SENATE

Tuesday, May 7, 1996

The Senate met at 10.05 a.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

SENATOR'S APPOINTMENT

Mr. Vice-President: Members of the Senate, I have been advised that His Excellency the President has appointed Mr. Verne Richards a temporary Senator with effect from May 6, 1996 and continuing during the absence from Trinidad and Tobago of the Sen. The Hon. Ganace Ramdial.

OATH OF ALLEGIANCE

Sen. Verne Richards took and subscribed the Oath of Allegiance as required by law.

MILITARY TRAINING (PROHIBITION) BILL

An Act to prohibit the training, drilling and equipping of persons with firearms, ammunition, artillery or explosives and the practice of military exercises otherwise than permitted under any written law, to increase the penalty for unlawfully wearing a police uniform and for related matters, brought from the House of Representatives *[The Minister of National Security];* read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. *[Sen. The Hon. Wade Mark]*

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General on the accounts and financial statements of the Primary Education Programme for the year ended December 31, 1994 as required by Loan Contracts 796/SF-TT and 215/1C-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)]*

2. The Customs Tariff for the Assembly Industry (Reduction of Duty) Order, 1996. *[Hon. B. Kuei Tung]*

TOURISM MASTER PLAN

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, I wish to state that consequent to the request that was made by the Senate at the last sitting and upon the promise that I had made, I wish to inform this honourable Senate that a copy of the Tourism Master Plan which is comprised of five volumes has been lodged with the librarian at Parliament.

It includes:

1. The tourism master plan
2. The overall investment programme
3. The priority projects and feasibility
4. Tourism land use and resources
5. The tourism market and product development

I thank you, Mr. Vice-President.

10.15 a.m.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark: Mr. Vice-President, I beg to move that the Motion under Public Business be taken at a later stage of the sitting.

Agreed to.

HABEAS CORPUS (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Habeas Corpus Act, Chap. 8:01 be now read a second time.

Mr. Vice-President, the purpose of this legislation is to enhance the protection of human rights in Trinidad and Tobago, by providing citizens with the right of appeal against any decision of a judge to deny habeas corpus; and by making certain procedural provisions to that end. The right of appeal, Mr. Vice-President, is also provided to the respondent which will normally be the state in one or other of its capacities.

Mr. Vice-President, habeas corpus is a very ancient writ, but it is a writ in the nature of an order calling upon the person who has detained another to produce that person before the court, in order to let the court know on what grounds he has been confined and to set him free, if there is no legal justification for the imprisonment. Over the years habeas corpus has been developed to be used in many instances, where there is detention, especially by the state. Mr. Vice-President, if anyone looks at any learning on habeas corpus, one would see that, over the years, it has come to be used not only in situations where a person has been imprisoned by the state in normal circumstances, but also in situations where there is emergency legislation and an attempt is made to have the court determine whether someone is lawfully detained or not. Attempts have been made to use it in respect of court martials and committals for trial; in cases of extradition; and immigration detention.

I am mentioning these matters, Mr. Vice-President, to illustrate how important this writ has become. This amendment is long overdue, since the Constitution accords special importance to the remedy of habeas corpus. Section 5(2)(c)(iv) specifically provides that Parliament may not deprive a person who has been arrested or detained "of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful."

By the amendment in the Bill, Mr. Vice-President, Parliament is not proposing to deprive anyone of the remedy of habeas corpus. It is proposing to make that remedy more effective by providing for an appeal against a decision of a single judge. The lack of any such right, Mr. Vice-President, has been a glaring deficiency in the law of Trinidad and Tobago and it probably constitutes a breach of the due process provisions of human rights treaties to which this nation is a signatory.

It is a historical anomaly in the law, Mr. Vice-President, which the United Kingdom rectified in the 1960 Administration of Justice Act. These amendments, in effect, are a mirror of sections 14 to 15 of that statute. As the leading text book on *Administrative Law,* the Seventh Edition, by Wade and Forsyth explains, and I quote:

> "The procedural deficiencies of the prerogative remedies, to be noticed later, were particularly acute in the case of habeas corpus. No right of appeal used to exist against refusal of the writ in cases of imprisonment where there was a charge of a criminal nature—a grave and irrational defect which was not remedied until 1960."

That learned author, Mr. Vice-President, referred to the absence of this appeal mechanism or procedure as "a grave and irrational defect which was not remedied until 1960." It follows, Mr. Vice-President, that what this Government is now attempting to do, is to remedy a grave and irrational defect in the law and thus improve the remedy of habeas corpus. In no way does it abrogate or abridge the right to test the legality of detention and to obtain release if that detention is unlawful. On the contrary, it enlarges the right by permitting it to be advanced on appeal to more authoritative courts than that of a single judge, namely, the Court of Appeal or the Privy Council.

The Bill, Mr. Vice-President, like the 1960 United Kingdom legislation, requires prisoners in civil actions to be released on habeas corpus as one irrespective of any appeal, but it does empower the court to direct that a prisoner in a criminal case remain in custody or be subject to conditions of bail if the state immediately lodges an appeal against the issue of the writ. These provisions, it seems to us, would follow logically and consequentially upon the establishment of an appeal system. It may be that pursuant to them the prisoners whose release is consequentially ordered by a single judge will now be detained until his erroneous decision is overruled by the Court of Appeal. But this cannot amount to a breach of the Constitution. It would be absurd to suggest that a criminal, lawfully detained, has a right to be released if a judge at first instance makes a mistake. The right protected by the Constitution is to have the validity of one's detention determined according to law. There is no right to have it determined incorrectly by a misunderstanding or a misapplication of the law.

Mr. Vice-President, the Bill essentially provides that no application for habeas corpus, having once been rejected can be renewed, unless it is supported by fresh evidence. This reflects the principle applicable to bail applications which cannot be renewed unless some change in circumstances is shown. If authority is needed for that, and just for the record, Mr. Vice-President, *The Queen v. Nottingham Justices ex parte Davies*, 1980 (2) AER at page 775, it follows logically from these provisions of a right of appeal that an unsuccessful applicant at first instance will have a choice as to whether to appeal or else renew the application with additional evidence.

