to be extremely careful as we proceed with these Band-Aid measures, which, when you examine them carefully, as we have concluded, would not make a dent in crime in our country. If this Government were serious about crime in Trinidad and Tobago, it would do like the Americans—bring a total comprehensive package. Our good friend Sen. Ainsley Mark made reference to the fact that this Government likes to deal with things comprehensively; it is a comprehensive regime. If it is a comprehensive regime, why not bring a total anti-crime Bill, or a total criminal justice Bill to this Parliament that would take into account all the elements that would bring into being, for instance, law, order and stability? But instead, a knee-jerk response, a panic response, is sometimes orchestrated by the Government.

We recall the Minister of National Security, in his wildness some time ago, telling people to go out there and demonstrate against lawyers who were defending persons who were about to be executed. He was actually inciting violence against lawyers. What I am saying, Sir, is that we have to be extremely careful as to where we are going and what we want to do. We have to understand that in our democracy people have the right to be heard; people have the right to know that if they are arrested they can be brought before a judge or a magistrate and depending on the severity of the crime, the magistrate or the judge would determine whether that person would or would not be granted bail.

But you cannot give the police or the executive authority the power. That is what the Government was seeking to do initially, and if it were not for the principled stand that we on the benches of the UNC took, what would have happened is that this law would have given the right to the powers that be to arrest politicians, trade unionists, business people, or anyone whom they do not like. This is the seriousness I bring to this debate, in terms of the pattern of repressive behaviour on the part of this Government.

The first thing this Government attempted, through this Minister of National Security, was to give the army the power of arrest. He was fighting to give the

army the power of arrest—this Minister of National Security, who is intellectually bankrupt. For a young Minister, a man coming from the PNM regime, with Eric Williams' foundation, the hysteria that comes from him, you wonder if this man had the power that he dreams about, the intoxication, I would not even be here, because any time he sees me, he says: "Mark, I have a cell for you in the new Golden Grove." *[Laughter]* That might be taken lightly, but I do not take those things lightly. He says that to me! He is not the only one. The Prime Minister of the country also threatens me by telling me that I am behaving bad and he has a cell for me also, in Golden Grove.

I am saying, it is a pattern of conduct on the part of the Government. First of all, it wanted to give the army the powers of arrest; when that failed—

Sen. Huggins: On a point of clarification. I just want to point out that in the Caribbean, Trinidad and Tobago is the only country where the army does not have the power of arrest in aid of civilian authority. It is in Barbados, Jamaica and Guyana. So it is not this wild suggestion as the Senator wants to make it out to be.

Sen. W. Mark: That is why our society is unique.

5.50 p.m.

When the Government could not get that particular arrangement going, it sought to remove the Commissioner of Police—that was the second step—and to restructure the entire Police Service Commission in an effort to get itself more power. When it could not get through with that, it wanted to introduce a Bill that would have taken away the right of the defendant to cross-examine his accusers. That is a criminal activity, again, on the part of the Government. Then when that was not enough, you know what the government is attempting to do? It is proposing to bring something called a Security Intelligence Agency that would be under the direct control of the Prime Minister—a *Ton Ton Macoute,* a gestapo, secret police society, a mongoose gang. It is a pattern of behaviour that this Government has developed over the years. Then the latest effort, as you know, is this proposed Bail Bill that we have before us.

My colleagues have said it over and over and it is worth repeating, that we stand up in defence of the innocent and in defence of those persons who cannot defend themselves. We say that is what our responsibility is all about and that is what we will continue to strive towards achieving. Therefore, we feel that the Government has to address the real issues in our country.

This question, as I said, about attempting to organize Band-Aid and piecemeal solutions is not going to work, and all the theatrics of Sen. Ainsley Mark, the

dramatics, about what the Government is doing—he was laughing while speaking, because he knows it was a joke he was making. The Government is actually creating all the conditions in this country for a lot of social discontent. As I said, the Bail Bill really was a reaction to certain developments that were taking place in this country.

If this Government was listening to the Opposition since l992, many people who got killed in this country, including the two women at Westmoorings, would have been alive today. We spoke about this Bail Bill since l983. In l992 we spoke about it. We spoke about the establishment of a Chancellor of the Judiciary. We spoke about penal reform. The Government ignored us. Do you know why? Because it had a majority. But when it realized there were special bills which require three-fifths or two-thirds majorities, then we became obstructionists. The only time the UNC and Opposition became obstructionists was when the Government sought to take away the people's fundamental rights and freedoms. So let us establish a little "Baby Doc" in the Prime Minister. It said to itself: we say, no! We are here to protect the rights of the innocent. We have no problems with the criminal. Let the criminal be taken care of by the judges and the prison officers. Our responsibility is to ensure that they do not come and lock me up innocently, or lock up Sen. Daly innocently. That is what we want to ensure, because the Government is capable of doing these things. We have to protect the innocent. That is our responsibility.

This is not only a repressive Government; it is also a counterfeit Government, as you know. It is a false Government on all fronts. A leopard seldom changes its spots, and we know that this Government is a leopard Government. Therefore, we on the Opposition Benches have stood our ground. We have not reacted to panic, to hysteria, to orchestrated conspiracies against our party. We have stood our ground and we have won. We won Pointe-a-Pierre and Caroni East. We stood on principle. We did not yield one inch of ground to the Government. We are the standard-bearers of the innocent and the oppressed. We are like the tree standing by the river. We shall not be moved. The Government knows that this party and Opposition is extremely firm.

The main intent of this Bail Bill in its original form was to remove the discretion of judges and magistrates and place it in the hands of the police. This Government attempted to do that! This Attorney General who said, "Do not expect support for this Bill because there are criminals, both inside and outside Parliament, who would not support this Bill." The same day he was saying that, I understand he crashed his car....

Mr. President: Sen. Mark, you are imputing improper motives.

Sen. W. Mark: I will refrain. But I understand he was in a slight accident that day. I do not know if he was under pressure.

The point I am making is, the same day he made that infamous statement describing as criminals all parliamentarians who were not supporting the Government, he crashed his car. So the fact of the matter is that this Government is on a certain kind of course and we have to hold it back. We have searched the annals of the Commonwealth to see if there is any precedent for this draconian and monstrous piece of legislation that the Government attempted to introduce in this country. Two Commonwealth countries attempted to introduce something similar to what this Government attempted earlier, before it was stopped in its tracks and brought into a state of sanity and reality—Tanzania and Kenya.

It is the same nonsense the Attorney General came with some time ago and told us about some place called Tuvalu, a place that does not even have an airport; it does not have running water; it has to import water. There was no legal precedent, and the Government came here telling us about Tuvalu. It is a pattern of behaviour, and this is what is worrying us on the Opposition Bench. We are worried about this Government. This is why we are happy when the Prime Minister says that he will call the election, because the sooner the election is called, the better for the population, because they shall vote them out! This is a repressive regime; a right-wing Government; a Government that is reactionary, that does not care about the poor and the down trodden.

This Government was attempting to take away the right and the discretion from the judges and the magistrates to determine whether a citizen who is charged with an offence and appears before that magistrate should be—[Interruption] No, but we are saying that we have to repeat these things because if we do not do so, the population sometimes would not understand that this Government is a criminal Government. And they must understand it.

6.00 p.m.

You will remember that the Attorney General said these Bills were drafted under the PNM. They were in power in l983. We know the history. When this Government was in Opposition and the NAR attempted to put out these bills for public comment, there was mass opposition. But the initial Bill is 1,000 times worse than the Public Order Bill of l970. This Bill that the Government has brought here has been brought to a certain level of sanity with the amendment we have advanced, but before those changes were made, the Bill, as I said, was as

draconian as the Public Order Act of 1970, which the Government, under Dr. Eric Williams, was forced to withdraw.

What we find about our society is that there is too much hypocrisy. We see 24-hour personalities in our midst; people who would tell you that they love you today and stab you tomorrow. They will tell you that they are against a piece of legislation today, but tomorrow they will support it. We are amazed at the lawless behaviour. *[Interruption]* We already told the Government, if it wants Hulsie, it can take her. That is no problem! I do not want to get involved in that. We have class, as you know. We would deal with that issue elsewhere. This is Parliament. We are dealing with Parliament business.

When one looks at the Bills that the Attorney General spoke about, that were introduced by the NAR—one of the things one cannot fault the NAR for is that the bills they introduced were always brought for public comment. The Prime Minister of this country—this so-called humble, almighty, born-again, Fr. Manning or Rev. Manning—went on a public platform and told the entire country that his Government would not put the Bail Bill out for public comment.

This is one of the strong points of the NAR! They had put their Bail Bills out for public comment, and we have a whole file of all the commentators. At that time, one Camille Robinson, a lady who had not yet become active in the PNM—because I understand she was drawn in like Sen. Jaigobin Nanga—

Sen. Robinson-Regis: Mr. President, on a point of clarification. I have been a member of the People's National Movement for the past 18 years.