The applicant who chooses to appeal is not shut out from making a new application if the appeal fails, subject only to the requirement that fresh evidence is adduced. These procedural provisions in no way abridge or abrogate existing rights, although it was once thought that an applicant could renew his application for the writ before any number of judges successfully. This theory has now been rejected by the courts. See Re: *Hastings No. 2 1959*, 1 Queen's Bench Division at page 358; Re: *Hastings No. 3, 1950* which is at Chancery, 368; and Re: *The Governor of Brixton Prison ex parte Ousman, No. 5, 1992, Times* November 25.

Mr. Vice-President, in reality, any renewed application would require fresh evidence if it is to stand any chance of success and the Bill gives statutory force to this practice and this proposition. May I mention that other countries have followed likewise in Canada; and if I may read from *The Law of Habeas Corpus, 2nd Edition* by Sharpe**,** at page 210:

> "In Canada, the question of successive applications was a matter of great controversy in criminal cases until Parliament acted in 1964. It is now provided that there shall be no application again made on the same grounds unless fresh evidence is adduced, but that there shall be a right of appeal to the provincial court of appeal and then to the Supreme Court of Canada from the refusal of an application."

Mr. Vice-President, I should mention, however, that the High Court of Australia, even without any amendment to the law, has construed that having regard to the fusion of law and equity and to the provisions of their Act which constituted the High Court, the High Court in Australia may hear appeals against an order of release as well as against a refusal to discharge in cases over which it has appellate jurisdiction.

10. 25 a.m.

Mr. Vice-President, in the country nearby, that is the country of New Zealand, it was held as early as 1900, that the defusion of the common law courts into one supreme court had ended any right to apply more than once on the same grounds for a writ of habeas corpus.

Mr. Vice-President, just for completeness, and I am reading from Basu's *Commentary on the Constitution of India, Sixth Edition, Volume I, 1985* at page 93, the Indian courts held that there was in effect the right of an appeal on the interpretation of their laws and on the interpretation of the Government of India Act 1935.

The Privy Council in the case of *Sibnath Banerjee and Vimlabai* agreed with that construction.

Mr. Vice-President, I am mentioning all these matters in order to put this Bill into perspective. The position at present is, that if someone applies for a writ of habeas corpus in a criminal matter and the writ is granted, and the person is released, it does not appear as though the state has a right to challenge that on appeal and whether the judge makes an error or not, the state is not entitled to challenge that on appeal. If a person makes an application for habeas corpus in a criminal matter and that application is refused by a judge the practice used to be that one could have gone from judge to judge, until it was stated in one of the cases that the courts got tired and they exhausted the grounds in order to try and get a writ. Even before the 1960 Act in the United Kingdom it was held by the common law in some jurisdictions that that in effect constituted an abuse of process and it was not right. In any event the Administration of Justice Act in England decided to remedy that and provided for an appeal in respect of habeas corpus.

This Bill, apart from the other matters mentioned, is providing a right of appeal to someone who is refused a writ and a right of appeal to the state if the writ is granted. So that both sides would be able to appeal. I suppose there can be no real quarrel with that because the whole question is for the legal and judicial system to be fair and the criminal justice system to be fair.

Mr. Vice-President, the other matter is in respect of applications which have been determined by a judge. This Bill now seeks to re-address that by, in effect providing that you would not be able to make a fresh application unless there is fresh evidence. That principle is also not inconsistent with existing law because the

principles are that in order to make a fresh application for bail, one has to have new circumstances.

Mr. Vice-President, I do apologize but I must congratulate you for being in that Chair this morning.

This Habeas Corpus (Amdt.) Bill, therefore, is to reform this grave and irrational defect in the law of habeas corpus and it is enshrined in the Constitution that one is entitled to the right to liberty subject to the due process of law, section 4 (a). It forbids any infringement of this right and in particular any action by Parliament which deprives a detainee of the remedy of habeas corpus as a means of determining the validity of his or her detention or the procedural rights necessary for effectuating that remedy. The amending legislation will make the remedy more just and effective by providing both parties with a right of appeal and so enabling a more authoritative verdict on the validity of a detention. It would not and it does not infringe any of the provisions of the Constitution. I stress that point because an argument has been lodged in another place, that it may infringe the rights enshrined in the Constitution.

If I may quickly then, go through the provisions of the Bill. Clause 2 of the Bill states:

> "Notwithstanding any law to the contrary..."

it deals with both civil and criminal matters—

> "...no such application shall be made by or in respect of that person on the same grounds, whether to the same court or judge or to any other court...unless fresh evidence is produced in support of the application."

Clause 2 also provides a new section 7 to the Act which exists:

> "An appeal shall lie in any proceedings upon application for a writ of habeas corpus, whether civil or criminal, against an order for the release of the person restrained as well as against the approval of such an order."

A new section 8 (1) of the Act states:

> "An appeal under section 7 shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal and, unless an order under subsection (2) is in force at the determination of the appeal, to remain at large regardless of the decision on appeal."

Subsection (2) states:

"Notwithstanding subsection (1), in the case of an application for habeas corpus relating to a criminal cause or matter, where the appellant would, but for the decision of the court below, be liable to be detained, and immediately after that decision the respondent gives notice that he intends to appeal, the court may make an order providing for the detention of the appellant, or directing that he shall not be released except on bail so long as any appeal under this Act is pending."

Mr. Vice-President, this really, in a nutshell attempts to reform the archaic provisions and procedures of the Habeas Corpus Act.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Nafeesa Mohammed*:* Mr. Vice-President, I would like to say a special word of welcome to our hon. Attorney General, SC, if you please, and a special word of welcome as well with respect to his return from the Far East.

During the three weeks of his absence from this country there was a certain level of peace and calm in the country and now with his return the tension is building again. This morning is a classic example because here it is that the Bill that is before this honourable Senate, is a Bill that has some effect on our democracy and indeed, with our fundamental rights and freedoms as enshrined in our Constitution.

For a moment, during the presentation of the hon. Attorney General, I wondered if, perhaps, I was engaged in a trial in the High Court with the number of authorities that the hon. Attorney General was quoting. However, we will not be fooled and we will not hide the facts from the citizens of Trinidad and Tobago with respect to what is happening in our country today.

Two days ago I heard a statement being made by no less a person than the hon. Prime Minister of Trinidad and Tobago, about the number of pieces of legislation that are on the statute books of Trinidad and Tobago and amongst these pieces of legislation which he mentioned, were the Habeas Corpus Act, the Jury Act and the Evidence Act and, indeed, these Bills have only now reached the stage of the Senate. They are not in our statute books. I have to wonder about the statement about "lies, half-truths and innuendoes."

10.35 a.m.

A couple days ago the hon. Attorney General made a statement about 100 bills coming to Parliament. This is in keeping with the public relations campaign of this Government which is being run on the basis of public relations. The hon. Attorney General would like us to believe that he is plugging the loopholes as was said prior to the elections of November 1995. I really have to wonder about the extent to which these loopholes are being plugged.

We have heard a bit about the history and the origin of the writ of habeas corpus. We know that it is a prerogative process for securing the liberty of a subject by affording an immediate means of release from unlawful or unjustifiable function. It is an ancient common law remedy. The origin of this writ is rooted in the 13th century. In the United Kingdom in 1679 the first Habeas Corpus Act was enacted, and in 1816 another one was enacted. The hon. Attorney General admitted today in this House that the Bill before us is a mirror of the United Kingdom provisions as in the Administration of Justice Act 1960.

This is where I have the greatest concern with regard to this Bill. In principle we welcome the right of appeal which is being provided for by virtue of this Bill. However, we have a serious problem when the Minister seeks to copy wholesale legislation from another country and does not comply with the procedures provided for under the laws of Trinidad and Tobago. The hon. Attorney General would like us to believe that the Bill before us in no way derogates or abrogates any of our fundamental rights and freedoms. I disagree with the statement. Under the Constitution of Trinidad and Tobago section 4, several of our rights and freedoms are enshrined therein. The first one which is enshrined is the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law.

Section 5 of the Constitution of Trinidad and Tobago states:

"(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—

(c) deprive a person who has been arrested or detained—

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;"

The right to habeas corpus is one which is enshrined under the Constitution of Trinidad and Tobago.

I go further to point out section 5 (2)(h) of the Constitution. It states:

"deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

This statement that no law may abrogate, abridge or infringe is one which needs closer examination. What is the meaning of "abrogate"? In the *Concise Oxford Dictionary* it means to repeal or infringe. In the said dictionary the meaning of the word "abridge" is to curtail or deprive especially in the context of liberty. The word "infringe" is defined as to encroach or trespass upon something or somebody's rights. The Bill before us, whilst seeking to give the right to appeal in respect of habeas corpus proceedings, is clearly taking away a right which has existed for many years, that is, a right to make successive applications under habeas corpus proceedings. Elements of this right are being removed. It is my respectful submission that in a measure such as this where our fundamental rights and freedoms are certainly going to be affected, one must comply with procedures and safeguards which are provided for in respect of any changes to any of the measures under the Constitution.

The measure before this honourable House is one which requires a special majority of Parliament in order for it to be passed as good law. I have read certain provisions under sections 4 and 5 of the Constitution. In the Constitution there are certain guidelines or procedures which are stipulated and must be followed when any attempt is being made to change the Constitution. Section 54 of the Constitution is very instructive on this point. It deals with the alterations to the Constitution. It states:

"(1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.

(2) 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."

10.45 a.m.

Mr. Vice-President, in a book, *Changing Caribbean Constitutions*, written by a former lecturer in the Law Faculty of the University of the West Indies, Dr. Francis Alexis, a well-known legal luminary who has served as a Minister of the Grenadian Government, in a nutshell, describes how certain provisions in the Constitution can be changed. For example, chapter 2, at page 11, deals with ordinary legislative changes, and it says:

"The ordinary Parliamentary legislative process is the majority of those members of a House of Parliament who happen to be present and voting at a particular meeting of the House, assuming, of course, that those present and voting constitute at least a quorum of the House. This is the simple majority vote of a House of Parliament. This is the majority that suffices for the passing of ordinary Acts of Parliament."

It is my contention here today that this Habeas Corpus (Amdt.) Bill is not an ordinary Act of Parliament. It is a Bill that is certainly affecting the fundamental rights and freedoms as enshrined under our Constitution.

At page 12, Dr. Alexis goes on to deal with the entrenched provisions under the Constitution, and more specifically he describes the meaning of entrenchment:

"Entrenchment is the protecting of some or all provisions of a Constitution against change by the ordinary legislative process, this ordinary legislative process having just been explained. Entrenchment means that the passing of legislation for the alteration of some or all provisions of a Constitution entails the observance of requirements which do not have to be met for the passing of other legislation. It has been judicially stated that entrenchment means that 'certain alterations in the Constitution were certainly not left to chance or an ordinary legislative enactment'.

Entrenchment devices in Caribbean Constitutions vary greatly in complexity."

He goes on to describe various entrenchment devices. They are the procedures that must be followed if one is seeking to change any of the entrenched provisions under the Constitution.

Mr. Vice-President, I wish to refer hon. Senators again to section 54 of the Constitution:

> "(1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution...
>
> (2) 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."

Then, in section 54(5), it goes on:

> "No Act other than an Act making provision for any particular case or class of case, inconsistent with provisions of the Constitution, not being those referred to in subsections (2) and (3), shall be construed as altering any of the provisions of this Constitution or (in so far as it forms part of the laws of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962, unless it is stated in the Act that it is an Act for that purpose."