Sen. W. Mark: Mr. President, I am happy that she has guided me. I was talking about Jaigobin Nanga.

Sir, what I am saying is that we had a Bail Bill that was similar in content—there were little variations here and there, as outlined by the Attorney General—but the essence of automatic denial of bail was where the Government, at that time, was seeking to deny discretion. Theirs was the same thing—the Government went a bit further—but the essence of what they did, the Government has repeated here.

At that time our present Minister of Consumer Affairs, Camille Robinson-Regis, lawyer said:

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

That was Camille Robinson—

Mr. President: Can the Senator identify the name of the newspaper and the date?

Sen. W. Mark: *Daily Express*, Saturday, 29 April, 1988.

What has happened? Camille at that time was innocent; today, she is guilty. At that time she was not married; she is now a married lady. The thing about it is that there were comments of this type coming from people like Camille Robinson.

When one looks at the chronicle of events unfolding during that period, one sees that the hon. Attorney General conveniently forgot when the Law Association, the Anglican Church and the Trade Union Movement vociferously opposed these Bills, and the general council of the PNM did too. The PNM came out against those Bills and we ask the question: Why is the PNM so much in support of these Bills today?

Mr. Sobion: Because there is a fundamental difference.

Sen. W. Mark: Is it because the PNM is in power and wants to perpetuate its rule? Is it because the rights and freedoms that they spoke about during that period no longer matter? We have a statement here in the *Daily Express* dated May 16, 1988 headlined "PNM against Bail Bills":

> "The General Council of the People's National Movement (PNM) decided yesterday that the recently published Bail Bills would 'unnecessarily trample on the fundamental rights and freedoms of citizens'.
>
> The PNM's governing body met yesterday, Sunday, at Balisier House, and discussed the proposed new bail legislation.
>
> Judges and magistrates, it noted, already have it within their power to deny bail in appropriate cases. The General Council stressed that while there appears to be abuse of the existing provisions for bail, and a need to deal with this problem, measures proposed as a solution must not unduly compromise citizens' fundamental rights."

Why did PNM have to wait until we have them in a corner—that is the Opposition UNC—to make these compromises when they knew that they were opposed to this Bill? They came out against the bill. It is a hypocritical regime! It is a 24-hour regime. It changes its complexion given the moment and the situation. We should be calling for the resignation of the Attorney General.

Mr. Sobion: Stand in line.

Sen. W. Mark: Any attorney general who can take the responsibility—I am not talking about...I am dealing here with...

Mr. President: Senator, keep that issue out of the debate.

Sen. W. Mark: I am not dealing with that. I am dealing with a statement by the then Opposition Leader, Patrick Manning. In the *Daily Express* dated June 4, 1988, headlined "Manning: No red herrings, please." It is reported:

> "Opposition Leader Patrick Manning said yesterday that responsibility for the draft bail bills lay solely with Attorney General Selwyn Richardson.
>
> In a news release issued yesterday, Manning said 'no attempt at introducing red herrings' of when the bills were actually drafted or what opinions were canvassed and expressed could now relieve Richardson of his responsibility for putting this draft legislation out for public comment."

That was Manning at that time.

Sen. Rooks: What year was that?

Sen. W. Mark: That was June 2, 1988 in the *Daily Express.*

What we are asking is: What has caused the change? Why can the PNM be so convenient? In another article in the *Daily Express* of May 26, 1988, headlined "Sir Ellis Clarke strongly against proposed bail legislation"—Sir Ellis Clarke, the Chairman of the Crime Commission advising the Government; now he is in support of it.

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

6.10 p.m.

Mr. President, history has a way of really revealing things. I am reading these things at least to bring you and the Senate up-to-date on some of the manoeuvres of very senior people in this country who came out against the Bail Bill in 1988. Dr. Ramesh Deosaran, in the *Guardian* of June 5, 1988, was against the Bail Bill. But he is now a member of the Crime Commission, so he is for the Bail Bill now. Hypocrisy!

The Chamber of Commerce, that is so silent—in fact, as my colleague Sen. Barrack said, there was an article recently in the *Daily Express* and the *Trinidad*

Guardian in which they came out in support of the Bail Bill before amendments were made. There were headlines like "Withdraw those Bills." Those Bills are dangerous." The *Guardian* of democracy was opposed to those Bills. What has changed? Because the PNM is in power? The Bill has not changed. The Government introduced the essence of the Bills.

In the *Trinidad Guardian* of May 25, 1988, the headline was "Chamber hits at Bail Bill"; sub-headline: "Business group concerned at comments by C.J. Bernard" because at that time the Chief Justice had given the impression that he was in favour of the Bail Bill, and he was urging the Government to pass the Bills. The Chamber of Commerce was attacking both the then Chief Justice of Trinidad and Tobago and the Government and was calling on the Government to withdraw those Bills.

What has gone wrong with the Chamber of Commerce? The Law Association, under Mr. Michael de Labastide, SC, QC, great man: he was totally opposed to that Bill and as President of the Law Association came out and attacked that Bill in a very comprehensive statement. We have a package that we will show every citizen in this country. Call election! You want election? This is a condemnation of the PNM.

As far as we are concerned the Government of this country is playing games with the lives of the people. The Government is not serious about crime and it is not serious about addressing the social problems of our country. After all these comments were made in 1988 this should have guided the Government on the feelings of the people. We have a history of struggling for our freedoms and rights here. When the PNM attempted to bring into being that draconian Public Order Bill in 1970 the population revolted against the PNM. So, we have always had that history of fighting for our democratic rights, freedoms and our liberties.

We thought that this Bill or referendum that came out in 1988 would have guided the Government in terms of its approach, but instead, what did the Government do? It tried to paint us as obstructionists, we are not supporting them, we are not helping them. Well, we are not here to help them; we have told them that over and over. We are here to remove them. We want to sit on that side. We have told them that. We are the alternative Government. Mr. Attorney General you may be a Senator, next round; I do not know. We are not here to make you look good.

Mr. President, you can testify to this matter. We have extended the olive branch to this Government. We said, "Our country is small, let us have a

government of national unity, let us form a national front government," and those opposite have refused it, Sir. We are saying that this Bail Bill before us, we know and the Government knows, the Attorney General has admitted, will not do anything to solve crime. It will not help crime because the basis—

Mr. Sobion: Mr. President, I thank the hon. Senator for giving way. I think, as he gets caught up in his own rhetoric he very easily misrepresents what has been said. I never said this would do nothing to solve the problem of crime.

Sen. W. Mark: It would make a dent in crime. I think he will agree with me now. We are saying to the hon. Attorney General that unless his Government faces fearlessly *[Interruption]* Mr. President, I seek your protection from the Leader of Government Business. Unless the Government through the Attorney General faces fearlessly and squarely the issue of inefficiencies in the administration of justice in Trinidad and Tobago, it is going to be spinning top in mud.

I agree with Sen. Martin Daly when he said that we have to deal with speeding up justice in this country. We have to deal with the administration of justice, we have to deal with the appointment of judges. We have made it very clear a UNC Government will institute an open system. These secret society and secret club appointments that take place—we are saying that our government will be an open government. If it is necessary we will have a national referendum. We will not come like thieves in the night and seek to bring all kinds of draconian measures to compromise the rights and freedoms of people. We will go to the population and level with them. We will discuss with them, we will bring the issues to them and, they will support us or not support us.

We are arguing that the Government of this country has to address the question of the administration of justice. We should like the Attorney General to know that this Bill that is before us, whilst we have indicated that we would give some support to it, the fact of the matter is that we are convinced that the Government is fooling the population, it is "mamaguying" the population. The Government knows that these things will not work. The Government is not operating in a manner that is consistent with democracy and the rights of our people. Democracy can exist only if individual rights are protected.

Therefore, we on this side take issue with some of the misleading statements made by the Attorney General. He cleverly in winding up his contribution, said that the Government will fix this and that, and it will take care of the advice. It will fix transport. That there is no overcrowding.

Sir, I have two articles. In fact, I want to commend Camini Marajh of the *Trinidad Express.* This young lady wrote two comprehensive pieces in the *Express* of August 14 and August 21 in which she described the state of our prison system.

I would like the Attorney General to tell us how he is going to address the issue of overcrowding, when the prison services received $35 million less this year than they actually sought, according to this article. If, for instance, the Attorney General wants to say I am wrong he could give me the correct information. I am quoting from this article which says:

> "Last year, Prisons got $34.4 million less than they requested from the Government. They received $62.2 million to run all of the prisons."

We ask the question: would this Bail Bill, even in its amended form, address the issue of overcrowding at the nation's prisons?

6.20 p.m.

The hon. Attorney General is quoted as saying in this article that there is overcrowding at our nation's prisons. The *Sunday Express* dated August 14, 1994 states:

> "Attorney General Keith Sobion acknowledged on Friday that overcrowding exists and that his Government expects an increase in the prison population once the legislation is passed."

Further, in this article, it is also stated that the new maximum security jail which is supposed to be constructed has a capacity for at least 1,800 prisoners or just under 2,800. At present there is a prison population, as I see it, of 3,800 and the Government is proposing to close down the Royal Gaol in Port of Spain. Does the Government intend to close down Carrera or the Royal Gaol?

Hon. Sobion: No.

Sen. W. Mark: I am happy to hear this. I always thought that it was the intention of the former Minister of National Security to close down both Carrera and the Royal Gaol. I am happy that the Government is not doing that.

SITTING OF THE SENATE

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, I beg to move that the Sitting of the Senate continue to the conclusion of the debate on the Indictable Offences (Preliminary Enquiry) Bill, Chap 12:01, which would follow the conclusion of the debate on the Bail Bill.

Leave granted.

BAIL BILL

Mr. President: We need an extension of the Senator's time.

Motion made, That the hon. Senator's speaking time be extended by 10 minutes. [*Sen. S. Capildeo*]

Question put and agreed to.

Sen. W. Mark: Mr. President, I hope when we come to the Indictable Offences (Preliminary Enquiry) Bill, we would not have a repeat of what happened here last week. You heard that Senators wanted to go home. I want to suggest that those who would like to go, let them go. They must not disturb me! They must not intimidate me! They must not try to muzzle me! I want to issue a warning. [*Interruption*]

I think that one of these days the Opposition would write a formal letter to the President of the Republic concerning the behaviour of some of these Senators on the Back Benches. That is another matter. I am here to do a duty! I can leave here at 12.00 p.m. Who wants to leave, can leave! Do not try to intimidate or muzzle me! Nobody must do that! I am allowing no one to do that!

Sen. Daly: On a point of order. Is the Senator imputing dishonourable motives to Senators by suggesting that Senators of this Bench have attempted to intimidate him?

Mr. President: Do you mean Independent Senators behind you or the Backbenchers?

Sen. W. Mark: I am just saying that the last time I came under attack when I was speaking on a very important matter because Senators wanted to leave. I am saying that those people who wanted to leave know themselves. I do not want to call names. That is not my business here today.

Mr. President: You have never been denied your right to speak.

Sen. W. Mark: I am not being denied, but sometimes the constant harassment poses a problem. If you would allow me, I have 10 more minutes.

Sen. Daly: My point of order remains. Is the Senator imputing that Members on these benches attempted to intimidate him? That is what I should like to know. I do not want to be muzzled by him shouting me down. I am on a point of order. It appears to me that he has imputed dishonourable motives to Senators of this Bench by suggesting that they attempted to intimidate him. I should like your ruling because if that is what he has done, he must withdraw the charge of intimidation.

Mr. President: The point of order is sustained on the ground that the Senator is imputing improper motives to the Independent Senators.

Sen. W. Mark: I take your guidance, Mr. President.

I would like to tie up this contribution because we have another hour or two to go. It could be more than that. There is an article in the *Sunday Express* dated August 14, 1994. This article states:

> "Prison officers said they were worried about the growing public hysteria and the demand to 'jail dem.'
>
> But jail them where? The new maximum security prison—portrayed by Sobion as the answer to the overcrowding problem—will not be opened until October. Mollineau claims that each cell there is already accounted for."

The Government can deny this again.

> "The Manning Government has announced its intention to close Carrera and to transfer its prisoners to the new jail, which has stainless steel commodes and showers. That prison is designed to accommodate 2,800 inmates."

The simple point I am making is that when this call to jail them is made, who is being jailed? It is the young African and Indian in Trinidad and Tobago. It is the working class and dispossessed people. We should be calling for rehabilitation of these prisoners. We have some elements in this society who have not forgotten their colonial past. They feel they are still living in the 16th Century in this country. They want to command us just as they have the PNM under control. Some of them are vexed that there are black people in this Parliament.

Sen. Ojah-Maharaj: You are talking about race.

Sen. W. Mark: I am not talking about race. The point I am making is that in this society today there is more class conflict than race conflict. They said to jail them and build more jails. The Government is building jails for people, and, as my colleague has said, it is a university of crime. I have no problem with jailing them. I am saying that the prisoners need to be rehabilitated.

Just recently when I was at home, I saw something on television concerning a new experiment in Jamaica. What is happening in Jamaica is what the UNC has always been calling for. We have been saying that the prisoners should work. There is enough land here for these prisoners to plant to earn a wage. In Jamaica it

is being done. I do not know whether the Attorney General saw it. In Jamaica the prisoners are being paid wages and they are able to take care of their wives and children while they are in prison. They are being rehabilitated. It is a non-partisan issue. We should be rehabilitating our prisoners.

There are too many young people who are in jail today and there are others who are about to join them. Those people are the youth and flower of our nation. As far as we are concerned if the Government continues on its merry approach to liberalization and privatization, it would expand the gap between those who have and those who do not have. When that gap is expanded, I am not saying that I agree with Sen. A. Mark—poverty should not be any excuse for a man to kill or come into my house and rob my family.

6.30 p.m.

We are citizens and legislators of this country. We are supposed to understand that if there is an environment that is oppressive and punitive, it would breed that kind of mentality. We have to get to the source of that problem and eliminate it. Instead of that, what do we have?

The economy is in a transitional phase where thousands of jobs are being lost, thousands of people are being put on the breadline. We ask this Government, in all fairness, to re-think its economic policy.

There is something I would like to ask Sen. Ainsley Mark. You know, there is something called NAFTA. This Government initialled two agreements recently with the United States through its former Ambassador, one called the Bi-lateral Investment Treaty, BIT, and the other is the Intellectual Property Rights Agreement. We do not know, as a country, what are the contents of those two agreements. What we do know is that the BIT gives the American investor equal status with our national investors. What we do know is that the Intellectual Property Rights Agreement will give these people access to certain areas of our operations.

What we are saying to the Government is that if it is getting into these matters, it ought to discuss them with the population, because the Government does not have all the talent and wisdom. Bring it to Parliament. Remember that those who cannot hear, eventually will end up feeling. We can only appeal to and urge the Government. What we would like to tell this Government is to take a little time off to consult with the population. Make this Bail Bill the last Bill that the Government seeks to introduce into this Parliament which requires a two-thirds majority. Carry those issues to the people. Let us organize our Parliament in such

a way that those bills will go through a parliamentary system so that we can thresh things out, so that when we come to this Parliament we do not have to be dealing as fiercely with the Government as we have to do now.

We always advance that the ideal thing for our country is one government. We should have one government with one economic policy, one economic programme and moving forward. But it is the system that allows me to bash them, and unless we do address that system, we would always have the problem.

This is why I am asking my hon. Friend the Attorney General to begin looking at that issue. Bring out your bills and Green and White Papers, particularly controversial bills, and allow the population to have a say before you bring them to Parliament. I think that is a better approach. If you look at what is going to come up here, which I would elaborate on further, if we had taken those approaches, a number of controversial matters never would have been defeated nor would have had to be referred to a select committee of Parliament. Refer those bills first to the people and then to a select committee of Parliament and they would see how democracy can work in a small plural economy in which we are all in the same boat where we either swim together or we sink and drown separately.

Thank you very much, Mr. President.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I hope to bring some sanity back to this debate. After the rantings and ravings of Sen. Wade Mark in a vain political attempt to paint his party as being non-obstructionist, I think he has succeeded only in underlining the fact that they have been obstructionists in this Parliament thus far. We, however, do not propose to engage in that kind of debate on this important question in this forum, and certainly those matters will be addressed, where they ought properly to be raised, on the political platform before the public.

I thank hon. Senators who have contributed in a relevant way to the debate today. It makes it that much easier for me in winding-up. In doing so, I want to speak to certain specific concerns raised and to deal with this matter first. It appears to have been cause for most concern, and, that is, the operation of the Bill in a situation where the system of administration of justice appears not to be working as effectively as it ought to.

You would appreciate that early in l992—and I did say so when I opened this debate—this Government brought to this Parliament certain positions with respect to the administration of justice. At that time I recall indicating that the system of

the administration of justice had fallen into disrepair over many years and that to remedy that situation is going to require a lot of concerted work and effort over a long time. Therefore, as ideal as it may be to have a proper functioning system, I do not think that one can delay putting in place measures which are necessary and which may have to operate at less than optimum level because of the clean-up job that has to be done with respect to the administration of justice.

I want to assure hon. Senators that the implementation team, which is working on that aspect of the matter, has set itself very tight timeframes and I am optimistic that those timeframes would largely be met, and that if we continue along that vein, we would have a system which is at least manageable. There is no doubt about it that at this stage there are certain short-cut measures that must be taken, but we are of the view that if they have to be taken in order to ensure that the more serious offences are dealt with expeditiously, then that is the option that is open to us.

So we have put in place administrative systems which will ensure that certain serious criminal offences are dealt with as expeditiously as possible. In that context, I also want to address certain specific matters that were raised. Computerization in the courts—and these are matters that were raised by Sen. Daly. This has started in the courts, and will include the entire Supreme Court Registry. That is one of the major thrusts that we have had, and this will apply, not only to criminal matters, but as well to civil matters. Tracing records, accessing those records—all this is part of that computerization process.