This provision deals with the need for a declaration of intent, and I would like to refer hon. Senators to page 41 of this book, *Changing Caribbean Constitutions*. With respect to the Trinidad and Tobago Constitution, Dr. Alexis goes on to state:

> "The 1976 republic Constitution of Trinidad and Tobago, replacing the 1962 monarchical Constitution, however, has three levels of entrenchment; although like its 1962 predecessor, it too has a few unentrenched provisions. Of the entrenched provisions, some cannot be altered by a general Act, as distinct from an Act making provision for a particular case or class of case, unless that Act has the declaration of intent. At a deeper level, certain provisions may not be altered without the votes of two-thirds of all the members of each House and the declaration of intent. At the deepest level, certain provisions may not be altered without the votes of three-fourths of all the members of the House of Representatives, two-thirds of all the members of the Senate, and the declaration of intent."

Indeed, Mr. Vice-President, under section 13 of the Constitution of Trinidad and Tobago, it is expressly provided that:

(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5, and if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

(2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the Members of that House."

Mr. Vice-President, I am trying to illustrate to hon. Senators that when one is dealing with alterations to the Constitution of Trinidad and Tobago, there are procedures to be followed.

As we have seen, there are various levels of entrenchment with respect to the provisions of the Constitution and we are dealing with the fundamental rights and freedoms provision of our Constitution. The Habeas Corpus Act is a remedy provided under section 5 of the Constitution of Trinidad and Tobago. It is a provision that is entrenched in our Constitution and we certainly require a special majority to have such a Bill enacted in the laws of Trinidad and Tobago.

Sen. Mark: Can the hon. Senator indicate to this House which provisions are being infringed under the present legislation?

Sen. N. Mohammed: I indicated before that this Habeas Corpus (Amdt.) Bill seeks to do two things. One is to give the right of appeal to the state or the ordinary citizen who has come by way of habeas corpus. However, the more fundamental aspect is the right that is being taken away—the right to successive application.

When one looks at the development of the writ of habeas corpus, the procedure was such that one could have gone from judge to judge. If a person was turned down by one judge after applying for an order of release by way of habeas corpus, he could have gone to another judge to seek that order of release. This is what this Habeas Corpus (Amdt.) Bill is derogating. It is taking away the remedy which is entrenched under the Constitution of Trinidad and Tobago, and I disagree

wholeheartedly with the views expressed by the hon. Attorney General that this Bill in no way affects any of the fundamental rights and freedoms of the individual.

Sen. Daly: Would the Senator indicate whether the right of appeal for a judge's refusal of habeas corpus is an adequate substitute for the right to petition successive judges?

Sen. N. Mohammed: With respect to the right of appeal arising out of an application under the Habeas Corpus Act, it is certainly a welcome provision. It is enhancing the law relating to habeas corpus, but indeed the right that is being taken away—the right to successive application—is also another significant right.

As I indicated under the fundamental rights provisions, the right to the remedy of habeas corpus is a right that is entrenched. If one is seeking to alter in any way this right or remedy of habeas corpus, one should do so by following the proper procedures as laid down in the laws of Trinidad and Tobago. The hon. Attorney General himself confessed that this Bill is a mirror of the 1960 Administration of Justice Act, but he is copying wholesale from another jurisdiction

10.55 a.m.

In England there is no written constitution, but we, in Trinidad and Tobago, have a written Constitution. Under our Constitution the procedures are laid down for altering any of the provisions of the Constitution. All I am saying is that with respect to the alterations that the Government is seeking, it should follow the necessary procedures and guidelines.

Under the Constitution, one of the requirements for seeking to alter an entrenched position, to avoid doubt, is that the Bill should be drafted in such a way that it would indicate that it would require a special majority and have the declaration of intent to change the particular provision in the Constitution. I ask the question: Why the haste now to tamper with this entrenched right to habeas corpus? What is the rush? What is the need for it? Is it to give the country the impression that they are doing such a great job, and that they are plugging loopholes?

Mr. Vice-President, we on this side—particularly with respect to this Government, given its track record—have to be very vigilant and to look at every move that seeks to affect our constitutional and fundamental rights and freedoms.

We are dealing here with a Government that just cannot be trusted. Mr. Vice-President, I will take you back to as early as November/December 1995 when this Government came into power. Immediately upon assuming power, the new Prime Minister spoke about national unity and a big issue was made about the People's National Movement joining the government of national unity. But, Mr. Vice-President, that, to me, is the first indication of an attempt to subvert our democratic system and tradition in this country.

If we have a government of national unity with all the political parties, it is a one-party system and our Constitution just does not provide for that sort of system. Under our Constitution provisions are made for an Opposition and our system is based on the first-past-the-post system; whichever party emerges from an election with the majority of seats in Parliament may form the Government. This is why we rejected their call for national unity. We are committed to national unity but we believe that it must come through the party. This, to me, was their first indication of wanting to subvert our democracy. It did not stop there, Mr. Vice-President, when the budget debate was taking place in the other place, I distinctly recall some of my parliamentary colleagues expected that the debate would have proceeded in a particular way, but lo and behold, just after the dinner break they were told that they were going through the night. For the rest of the night, until 7.00 a.m. the next morning, Members of Parliament from the Opposition Benches had to stand and participate in a significant debate such as the budget debate of Trinidad and Tobago. That, to me, Mr. Vice-President, was a further attempt at subverting our democracy, this time it was a subversion of our parliamentary democracy.

It did not stop there, Mr. Vice-President. Many of us would recall, from as early as January, the attacks that were being made on the press. One of our fundamental rights, that is, the freedom of the press which is enshrined in section 4(1)(k) of the Constitution—in their first few days in office they attacked the press and wanted to curtail the freedom of the press and imposed all sorts of regulatory restrictions. They are still threatening to do so with a press complaints authority. They just like to have their own way but we are living in a civilized society, which is governed by a constitution—Mr. Vice-President, they just have to follow the laws of the land. But at every stage some attempt is being made at subverting our democracy.