The computer-aided transcription system requires a two-year training programme. The second of the training programmes is now being conducted. It is in its first year and we would have another 24 graduates of that programme in a year's time. One has to appreciate that it is not a matter of plucking computer-aided operators out of a tree; one has to train and equip them; and that process takes some time. As a matter of fact, a proposal has since come to me within the last month which seeks to devise a modified training programme which would reduce the present programme by about six to nine months. That programme is now being evaluated and the faster we can get it on stream, if it is found feasible, the quicker we would be able to have all the courts in Trinidad and Tobago computerized.

At the moment, the processes of the Appeal Court are subject to the computer-aided transcription system and the criminal courts which were in operation, at least two or three of them also had access to the computer-aided transcription system.

6.40 p.m.

With respect to other matters raised by Sen. Daly, plea bargaining, the ticket system, no fault insurance, I want to assure him and this Senate that all these matters were considered by the respective ministries. It sometimes appears very simple, it is easy to stand up and list all the matters which can aid the system, without sometimes appreciating the difficulties that are involved, the extent of research that is required, the drafting and the formulation of some of these matters before they actually see the light of Parliament. But all of those matters are being addressed. I myself had discussions on no fault insurance with the Association of Trinidad and Tobago Insurance Companies. It is a matter which is being considered by the Ministry of Works and Transport, together with a revised system for dealing with traffic matters.

Whilst it would be ideal to be able to come to Parliament and present some piece of legislation which would cure all the ills and evils of our society, I assure hon. Senators that that is just not possible and one has to deal with it in the methodical way that I suggested when I began this debate.

Sen. Daly also raised the question of the Director of Public Prosecutions (DPP). I may be using the wrong term, but I think he suggested that seven new officers were taken on, on contract; that the Government was seeking to window dress or to paint a picture that all was rosy, but that one needs to look behind all of that.

It is true that in recent years there has been difficulty—and for a very long time—in recruiting persons with years of experience from the criminal bar to fill some of the senior positions in the Office of the DPP. That is a fact. Persons who are in private practice in the criminal bar are not attracted to the salaries being offered by the state to serve in the DPP's Department.

What we have had to do, therefore, is to seek to obtain as many of our top achievers from the law school as we could into the lower ranks of the DPP's office. By intense exposure with guidance by senior officers of the various courts, we are now able to utilize persons who may be at the rank of State Counsel I in the Assizes, whereas years ago the practice was to expose only persons at the level of State Counsel III.

I assure Sen. Daly that that does not mean that the state is at any serious disadvantage. The whole system of legal training has changed over the last 10, 15, 20 years and the exposure to practical exercises at the law school means that there is a better product coming out of our legal training system and a product that is

better able to adapt to the kind of pressure to which those legal officers of the DPP's Department have to adjust.

Whilst it is difficult—and we accept that it is difficult—to get people with 5, 10, 15 years' experience, we are seeking, having regard to the resources that are available to us, to get the right kind of people to do some in-house training of our own, in addition to the training they are exposed to at our law schools.

In the context of the administration of justice I think Sen. Daly also raised the question of the criteria for the appointment of judges. Hon. Senators would recall that at an earlier stage in the life of this Parliament, I indicated that the Government was concerned about the operations of service commissions and that it was seeking to review their operations insofar as they related to the public service, the police service and, indeed, the Judiciary.

I think, however, one of the concerns expressed by Sen. Daly, even though he may not have said it in so many words, was that the Judiciary was not attracting the right kind of people. This is a matter which had been subject to some kind of public comment.

One of the serious problems we have had in Trinidad and Tobago with respect to the recruitment of judges is that unlike the United Kingdom, where persons who attain a certain level of practice in terms of not only experience but also of expertise consider it their duty to offer their services as judges of the Supreme Court; unfortunately, in Trinidad and Tobago we have not had that kind of history. It is a problem with which we have to grapple. Until we can get to a situation where we can lure people to the Bench, away from the lucrative private practice, we are going to be faced with the difficulty of finding some of the right people.

In this connection, I think it was Sen. Mahabir-Wyatt who raised the question of whether the guidelines set out in the Bill were sufficiently tight so as to ensure that magistrates would not exercise their discretion in a liberal manner. There are two things I wish to say about that, because I think it is a very important observation.

One of the benefits that I see coming out of this bail legislation is that the population has become sufficiently sensitized to the importance of this issue. By putting the guidelines firmly in the legislation, I think that those who are to administer the legislation would be sufficiently sensitized to the guidelines under which they are to operate.

Then you tie that to the fact that they are also required to give their reasons, in writing, and that the accused, as well as the prosecution, for the very first time,

now has a right of appeal—which was not a situation that existed before. This Bill permits the prosecution, in the event that a magistrate or court grants bail where the prosecution is objecting, to appeal and the court must give its written reasons why within those guidelines set out in the Bill, it has granted bail to person A or person B.

Having regard to the fact that the population as a whole is sensitized to the issue of bail, the fact that the guidelines are firmly set down, the further safeguards of written reasons and the right of appeal be invested both in the accused and the prosecution—all this will be a sufficient check on the exercise of the grant.

Sen. Mahabir-Wyatt: Mr. President, I thank the hon. Attorney General for that explanation. Before he concludes, I wonder if he could also address the point which was brought up and which a number of us were very concerned about: the definition of the word "antecedents" in clause 6 (3) (b). "Antecedents" seems to be that if my father was a criminal you would take this into account when you are looking at me. I am not sure whether that is the correct legal term. I wonder if he could let us understand what that means.

Hon. K. Sobion: I would deal with that. I am going to get to Sen. Wade Mark at the end and he has raised the whole question of clause 6.

I think it was Sen. Rev. Teelucksingh who raised the question of arrangements which are being made to monitor persons on bail, and said that it was an omission from the Bill.

I stated from the outset that this Bill is a very sensitive piece of legislation requiring the balancing of the interest of the individual and the interest of the society as a whole. While it is therefore not possible to have a number of mandatory situations, because one has to deal with situations on a case by case basis, I think Sen. Rev. Teelucksingh's problem is in fact addressed by the Bill, although it is in a discretionary form.

6.50 p.m.

I refer, specifically to clause 12 (3). Under the provisions of this clause, some of the further Orders which a court can make on the grant of bail, among others, are as follows:

> "12(3)—A Court may further require any person applying for bail to—
>
> (a) surrender his passport to the Court;

(b) inform the Court if he intends to leave the State; and

(c) report at specified times to any police station..."

So those are circumstances which one cannot prescribe as mandatory requirements, but there are provisions whereby the court in assessing an individual case can determine which of those requirements or whether any or all of them ought to apply in any particular instance. Of course, he will have the benefit of the prosecution outlining why such an Order should be made before he makes a reasoned decision to apply any one of those provisions. I think that would meet what Sen. Rev. Teelucksingh thought of as being an omission, but it is contained in the Bill in a discretionary form.

I think it was also Sen. Rev. Teelucksingh who raised the question of kidnapping and abduction and suggested that those two matters should have been included in the Schedule. I want to assure him, and other Senators, that this was a matter which was given serious consideration prior to the debate in the other place. During that debate, the difficulty that we had is that, unlike hijacking, where there is a Hijacking Act, where the defence of hijacking is carefully defined, under kidnapping, we are dealing with a common-law situation and the difficulty with respect to that offence is that it will also catch a number of cases which we did not think we wanted to bring into this particular bail machinery; and I refer, specifically, to the question of estranged husbands taking away children from their wives from whom they were separated, or vice versa. Whilst kidnapping, in the classic sense, is an offence which should properly fall within this Schedule, it is a matter which will have to be addressed by separate legislation dealing with kidnapping before an amendment of that type could be made to the Bill.

I think it is Sen. Prof. Spence, who must have missed most of my presentation of this Bill— certainly, I addressed the Government's comprehensive approach starting with the pre-trial situation, the arrest and investigative phase, down to the reform and rehabilitation phase; and I did indicate the kinds of activities which were taking place in terms of reform and rehabilitation. I refer to the legislation passed with respect to young offenders, provisions for them to continue their education under licence of the Commissioner of Prisons. So that we have been dealing with all of those matters, including, I am reminded, the question of agriculture within the confines of the Golden Grove Prison.

I am also advised by [*Interruption*] Well, Mr. President, we may have to expand the outer limits of the Golden Grove Prison in order to ensure that we entrap a greater number of persons interested in agriculture.

I am also advised by my colleague, Sen. Huggins, in response to Sen. Wade Mark, that there is a system of remuneration payable to prisoners on their release, based on work that they did during their course of stay. I have, however, stated that the existing facilities do not provide for the authorities to provide as wide and extensive a range of rehabilitation programmes, as are necessary, but with the coming on stream of the new prison, we expect that those matters will be readily addressed.