It did not stop there. As I said we had three weeks of peace and calm in the country but from the time the hon. Attorney General returned the most experienced military person in this country—other than our Minister of National Security—Mr. Ralph Brown was fired from his job. We have to wonder what is really going on. What is happening to our country? What is happening to our democracy? Mr. Vice-President, this is a Government that is not to be trusted. God help us in the next few months—I am made to understand that this Government will be there until the year 2015. I am wondering, if I am alive, whether I might have to come by way of a writ of habeas corpus to secure my freedom—*[Interruption]*. May his soul rest in peace.

Mr. Vice-President, I know how they operate, and as I said before, this is why I am where I am today, I believe in democracy, I believe in freedom of expression, freedom of association, freedom of the press and so many of the other freedoms which are enshrined in our Constitution, but I am afraid of this Government which has been in office for just a few months, already with so many attacks and attempts being made to subvert our democracy.

Our position with respect to this Bill is that we welcome the attempt to change the law to have that right of appeal, but we believe that the Bill is also affecting our fundamental rights and freedoms, and as such, the proper procedures that are stipulated for any changes being made to the Constitution ought to be followed. Whilst we welcome the changes, as I said before, the proper procedures ought to be followed and it is my submission that we need a special majority vote to have this Bill enacted.

I thank you, Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I support and welcome the Bill to amend the Habeas Corpus Act, because I think the state should have the right to appeal in this instance, whatever the reason, where a judge has erred. I am not qualified to comment on the constitutional question which Sen. Mohammed raised, however, I would like to ask the Attorney General: When will the state get the similar right to appeal against a judge who has erred and where the sentences are too lenient? We have had two instances recently. There was a case of the rape of an 11-year-old child by someone who had three cases of rape outstanding against him —I think he got seven years because the judge said he was “merely misguided”. We had another case, I think it was last week, which was dismissed against a lawyer—I suppose I cannot say "killed" because it would be the wrong term legally—after a child’s life had been terminated as a result of her car hitting

and dragging the child. We are told that apparently eye-witnesses were not even called in that case.

It seems to me that if this habeas corpus amendment is going to give the state the right to appeal in these instances, which I heartily support, that right of the state to appeal should be extended to cases where judges err on the part of leniency, or where there is a “no case” submission.

11.05 a.m.

The other question to the Attorney General is in relation to the amendments to the Bill. He said that there was a word which had been left out in section 8(2), "the court may make an order", would that be "may" or "shall"? Mr. Vice-President, from what he was saying I was a little confused because it sounded to me as though in most instances the court "must" or "should", but is it "shall" or "may".

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, I join with the others, I am certain who would say thanks to the hon. Attorney General for the background information he has given to the Bill, inclusive of historical information and also contemporary development of what has happened in other parts of the commonwealth concerning the habeas corpus privilege. Of all the bills this honourable House may consider for the year 1996, this legislation aimed at amending the Habeas Corpus Act, Chap. 8:01 may prove to be one of the most significant.

Not being skilled in legal matters, our Habeas Corpus Act of 1841 was simple enough for me to go on to appreciate the power and the tonnage of this Bill. We have been asked to consider the heaviness and the energy of the proposed amendment. As a layman sees it, I believe that the amendment before us is no joke amendment. It is mighty in its consequences and I hope that hon. Senators will appreciate my observation as I am not really professing to be an expert in legal matters.

Mr. Vice-President, I ask: What is the purpose and value of habeas corpus? As I see it, the parent Act of 1841 has been in our law, and I quote:

> "...intended for the purpose of securing the liberty of persons in Trinidad and Tobago.”

It ensures that any person detained in any prison in Trinidad and Tobago and is to be brought before any court of justice in Trinidad and Tobago for trial or to be examined—and this is where I see the power of this provision—habeas corpus

commands a person who detains another to produce that other person before a court to show why he is being detained. The parent Act therefore guards against illegal imprisonment and unlawful detention. I understand the seriousness of the legislation today in that habeas corpus, the parent Act, is used to test the validity of imprisonment or confinement and ensures the release of the prisoner in the event of wrongful imprisonment. Habeas corpus provides for an enquiry into the cause of detention.

Mr. Vice-President, I see the significance of this provision in that it is a protective device against arbitrary detention and therefore serves as one of the basic protections of individual liberty. This is the stance from which I will continue, about the protection of individual liberty. I consider the writ of habeas corpus to be the prisoner's hope. It is the angel of mercy who opens the door for one who is illegally detained. Habeas corpus is one of our liberty and freedom instruments with a well tested history, whose liberty and principle go back to that famous human rights document, the *Magna Carta* of 1215, which guarantees that in an English society, the King's courts will be open to all on equal terms. Mr. Vice-President, the liberty principle which remained fundamental in the 1689 English Bill of Rights is something we must not forget. That continued in the 1776 American Declaration of Independence and the 1789 French Rights of man and of the citizen.

Mr. Vice-President, do you remember that motto, "liberty, equality and fraternity"? Mr. Vice-President, let me not forget—if I refer to all of these documents of other places—the 1976 Constitution of our twin-island republic whose first chapter is entitled "The Recognition and Protection of Fundamental Human Rights and Freedoms" and the listed subsections state:

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;"

I notice sections 5 (2) and (4) in our Constitution ensure access to habeas corpus. I think it has to be the Habeas Corpus Act of 1841. Can one tell me if it is another? Section 5(2) states:

"...but subject to this Chapter and to section 54, Parliament may not—

(c) deprive a person who has been arrested or detained—

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;"

I hope we are properly advised of the applicability of section 54 of the Constitution and the need for Parliament's special majority if certain amendments are to be made, particularly with reference to this section of our Constitution.