Finally, if I may turn to Sen. Wade Mark, I think for all of his discourse there were, perhaps, three matters that require response. One really is a matter of history, and I did indicate that there were those who would come with their pre-recorded observations. We heard much about institutions and organizations which objected strenuously to the 1988 legislation, and who appeared to lend their support to the legislation of 1994.

I want to make the point, quite simply and clearly, that there is a fundamental difference between the bills proposed in 1988 and that which was proposed in 1994. The Bills of 1988 sought to deprive any person charged, whether he be a first offender or not, of the right to bail *simpliciter*. There was no underlying basis which one could look at and say, why should we deny bail to a person who has an imitation firearm?

That was the 1988 legislation. What the 1994 legislation sought to do was to address the question from the problem of repeat offenders and try to find a definition by way of reference to convictions and pending charges to categorize persons within that concept of repeat offenders. It is when one was categorized as such by the definitions in the original provision, that one was then denied the right to bail with some limitation.

So that the Bills were fundamentally different and it seems to me that by some failure of absorption, Sen. Wade Mark was unable to understand why it is that these responsible groups resisted the legislation in 1988 but, on the other hand, supported the 1994 legislation.

Sen. Barrack: What are the fundamental differences?

Hon. K. Sobion: It is quite clear that he has not read either of those pieces of legislation, but collected a folder of newspaper cuttings and stood here and regaled this Parliament with useless rhetoric. [*Interruption*]

The Security Intelligence Agency has been described as a Mongoose Gang by Sen. Wade Mark, as the *Ton Ton Macoute*, and a number of epithets which cast an

unfavourable light. I do not know that MI5 and MI6 of the United Kingdom will be described by Sen. Wade Mark in that light. I do not know that the Central Intelligence Agency of the United States would be described by Sen. Wade Mark in that light. [*Interruption*]

I also wish to point out, that the recommendation for the establishment of a civilian Security Intelligence Agency came from the police service. It came when a review was being done, at around the time the *O'Dowd Report* was being prepared. A report was prepared in respect of the existing Special Branch and this was the recommendation which came from the police service and, as you know, Mr. President, the Government does not seek to interfere with the operations of the police service. [*Laughter*]

Sen. Hosein: Touché!

Sen. Barrack: That is why we are in this situation—no proper administration!

7.00 p.m.

Hon. K. Sobion: Sen. Wade Mark, without giving any explanation as to how he came to certain conclusions, referred to clause 6 (3) and sought to convince himself and to convince me and, I suppose, other Members of this Senate, that there is something devious about a provision which requires the court to consider the character, antecedents, associations and social ties of the defendant. I think, myself, that the hon. Senator was probably thrown by the words, "social ties" appearing in that provision. I do not think that he can have fault with a magistrate considering the character of the defendant. I do not think that the hon. Senator can have any problem with the question of the antecedents of the defendant. The 'antecedents' mean the previous conduct, the previous history of the defendant. I do not think that he can have objections to the magistrates considering the associations of the defendant.

Sen. W. Mark: What do you mean by, 'association'?

Hon. K. Sobion: The persons with whom a defendant associates. That is a factor to be taken into consideration, the social ties, the question of whether the man has connections with a social club, a trade union, whether he is homeless, whether he has any fixed place of abode, whether he has family, who are his relatives. I do not know why Sen. Wade Mark found it possible to come to an interpretation which is—

Sen. Barrack: Suppose he came from Laventille.

Hon. K. Sobion: You see, again, I am surprised that a comment like that should come from Sen. Barrack. As far as I am aware, there are many upright, decent citizens of this country who have come from that part of Trinidad and Tobago,which was one of the earliest suburbs of the city of Port of Spain.

I think, perhaps, there is no need for me to say any more on that matter. It is just a complete misinterpretation. In the circumstances, I again thank Senators who have contributed in relevant form to this legislation.

Sen. Merritt: Before the Minister completes his contribution, he mentioned an implementation committee. I want to know what is that committee implementing. Is it the recommendations of the *Gurley Report*? I need to get some clarification on that. He also spoke about the SIA being established from the recommendations of the police force and he mentioned the *O'Dowd Report*. What is he doing about the implementation of the latter report, and the recommendations coming from the *Scotland Yard Report*? I am asking him to stop procrastinating and implement the reports.

Hon. K. Sobion: Again, Mr. President, that is the kind of impatience that I was referring to earlier. The implementation of the *O'Dowd Report*, if it is to be done properly, is not a question of saying, "We have implemented the *O'Dowd Report*; here it is." There is a lot of analysis. Even though *O'Dowd* submitted a report, it has to be looked at and the relevant material culled from the report; and those things which can be implemented will be implemented. They are being implemented, in fact. The implementation team is one which is implementing the recommendations of the Gurley Committee, and I said so on previous occasions.

Sen. Daly: I wonder whether the Attorney General would tell me whether there is a problem in getting the Inland Revenue authorities with their considerable powers under the Income Tax Act to scrutinize more carefully the persons who may be profiting from drug trafficking.

Hon. K. Sobion: Mr. President, I am not really in a position to respond as fully as Sen. Daly would like, but I do understand, however, that the matter is being addressed by consultation between the Ministry of Finance and the Ministry of National Security and probably at an appropriate time some fuller response could be given.

Sen. Daly: Does that mean that some attempt is going to be made to make the Inland Revenue consider more carefully whether they can get at people who are profiting from drug trafficking?

Hon. K. Sobion: Mr. President, perhaps I have not made it as clear as I ought to. That is what I understand is under review at the moment.

So in closing, I again thank Members of the Senate who have contributed in a relevant and meaningful way to this debate. Those who have done so certainly deserve the respect of the population of Trinidad and Tobago.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Daly: Mr. Chairman, I wish to propose an amendment to clause 4(b) as follows:

"Add at the end, 'and the Extradition Act, l870'".

My understanding—and no doubt the Attorney General will correct me if I am wrong—is that despite its name, the Extradition Commonwealth and Foreign Territories Act in fact, applies at the moment only to extradition from Commonwealth countries, and that extradition from other countries is governed by the Extradition Act, l870. If that is so, then it means that this Act will not apply to—

Mr. Sobion: Mr. Chairman, the Extradition Act of l870 to l906 was contained in the Extradition Act, Chap. 12:04. That Act was, however, repealed by the Extradition Commonwealth and Foreign Territories Act, No. 36 of l985. So that the Act of l985 repealed and replaced the Extradition Act and all of the other Acts, and all of them are now embodied in the Act of l985.

Sen. Daly: Does that Act apply to non-Commonwealth countries?

Mr. Sobion: The Extradition Act of l985 repealed and replaced all of the Acts, including the Extradition Act of l870 to l906, which is contained in the Extradition Act, Chap. 12:04, and is now known as the Extradition Commonwealth and Foreign Territories Act of l985. So that the amendment will not really be necessary.

7.10 p.m.

Sen. Daly: There is the whole Piralli problem of which the Attorney General is well aware and which we tried to cure in the Preamble to the Dangerous Drugs (Amdt.) Bill. I may not have gotten it exactly right, but, there is the Piralli problem. However, I withdraw the amendment because it is late.

Mr. Sobion: The Senator is withdrawing it because it is late, but that is not the point. It is not necessary. If it is necessary, I do not think that is the approach which should be taken. The 1870 Act was repealed by the Act of 1985.

Amendment withdrawn.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Daly: Mr. Chairman, I propose that clause 5(2) be amended as follows:

"Substitute the word 'two' for the word 'three' at the end of line 5 thereof"

I think that instead of three convictions over 10 years, it should be two convictions over 10 years. I think it is fairly popular on these Benches, Sir.

Sen. W. Mark: Mr. Chairman, we are not in support of this proposed amendment.

Sen. Daly: Can the Senator tell us why?

Sen. W. Mark: We are consistent. We are not tampering with that aspect of it.

Sen. Daly: Can he tell us why?

Sen. W. Mark: Mr. Chairman, I want to be brief on this matter. We are not supporting this amendment.

Sen. Daly: Mr. President, this does not in any way interfere with the principle of that clause. Of course it is a grave discourtesy not to engage in dialogue on the matter, but the point about it is that changing it from three offences to two offences over 10 years does not interfere with the principle of the presumption of innocence, or that the courts would have a discretion. It is difficult to see what the objection is, but, of course, if one has orders or some reason or no authority to engage in dialogue, well, so be it. However, I think it is quite a reasonable amendment.

Mr. Sobion: Mr. Chairman, I just want to note that we on this side think there is some merit in the proposed amendment, but given the approach as expressed, we reluctantly would not be able to support it.

Sen. Daly: There is no transparency if the Opposition would not give some reason why they are not supporting it. They may have a good reason, but it is totally non-transparent for them to simply say they are not prepared to entertain it and not give any reason.

I wonder whether they would reconsider and be consistent about not being secret and be open.

Question put.

The committee divided: Ayes: 7 Noes: 19

AYES

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Rev. D.

Chamely, Dr. E.

NOES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Betrand, Mrs. E.

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Senators M. Mansoor and Prof. J. Spence abstained.

Amendment negatived.

Sen. Daly: Mr. Chairman, I propose that subclause (2) be amended as follows:

"Substitute the word 'incidents' for the word 'transactions' appearing at the end thereof."

Question put.

The committee divided: Ayes: 7 Noes: 19

AYES

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Rev. D.

Chamely, Dr E.

NOES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Betrand, Mrs. E.

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Senators M. Mansoor and Prof. J. Spence abstained.

Amendment negatived.

Clause 5 ordered to stand part of the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Sen. Daly: Mr. Chairman, I beg to move that subclause (2) be amdended by inserting the following new paragraph (b):

"(b) In the exercise of its discretion under paragraph (a) above, the Court shall, without this subsection in any way being construed as a limitation on the Court's discretion, consider any prior charges which the person has pending for any offence or combination of offences listed in Part II of the First Schedule."

Also, reletter the existing paragraphs (b) to (g) and (c) to (h), respectively.

Mr. Chairman, may I ask, what is the position of the Government and Opposition on this, please? The public has a right to know who is soft on crime and who is serious. Can we get some reaction?

Sen. W. Mark: You are strong on crime.

Sen. Daly: We are not a rubber stamp and we are entitled to dialogue.

Mr. Sobion: Mr. Chairman, before the question is put, I heard Sen. Daly ask for the views of the Opposition and the Government on this matter. For the record I should just like to state our position with respect to this amendment.

Again, this amendment has some degree of merit. I get a certain impression coming from the opposite Benches. I want to point to one other provision in the Bill, as it now stands, which may make the proposed amendment not wholly necessary. That is, clause 6 which says:

"(2) ...it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

(f) where he is charged with an offence alleged to have been committed while he was released on bail;"

It would seem to me that perhaps this provision is even wider than that which is now being proposed because it is not limited to the scheduled offences. So that a person may be charged with a particular offence, and because he has pending charges he can be denied bail under the terms of this provision.

I understand what Sen. Daly is trying to do; he is trying to keep the concept of repeat offenders, but I think to a large extent it is maintained because of 6(2)(f).

Sen. Capildeo: Mr. Chairman, it is rare, but what the Attorney General is saying makes sense.

Sen. Daly: Mr. Chairman, I withdraw the amendment.

Clause 6 ordered to stand part of the Bill.

Clauses 7 and 8 ordered to stand part of the Bill.

7.20 p.m.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Sen. Daly: Mr. Chairman, I propose an amendment which reads as follows:

> "In subclause (1) add the following words after the word 'conditions' at the end thereof:
>
> 'provided however that an absence of reasons shall not prevent an application being heard.'"

This is one that I feel strongest about, if we are going to be faithful in our protestations that we want to protect the innocent. Indeed, it happens now in the system where quite frequently your appeals cannot be heard because the judicial official has not produced his or her reasons. I am concerned that under clause 9, as it is framed at present, we are going to have the same problem. Someone who has been refused bail—let us keep with the protection of the innocent, poor and the oppressed—will make an application to the High Court to have the magistrate's refusal reviewed and, as frequently happens in the system, he will be told the reasons are not ready, his application cannot proceed. This is the one that gives me the gravest concern.

I would like to have an expressed safeguard that if there are no reasons, if the judge decides to hear—I am saying the absence of reasons shall not prevent application from being heard. It would be a matter for the judge if he is told the reasons are going to be ready in three days, a week, two weeks, one month or whatever, completely consistent with all that would be said, it would be a matter of judicial discretion whether to go ahead without the reasons and thereby protect the innocent, the poor and the oppressed who would be fighting in the system as they fight now to get their reasons.

Mr. Sobion: Mr. Chairman, I agree that the absence of reasons, on occasion, has caused certain problems, but because we on this side sense a certain reluctance in respect of these amendments, we will not be able to accede to this proposed amendment. I make the point, however, that it is in my view part of the inherent jurisdiction of the court; and—indeed, from my own personal experience—I have made on occasion an application to the Court of Appeal to proceed with the hearing of an appeal in the absence of reasons from a judge of a High Court.

If there is a perceived difficulty, as I said, there is that safeguard that in this kind of application the court can, in any event, proceed even if the reasons of the

magistrate are not ready, and, particularly where one is dealing with the liberty of the citizen, whilst there are other avenues open to an individual in circumstances where this situation may arise.

Mr. Chairman, in this circumstance, it is with some degree of regret we would not be able to support the amendment.

Sen. Capildeo: Mr. Chairman, Sen. Daly's proposed amendment to 9(1). I see what he is trying to say there, that in the past we have had problems like that in the system where magistrates and sometimes even judges of the High Court did not give reasons. But at this stage, I am afraid we cannot agree to it.

Sen. Daly: Could Sen. Capildeo give the reason?

Sen. Capildeo: Quite frankly, the reason is that I really cannot support it at this stage, but I understand what he is saying.

Sen. Daly: What goes around comes around. *[Laughter]* I am not withdrawing. I think it is fundamental to poor people. There are tremendous problems in the system—and Sen. Capildeo has acknowledged it—where people cannot get their reasons, particularly in magisterial matters.

Question put.

The committee divided: Ayes: 9 Noes: 14

AYES

Mansoor, M.

Spence, Prof. J.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Rev. D.

Chamely, Dr. E

NOES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Bertrand, Mrs. E.

The following Senators abstained: W. Mark, S. Capildeo, C. Merritt, M. Hosein, J. Barrack.

Amendment negatived.

Clause 9 ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Daly: Mr. Chairman, I propose an amendment to clause 10 which reads as follows:

> "Delete the words, ‘inquiring into or trying an offence alleged to have been committed by a person.’"

Can I get a reaction from the Opposition?

Mr. Sobion: Mr. Chairman, I would like to give a reaction. I know Sen. Daly in his contribution said something about this amendment. I am not quite sure that

I fully understand the reason for the amendment. If I could be given that opportunity again.

Sen. Capildeo: If we remove the words, then it would read—if I am on the right clause—"where a court refuses bail—

Mr. Sobion: "Where a magistrates' court…"

Sen. Capildeo: "Where a magistrate's court refuses bail it shall inform him that he may apply to the High Court to be granted bail." That is what will take place if we delete the words. What happens if we do not delete the words?

Sen. Daly: The point I was making is—it is late and there is not much dialogue, and really we are in a rubber stamp exercise despite having been here since 10.00 a.m—if you qualify the words "a magistrates' court" by "inquiring into or trying an offence alleged to have been committed...", that suggests that the refusal of bail or that the only person who will be inquiring into bail is the magistrate who is going to try you. It seems to me conceivable that there could be a situation where you go to the Chaguanas Magistrates' Court in September, one magistrate is presiding, he deals with bail; and you go back in October and another magistrate is presiding, and he deals with your case. The problem with this is you are committing the magistrate who would be trying the case into dealing with the bail application. If it is not a problem, fine.

Mr. Sobion: Having heard the explanation, I do not think it is a problem. The clause does refer to a magistrates' court. The procedure is that where an accused person is brought before a particular magistrate in a particular magistrates' court, it is for the purpose of either a preliminary inquiry or the actual trial of the matter. It is at that stage that the application for bail is made, in the district where he is charged. I do not think that the deletion would help.

Sen. Daly: Mr. Chairman, I withdraw my proposed amendment.

7.30 p.m.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Clauses 11 to 21 ordered to stand part of the Bill.

First, Second and Third Schedules, ordered to stand part of the Bill.

The Preamble ordered to stand part of the Bill.

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

Senate resumed.

Question put, That the Bill be now read the third time.

Mr. President: A special majority is required. A count would have to be taken.

The Senate voted: Ayes 28

AYES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojah-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A.

Maloney, A.

Nanga, J.

Bertrand, E.

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Barrack, J.

Mansoor, M.

Spence, Prof. J.

Rooks, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Rev. D.

Chamely, Dr. E.

Question agreed to.

Bill accordingly read the third time and passed.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. President, I beg to move,

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

Sir, essentially, this Bill seeks to expedite the hearing of preliminary inquiries, which are conducted before an examining magistrate who has to determine whether a prima facie case is made out against the accused person. If such has been made out, the accused person is then committed to stand trial at the Assizes.

For many years now, a review of that system has been proposed and it began in light of the lengthy delays which were experienced in the magistrates' courts, not only in the taking of the evidence, but also in the lengthier delays which took place in the preparation of the record, after all the evidence had been taken, and after the person had been indicted and committed to the Assizes.

In more recent times we have been faced with the additional phenomenon of witnesses being interfered with, not only by way of threats, but also by way of physical elimination, or persuasion of a physical nature not to participate in the proceedings. In circumstances where there are lengthy delays in the hearing of preliminary inquiries, there is a greater exposure to the witness to those acts of intimidation.