Mr. Vice-President, there is a question which stares us in the face and cannot be evaded. I had this problem during the weekend and I want to share it with you. Now I understand the importance, the strength, the power and the significance of habeas corpus and I have been asking myself, even while driving to this place this morning: Does this Bill infringe upon a citizen's liberty? For me, that is the basic question.

11.15 a.m.

Mr. Vice-President, since 1841, the citizen has been accustomed to having the right to seek redress from judge to judge, but now the amendment puts a stop to this except, of course, fresh evidence could be introduced.

What if the prisoner has no new evidence, but he thinks that there has been a miscarriage of justice? That is important.

Mr. Maharaj: He can appeal to the Court of Appeal under the Bill.

Sen. Rev. D. Teelucksingh: Thank you. How many opportunities would he have to appeal?

Mr. Maharaj: He can appeal to the Court of Appeal which consists of three judges and he can appeal to the Privy Council which consists, at most times, of five judges.

Sen. Rev. D. Teelucksingh: Mr. Vice-President, is this Bill telling us that there will be an end to that? This is how I see it, there will be an end to that. My problem with the strict force of the amendment is that the parent Act provides the right of the prisoner to have someone representing him to go from judge to judge in search of justice as he, the detainee sees it, until he can find a judge who understands his case and is sympathetic. He is not going to give up. Why should he give up, and why should we draw the line now? The parent Act did not draw the

line, the amendment is drawing the line now for him. The amendment takes away that right. Since 1841 in this country we had that right.

The detainee knows, and I know, and of all persons, the Attorney General knows. Is it not true that certain magistrates and judges from time to time have been proven to be wrong by other magistrates and judges? The detainee knows that and this is why he wants to try again and again. Do we not have enough examples to show that our appeal court has on occasions—I want to say several occasions but I am not so well acquainted with all the details and the history of appeals and so forth—determined that magistrates have been wrong in their judgments? Do we not have cases of the Privy Council overturning decisions of our Court of Appeal? I understand that we have instances where the Privy Council has reinstated the decision of a magistrate, even when such a decision has been struck down by our Court of Appeal and you are telling me that the person in confinement must be satisfied when all along he had an opportunity to seek this sympathetic hearer?

Mr. Vice-President, did we hear Justice Telfer Georges saying recently and reminding us of what we know, that even the judicial committee of the Privy Council in the final analysis is not infallible? Furthermore, the uncertainty and that infallibility of the courts of justice in this world are known by every citizen detained and he wants his chances to try and try again, hoping that he will win one of his most cherished rights, his liberty to live, but not in confinement.

I know we need to address the problem of the abuse of our court system with its endless appeals and other obstacles, Sir, which have been haunting us. We cannot sacrifice individual liberty in the search for justice, and this makes me very uneasy with the amendment before us today for which I have very strong reservations.

I most respectfully suggest that legislation, Sir, with such far-reaching implications should be exposed to greater consultation. We have been advised that the Government is planning to bring so much more legislation and I am certain that there will be some relating to the reform of our judicial system. I suggest to the hon. Attorney General and the Government, that legislation with such far-reaching implications should be exposed to greater consultation. Where are the views of the Law Commission, for example on the Habeas Corpus (Amdt.) Bill, or the Bar Association, for that matter, or other interests groups?

Furthermore, I would like to say to the hon. Attorney General and maybe other Ministers too—because among the hundred-odd pieces of legislation of which we have been advised and warned there will be legislation pertinent to their ministries—could we have these bits of legislation published in the daily press? Could we share it with them? Could we invite public comment? It would be a good thing. I would have loved to see the hon. Attorney General using the Information Unit, and the electronic media to inform the public of the significance of habeas corpus and the intention of the amendment. Could we use our parliamentary committees to be a kind of think-tank and clearing house for legislation such as this one?

Mr. Vice-President, I want to close but I want to share with the hon. Attorney General another concern of mine—and I am certain that of many persons—on the question of liberty versus confinement. I kindly ask the Attorney General to address the question of weekend confinement, when courts are inoperative, or seem to be at a standstill. Sir, innocent persons are sometimes detained without easy recourse to bail, sometimes resulting in false and humiliating confinement.

Mr. Vice-President, my last observation in my winding up comment is to say I am most sympathetic with the Government's programme to clear the backlog of court matters that have been pending for many years. Truly, I am hesitant to sacrifice our people's individual freedom of liberty in the search for judicial efficiency.

I thank you, Mr. Vice-President.

Sen. Martin Daly: Mr. Vice-President, may I begin on two personal notes: one is to welcome you to the Chair, not in the role of a tea watchman but today as a full-time presiding officer. It is a very great pleasure for many reasons to see you there, Sir, and I welcome you to the Chair.

May I also take this opportunity to say how pleased I am that the Attorney General has joined us in the inner bar and it is rather ironic that we should have heard comments about his, what I regard as long overdue appointment to Silk, from persons who are now silent on these Bills before us. I certainly hope that the Attorney General would respond in detail to some of the remarks that have been made about the apparent lack of consultation. I believe there has been some lack of action on the part of persons who presume to comment on his appointment.

The Attorney General's achievements in the field of public law are well known, and while we may have many disagreements, I think it is in local parlance "farse"

for certain persons who are now silent about these Bills to comment on his appointment. Anyway, I guess that is the way it works.

11.25 a.m.

Mr. Vice-President, I am wholly in support of this Bill, and I would just like to explain why. There is no doubt that a Bill of this kind should have been before this Parliament for four or five years now, since it was glaringly exposed in a high-profile case that there was no right of appeal on the part of the state in habeas corpus. The presentation of this amendment alone is worthy of commendation to the Government, and I hope that they will increase the degree of commendation, by yielding to the request of Sen. Diana Mahabir-Wyatt for appeals against lenient sentences, and no-case submissions where judges withdraw cases from the jury.

However, as is my custom, I must of course invite the Government not to be carried away by the support which I think this Bill is likely to receive, because there is a trust question hanging over this Government. There is a trust issue. You see, Mr. Vice-President, we have seen in the last few days completely zigzag explanations about the removal of Major-General Brown. That is relevant to a Bill like this which affects liberty, because if we have the removal of a high-placed member of the security personnel, who is just as involved in the preservation of our liberty, and we get a series of zigzag explanations then, of course, people might worry about the purpose of the habeas corpus amendment. They might worry unnecessarily. So I really wish the Government did not make its own difficulty.

I will refrain, Mr. Vice-President, from commenting on what some people see as a degree of paranoia about the media. I have commented on the Government's ambivalence over the Pride fiasco which also raises a trust question because of the "scent" that is associated with those murmurings, and the Government has remained completely silent; and of course I have already expressed my concern over the signing of the $450 million Severn Trent loan by this Government, at variance with requests for proposals. So the Government must understand that a Bill like this which involves liberty is going go be carefully scrutinized against the background of that kind of behaviour.

Nevertheless, Mr. Vice-President, we must address ourselves to the Bill before the Parliament, and if it is worthy of our support, despite our concern about things that are "brown" about the Government, we must examine the Bill very carefully. I have absolutely no difficulty with the Bill. Moreover, I think for a change, we can

see the hand of some decent drafting. I would seek to allay the fears of those who are concerned about the ability to go from judge to judge by saying simply: I see this Bill as dealing with the modalities of the habeas corpus. I do not think anything is really being taken away when you examine it.

After all, our duty as a Parliament—and I notice several of my colleagues reading the relevant chapters of the Constitution very carefully—is not to abrogate due process. That is not our duty as a Parliament. That does not mean that if you have some particular right, the way in which the right is exercised cannot be changed; and that is the way in which I see this Bill, that instead of going from judge to judge, we have a properly ordered system of appeals, as obtains in the rest of the legal system. So I hope that, despite my misgivings about some of these trust issues, I am seeing this Bill in its proper context. Therefore, I am not concerned about the so-called taking away of the right to go from judge to judge. I do not see that as a right at all, I see that as a modality, or a method by which you secure a writ of habeas corpus.

If we are going to have clear and undoubted rights of appeal in conjunction with the provisions in the rules of procedure for urgent appeals, and in conjunction with some of the helpful developments that have been taking place in the Court of Appeal with regard to the speed with which appeals are being heard, then I do not think there is much to fear from this Bill. It has become rather fashionable among editorial writers to say, when high-profile legislation is being passed, "Well the Senate will fix it". I have a little difficulty with that because I think labour should be shared equally. I am very pleased to see that in another place some extremely well-drafted and careful provisions were made regarding what is to happen to the applicant for habeas corpus in the event either that the writ is refused, or in the event that the writ is granted. So, I am not at all impressed by this taking away of the right to go from judge to judge. I think we are replacing it with a much more well-balanced system. I do not see anything either in the substance of this Bill or in the drafting that causes me any alarm; and for those reasons I support the Bill. [*Desk thumping*]

Sen. Dr. Eric St. Cyr: Mr. Vice-President, we live in a democratic society in which the freedoms we enjoy have been won over centuries, not by ourselves, but by peoples throughout the world. I remember myself as a boy when I was first introduced to the story of the barons, strong men standing up to King John, and extracting from him something that I used to then hope I could extract from my

own father, or my teacher at school, or from people in authority over me. I really enjoyed that introduction to morality over might, or just brute force.

I dare say that our democratic society is based on these wider, more fundamental principles. We cannot escape the view that there is a breach of power in our society. It occurs in the home, it occurs throughout the society; and we also cannot escape the situation that, at this time, there seems to be a general breakdown in law and order in the society and apparently, we are powerless to bring that to a stop. So that, in addressing the Bill before us, I was heartened by the Attorney General's assurance that he was concerned to increase the liberty of the individual, rather than to curtail it. But I myself, on first reading of the Bill, did not get that sense in my spirit that the objective, initially, was to give more liberty and not at best bring some order into the way we transact our business before the courts.

So my first point in this difficult debate which, ultimately, must lead us, in conscience, to say yes, we must make or not make this amendment, is that we really should say what is the motivating factor—what is impelling us to make this move. I know that it will allow the state to appeal in situations where a habeas corpus writ has been allowed where, on the glaring evidence before all, that seems unreasonable. So we are going to correct that, and I am happy at that. It also removes the abuse of due process, of people appealing and appealing in a never-ending sequence and we do not seem able to get a decision on that. But, here, I think the question would be an empirical one. How often has it happened that people go from one judge to the next to seek a writ of habeas corpus, searching, as it would seem, for a judge with a soft heart?

11.35 a.m.

I myself, do not know the empirical evidence on that. If that has happened, then I rule that part out of the Attorney General's claim that he was concerned to increase liberties rather than to curtail them.

I do not know whether fresh evidence is different from new evidence but, who decides whether there is fresh evidence and when that decision is new? In other words, do we actually get a second hearing before the courts and they determine yes, this is fresh evidence in which case we would have had a second hearing? Once we have that second hearing I think we would have opened the door for a third. In other words, operationally, it is not clear, but I am sure the lawyers would

know how to handle this. I do not understand and I would like to have it explained to me how evidence, new or fresh, will be determined.

Having said that, I come to the point that worries me most. I see in this amendment a good, clear attempt to clarify a situation in the very short run and I have no problem with that. If in the situation where our courts seem to be bogged down I would easily support the Bill.

My difficulty is that it is tampering with a right which might have taken peoples throughout the world 800 years to win. When I tackle such a right I want to be sure that I am not doing it lightly and, secondly, that I am certainly not going in a direction which is fundamentally contrary to democratic practice. It is easy to start to whittle down these freedoms which, as a young man, we used to refer to as bourgeois freedoms. I see my good Friend, the hon. Minister of Public Administration and Information smiling, is he? He is not. I do not think we should take these freedoms lightly, for example, freedoms to liberty and of the press. In fact, if I were to err there I would err in giving the benefit of the doubt to the individual.