We are seeking to do two things to the system: principally to expedite the hearings of preliminary inquiries and to expedite a process whereby the records

are compiled. Effectively what is being put in place is a system whereby the oral evidence would be taken by way of sworn statements, which would themselves subsequently form part of the record. There is no need for the lengthy examination-in-chief of a witness and there would be no need for the compilation, from the magistrates' notes, which very often become indecipherable.

We also hope that by expediting the system we would deal more effectively with those persons who had not been granted bail as a result of the Bail Act 1994, and also with the problem, by way of a side-wind almost, of persons who are intimidated as a result of being witnesses.

By way of history, this Bill was introduced into the Parliament in a form which provided for a limited use of sworn statements. At the time it was postulated that because one did not necessarily want to shift the backlog from the magistrates' court into the High Court, it would be better if there was a system which would permit the selective use of the sworn statement procedure, and continue in a parallel way with the existing system of oral evidence.

7.40 p.m.

The argument at that time was also predicated on the fact that it would have been necessary to attempt to fast track some of those more serious matters, particularly where witnesses were at risk. It was for that reason that the Bill in its original form provided a system whereby there would have been no cross-examination, because it was expected that the matters would have moved shortly thereafter into the assize system.

And seeing that a preliminary inquiry involved only the finding of a prima facie case, it was thought that depriving an accused of the right to cross-examine at that preliminary stage, would be balancing the interest of all parties involved. That would have been a better approach if one could have got his case expedited in the High Court where he would have had a full right to cross-examine all the witnesses.

As I say, it was based on the fact that at the preliminary inquiry the magistrate is only required to find a prima facie case that there is sufficient evidence which points to guilt, and if he so found he would then refer the matter to the Assizes. And whilst the accused person may have lost his right to cross-examine at that preliminary stage, he would have had the benefit of an earlier trial which would finally determine his rights once and for all.

This matter was subsequently referred to a committee, and the deliberations of that joint select committee, contained in a report, were laid in this Senate earlier

today. Appended to that report is a list of amendments, and I would broadly state the effect of those amendments. The committee was persuaded to adopt the view that rather than have a selective process of preliminary inquiries by way of sworn statements, we should expand the procedure immediately and make it available in all matters where preliminary inquiries are being conducted.

The advantage of adopting that approach and allowing cross-examination on those sworn statement is the preservation of the right of the prosecution on application in the Assizes to admit into evidence those sworn statements, if the witness were to subsequently die or to migrate from the jurisdiction of Trinidad and Tobago.

Again, it was a question of balancing the respective interests, whether it was necessary to limit the cross-examination in order to get a faster hearing, or whether to allow the cross-examination, and perhaps get a slower hearing because of the time factor that may be involved in the cross-examination, but to get what would, nonetheless, be an expedited process, and preserve the right to introduce the statements at the Assizes in the event, principally, of the unfortunate demise of the witness.

This report was laid, the amendments may appear to be formidable, but they are not really, when one considers that one had to incorporate a number of existing situations to deal with sworn statements which would apply now that cross-examination is permitted.

I want to sound one warning: Once this Bill is passed, its actual effectiveness, to a large extent, is going to be determined by the practitioners who appear before magistrates in these preliminary inquiries, by the way they conduct the business of their clients, by the way they deal with the evidence that is before them in a written form, which would be made available to them beforehand. But a lot will depend on the approach adopted by those who are involved in the whole process of the conduct of preliminary inquiries.

The Bill largely incorporates the provisions of the United Kingdom Act of 1976, and it is a system which can work and which can produce significant benefits to our system of justice, but it depends, as everything else, on the human element, those factors that cannot be legislated for in any form. The success, or lack of it, of this approach hinges to a large extent on that intangible.

I have been involved with this Bill for a long time, and I feel that the gains that we can achieve, particularly now that we have increased the number of criminal assize courts which are available to receive matters flowing from the

Magistrates' Court level, would assist in ensuring that the Bill achieves the desired objective.

Sen. Daly: Before the Attorney General takes his seat and we waste another eight or nine hours, may I enquire whether the Government is going to accept only consensus amendments from the Independents, that is to say, amendments which have the support of the Opposition?

Hon. K. Sobion: Mr. President, the Government is prepared to consider all amendments that are presented in this Senate. The matter was considered by a joint select committee, and there has been consensus at that level, but we have looked at the report, which has been laid, and the Government will be prepared to consider any amendment which Senators may wish to propose.

Thank you, Mr. President.

Question proposed

Sen. Wade Mark: Mr. President, I want to begin by saying that the importance of the committee system in the life of the Parliament is being manifested in this report and the accompanying appendix. We have made it very clear that the committee system works, if we want it to work. This report on the Indictable Offences (Preliminary Enquiry) Bill that is before this Senate is an indication—I must refer to the report before us and its appendix. In dealing with the amendments that have been proposed to the initial piece of legislation.

7.50 p.m.

The report and the accompanying appendix in terms of this particular piece of legislation—it is a very important piece of legislation that the Government sought to introduce—show that had the Government exercised some degree of give and take prior to the actual referral of this document to the joint select committee of Parliament, many of the proposals that were raised by the Opposition would have been accepted.

As you would have noted, the proposals that were accepted and now form part of the appendix to the report on this particular Bill indicate, in no uncertain terms, that in spite of the efforts to paint us as obstructionists, the Government and the Opposition with other forces—but the Government and the Opposition mainly because we are the elected representatives of the people—

Sen. Huggins: For the past two hours we have been hearing the same speech.

Sen. W. Mark: Mr. President, I seek your protection.

Sen. Huggins: Just bring *Hansard* and we would note it.

Sen. W. Mark: Mr. President, the Bill before us sought, in the first instance, to take away the right of an accused person facing trial in an indictable offence to decide whether he or she would cross-examine his or her accusers at the preliminary inquiry stage. If we look at the amendments, we would see that what the joint parliamentary committee has agreed to is to allow that right to be maintained. This piece of legislation, the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill, tells us that the Government has to be extremely careful in attempting to remove the rights of our citizens.

I want to issue a word of caution to the Government on this matter. The committee system of Parliament can work; it has been working in some instances. The Attorney General is not here, so the hon. Minister, Sen. Russell Huggins, must take note of this. The Government must know that in seeking to deal with this issue of cross-examination, as is outlined in the amendment, what we on this side sought to do was to ensure, all along, that the person who has been accused and brought before a magistrate, retains that right through his legal attorney to cross-examine.

This Bill has never come before the Senate for debate. We are going to run through it because of the fact that there was a joint parliamentary committee and there was an agreement. We cannot escape the fact that the Government was forced into a position. The Government had to make some adjustments that were necessary in the circumstances.

As you know, Sir, the Government is attempting, through this Bill, to speed up the administration of justice, to bring about some degree of stability in the administration of justice. We feel that that is a worthy objective, and we are supportive of such an effort. But we advise the Government again that this Bill, by itself, is not going to deal effectively with the backlog of cases. Therefore, the Government would need to look at the issue of the appointment of additional judges. It must look at the issue of not simply the appointment of judges, but the appointment of competent judges. We would like the Government to take note of this.

One of the reasons for this Bill being before Parliament is an effort on the part of the Government, as I said, to speed up the administration of justice, to get cases more swiftly through the system. What we on this side are arguing is that we cannot fight crime without looking at court management. We cannot fight crime without looking at judicial training. We cannot fight crime and deal with the

system of justice if we do not focus on judicial education. These are very serious matters and every time we are debating something serious, the Government seems not to be paying attention to what we have to say.

Mr. Sobion: Mr. President, for the information of the hon. Senator, some three years ago the Council of Legal Education agreed on a pilot training programme for judges. It has proceeded over the last two years in an informal way with a view to having the system developed into a full-fledged judicial training system.

Sen. W. Mark: Mr. President, I am happy to hear that because this is an area we are concerned about. When we look at the system in Trinidad and Tobago we realize that in a number of the cases pending in the High Court when we look at the records of those cases carefully there are judicial errors. Therefore, this question of a judicial school is important and this is something that we insist upon. The area that the Attorney General has mentioned, in terms of training judicial personnel, is very commendable. May I add the question of judicial discipline, too.

Those are areas that we would like the Attorney General to pay attention to: the school that is on stream; court management; judicial education and training.

The Attorney General did not respond to our earlier intervention when we mentioned the fact that there is need for the Government to look at the issue of the appointment of judges. There is need for more openness and public scrutiny.

Mr. President, in this debate, we should like the Attorney General to let us know what attempts the Government is making to deal with the issue of plea bargaining.

[MR. VICE-PRESIDENT *in the Chair.*]

Mr. Vice-President, that is an area in which we are interested. We are seeking to speed up the administration of justice. We are seeking to get rid of the backlog of cases. Therefore, we need to focus on the issue of plea bargaining.

An area that we are also concerned about as we look at this Bill is compensation to victims of crime. This is an area at which we believe the Government ought to look. In a White Paper on law reform under the PNM Government in 1979 this question of compensation to victims of crime was, in fact, mooted; we are now in 1994, and the Government has done little about that issue. I remember the former Minister of National Security indicating that that was an area at which the Government was looking. This Government keeps

looking at things without taking action. We want the Government to examine this issue very carefully.

8.00 p.m.

As I said, piecemeal solutions will not help.

We need a more comprehensive approach and we are also indicating that there is need for the Government to bring to this Parliament, very quickly, more critical areas of operation to speed up the system of justice and its administration.

As regards this report, one of the reasons we would not want to get into any serious details on this is that there was a joint parliamentary committee and we had representation thereon, but we want to indicate to the Attorney General that the Government must pay more attention to this issue. Therefore, in future, a number of areas that would detain us and allow the Attorney General to make all kinds of spurious allegations against the Opposition could be significantly dealt with.

On this matter we do not want to detain the Senate too long; we simply want to indicate that we support the measure before us, and we want to remind the hon. Attorney General of the need to get legislation before committees, before they are brought to the Parliament. We feel that if that approach is adopted, a number of controversial matters could be addressed; and we hope that, given all we have discussed today, the Children (Amdt.) Bill, the Bail Bill, and now the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill—they are very important in the context of co-operation and co-ordination, and the committee system of Parliament is critical in dealing with this issue.

We do not want to detain our good Friend, Sen. Russell Huggins any longer. I know he wants to go home, but in any event we on this side of the House support this Bill and we should like the Government to take notice, once more, of the importance of the workings of the committee system in Parliament and give it more importance. Basically, Sir, these are my few words. I know that whenever I rise to speak very late in the evening, there are people who are unhappy, but this is a brief intervention in an effort to depart from here as early as possible.

Thank you very much, Mr. Vice-President.

Sen. Martin Daly: Mr. Vice-President, I too, will be very brief. On this occasion, it appears that the committee system did work, that is to say, a Bill was produced dealing with a technical matter which appears to have satisfied all the

members of the committee. So on this occasion the committee system may have worked, but, as always, I like to sound a note of warning, particularly where I detect arrogance or complacency.

We are not going to be able to run this Parliament effectively if we make an assumption that because the Bill has gone to committee, or has otherwise been negotiated, that it is a perfect Bill. We cannot make that assumption. To do that is to be both complacent and arrogant, because, in fact, we have had other Bills that have gone to committee during the life of this Parliament that have not worked so well.

It is far too late in the evening to introduce any recriminatory note, but I have been on another committee from which little or nothing has emerged. I put it as neutrally as that. So we cannot assume that once we have a system, or I emphasize, that once we negotiate a Bill, it is a perfect Bill.

There is another reason why that is a complacent and arrogant assumption, and it is also inconsistent with the need to have the public comment on Bills. If the passage of legislation is brought into a "club" which comprises a small select number of people in the Parliament, then we are going to exclude the public from any say on these Bills.

So I think we have to be very careful in this whole atmosphere of mutual admiration, and so forth, which has developed; and I think it is very important that I sound that note of warning, particularly, as I believe we are now approaching, so to speak, the end of term. I hope that when we begin the new term we shall not make some of these assumptions.

I did not think that I would have to sound this brief warning, but one read in the newspaper statements attributed to very high officials in politics that they expected the Senate to do some polishing up of the legislation.

It turned out that that was a false representation but, you know, you win some and you lose some, but it is very grave that we have operated on such a false premise and that we have stayed here for six and a half hours on the basis of a false representation and, indeed, expended much taxpayers' money and private sector money in keeping employees of the media, and all of us, here. So I want to sound, with as much humility as I can muster, a little note of warning as it is the end of the term.

Thank you very much.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, just apropos of Sen. Daly's comment about lack of perfection, could I point out in the Report of the Joint

Select Committee, on page 2, there was appointed from the Senate a "Mr. C. Mahadeo" and in the list of those, on page 5, who were members of the committee there is another "Mr. C. Mahadeo". I am sure that Miss Carol Mahadeo would be most interested in the perfection of the report.

Thank you, Mr. Vice-President.

Sen. Surendranath Capildeo: Mr. Vice-President, I rise to support the Bill, and to congratulate the members of the committee, and to say that the committee system works, and that it augurs well for the future of this country if we could have such committees sit with, maybe, controversial legislation in the future.

I sat on that committee and I was impressed by the openness that existed between the Government and the Opposition, and the respect we had from the Chair.

Thank you, Sir.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Vice-President, I just want to make a few observations on matters raised by Senators Wade Mark and Daly.

The question of plea bargaining and compensation to victims of crime was raised. I want to say briefly on those two matters that bargaining is an issue, among other things, which has been engaging the attention of this Government. There are many pitfalls which have occurred in the society where that system is best known—the United States of America—and there are many problems associated with it which have developed over time. But it is a matter which has some merit and which will be given due consideration.

8.10 p.m.

On the question of compensation to victims of crime, Sen. Wade Mark noted that this matter was raised in 1979 by a previous People's National Movement government.

Again, we have done further research on that question and I think that Sen. Wade Mark would be interested in knowing that it was not until l985 that the United Nations accepted an Article in “the Declaration on basic principles of justice for victims of crime and abuse of power” which said, among other things, that states should endeavour to provide financial compensation to victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crime.

So that this Government was running some six years ahead of the United Nations when it first made its proposal for compensation to victims in l979. I may note, however, that there are several fundamental issues relating to this question, the most fundamental of them is whether states, in fact, have a responsibility to victims of crime. There are also several systems in place throughout the world, and one will note that the system has been established only in the more developed countries, such as Australia, France, and the Soviet Union. The only Third World country which has established such a system is Cuba and it has not really worked very well.

Under the Cuban system the prisoners work and the moneys are contributed into a common fund, but I gather that since the Mariel boat lift, the working population of the prisons dropped considerably. But quite apart from looking at the different systems that are utilized, there are also a number of sub-issues which require serious consideration and which will also have a very serious impact on the economies of small countries such as ours.

I have noted the caution and the note of warning sounded by Sen. Daly with respect to the operations of committees. It is a concern which I, myself, share and have shared in debates, both in this Senate and in the other House. My prime concern has been the fact that we have very small numbers in this Parliament and even finding an available day for holding a committee meeting continues to pose a problem. Quite apart from that, there has always been the difficulty of getting a quorum when these meetings are eventually fixed, and in some instances, the progress of the committees has not been as we had hoped.

In the case of the Indictable Offences (Preliminary Enquiry) (Amdt) Bill, I have the view that because of the nature of that piece of legislation and because of the public's view with respect to improving the system of justice, perhaps an extra effort was made by members of that committee to deal with it. But when faced with the daunting and intimidating task of having to do the same exercise with the Companies Bill, one found that the enthusiasm was not there.

[*Mr. President in the Chair.*]

In respect of the other matter raised by Sen. Daly, I also take the point that the danger of relying fully on a committee system removes from the public's view much of the deliberations of the Parliament and, therefore, you do not get the kind of public feedback that one sometimes finds very useful.

Sen. Prof. Spence: I want to make two quick points, Mr. President. One is that in some countries the committee system is public, so the television camera is there.

The second point is that in one of the Senate committees we found that meeting during the lunch hour before the Senate meeting is a very good way of getting people to attend.

Hon. K. Sobion: I note the comments of Sen. Prof. Spence, and they would certainly be taken into account.

In respect of the second committee, we have solved the problem of the public's input by having requests for memoranda, and we have been successful in getting several weighty documents coming in with respect to those requests. We also proposed, before the committee wound up its affairs prematurely, that we would have persons appear before it. So that, perhaps, is another way of dealing with a perceived deficiency in the committee system.

I also wish to point out that the Government itself has adopted the approach and has recently issued the Environmental Bill and the Town and Country Bill, and those have been circulated for public comment. Members of Parliament have been provided with copies as well. I understand that a similar approach is being proposed for the Town and Country legislation. So that we on this side are well aware of the need for public input into some of these critical matters.

Having, therefore, dealt with the comments raised in the course of this brief debate, I beg to move that the Bill be now read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

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

Senate resumed.

Bill reported without amendment.

Question put, That the Bill be now read the third time.

The Senate voted: Ayes 25

AYES

Saith, Dr. The Hon. L.

Huggins, Hon. R.

Barnes, Hon. B.

Robinson-Regis, Hon. C.

Callender, S.

Mark, A.

Ojar-Maharaj, D.

Elder, Miss J.

Rahael, J.

Gosine, Pundit R.

Hassim, A. M.

Maloney, A.

Nanga, J.

Bertrand, E.

Mark, W.

Capildeo, S.

Merritt, Miss C.

Hosein, M.

Mansoor, M.

Spence, J.

Mahabir-Wyatt, Mrs. D.

Ali, H.

Daly, M.

Dean, E.

Teelucksingh, Sen. Rev. D.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith): Mr. President, before I move the adjournment of the Senate, may I thank Senators for their patience and co-operation, both last week and tonight, in assisting us in trying to get our legislation through. Therefore I take great pleasure in moving that the Senate do now adjourn to a date to be fixed by the President.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.20 p.m.

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