I will support this amendment but I really wish we could have been putting it in for say, a five-year period and if it does not work then it goes by the wayside and we could come back in five years' time and confirm that we want to go in this direction and that it is wise to go in this direction. I do have a little reservation on those counts though. As I said, I will vote for the amendment today as a short term measure.

I thank you, Mr. Vice-President.

Sen. Prof. Julian Kenny: Mr. Vice-President, I am going to change my name by deed poll. There is another person who is called Ken Julien, and I am not that person. He is also a professor at the university.

One of the advantages of being new and being down the chain is that one can be very brief. I have no problem with supporting this Bill, but I do have some concerns about what happens with the procedures. Giving the right of appeal to the individual and to the state, of course, to me is just but there is a problem which we read about in the newspapers day after day. It is a debate going on among lawyers and Sen. Teelucksingh referred to the Georges lecture, where this eminent judge made the observation that there was a difference between infallibility and

finality. In other words, if you arrange another appeal above this you would find, in the end, that it is possible to reverse decisions followed down in the system.

The system is that there is somebody who appears before one judge and he rules against you; you then go to a Court of Appeal, that is three judges may rule against you—now it is four of them against; you then go to the Privy Council where there are five judges, and four who vote for you, but when you do the arithmetic, five have actually been against you. This emphasizes the point which he made about infallibility and finality and I cannot envisage any system in which you can have an absolute resolution of the issue. After all, it is human judgment.

The other observation I would like to make is reflected in what other Senators have said here this afternoon. We notice that there is clearly reform in the air. We read it in the newspapers. I personally would have preferred to have had it come to the Senate in the first week of the new Government to tell us where we are headed with law reform. There is a good reason for it, but it is better to hear it from the authority than from the media which frequently gives emphasis in the wrong place.

11.45 a.m.

Although I give my unqualified support to this amendment to the Habeas Corpus Act, my major concern is with the Constitution. I have reread it. When one goes to Part V section 14 (1) it says, "For the removal of doubt it is hereby declared..." This allows the individual another remedy. If the individual feels that his/her right to liberty is infringed there is the other remedy which is a constitutional motion that will go to a judge in the High Court or the Appeal Court and he/she can go to the Privy Council. It seems that there are two remedies. I may be wrong. The habeas corpus remedy is what I call the brand name drug; the constitutional motion is the generic drug. If one has a bad headache one has a choice of taking either panadol or paracetamol. They are exactly the same thing which change the brain chemistry and relieve the symptoms.

My concern is with what people feel and what is acceptable to the man on the street. Is there a system in which we allow two remedies and appeals all the way to the Privy Council? Is this not going to add to the burden which already exists in the court? If it would make it more time consuming and complicated, then of course, we have to start looking at constitutional reform, that is simplifying the Constitution. Perhaps it is not for lay persons, but when one talks with people on the outside, there is this problem that it seems to be something that the lawyers are doing and not the ordinary people.

When one looks at the newspapers one would see that the Caribbean Bar Associations oppose banning appeals to the Privy Council. Statements are being made in the law school about change in the law. People outside have problems with this. There is a feeling that perhaps this serves the lawyers as well as the individual.

To close I will also be personal. This Constitution gives us many rights. One of them is freedom of movement. Every time I travel outside of this country, I have to go through a system at Piarco which makes me have somebody—as Mr. Michael Williams wrote in the newspaper—"feel me up." I have a right to movement. If the authorities feel that I am a drug mule they are perfectly entitled, having reasonable suspicion that I am doing something unlawful, to call me inside and search me. Everybody in this country, bar parliamentarians, judges and eminent people, have to go through this indignity which we do not go through anywhere else in the world.

On one occasion I decided I was not going to have this and refused to have someone "feel me up". I asked him to tell me under what law he was putting his hands on me. He did not know. He went to the supervisor, but eventually somebody high up in the Airports Authority came to me and asked if I was a lawyer. I said that I was just a citizen and I wanted to know why they wanted to put their hands on me. He could not tell me. I said that in those circumstances, I would not go through because he was not going to touch me and I was not going to travel. I started to go back through the process which caused other problems. Eventually a higher person came up and told me to go through and I would not be touched. I went through. We have to be reasonable and think in terms of what the ordinary person accepts in a democracy and his basic rights.

I think that there is no problem with this Bill. Let us start thinking in terms of the practicality of this measure with the multiplicity of appeals which will load up the courts even more heavily than they are.

Thank you.

Sen. Moore-Miggins: Mr. Vice-President, I will give way to the hon. Independent Sen. Dr. Mc. Kenzie.

Sen. Dr. Eastlyn Mc Kenzie: Mr. Vice-President, I support Sen. Mahabir-Wyatt with the lenient sentences. When one looks at the types of sentencing and the sort of disparity from one judge to the next, the impression is given and it is sustained that one can go from one judge to the next and get a different ruling on

the same matter. Hence I do not think it is unreasonable that citizens should think that they could go with the same case from one judge to the next and get a different ruling because we see what is happening with some of the cases, getting far different sentences for actually the same type of offence.

I support the right of the state to appeal. I like that. Something bothers me from the Tobago angle. If someone is charged in Tobago—I am not a legal mind and I could be corrected by my colleague from her standpoint as a lawyer—for an offence and not brought to court within a certain time, that Tobagonian would be sent to Trinidad to prison or remand yard. If this Bill states that one has to go to a judge, the Attorney General knows that there are no judges resident in Tobago. I would like him to address that area of disparity of rights and privileges as it applies to a Tobagonian being charged in Tobago and being sent to prison in Trinidad. If his case cannot be heard before a certain time and the judge does not reside in Tobago, how does this complicate the matter? The amendment which is being made, how do they come together? What kind of redress does the Tobagonian prisoner have in a situation like this? I would like him to tell me. I am a lay person and I do not know anything about it.

Thank you.

Sen. Deborah Moore-Miggins: Mr. Vice-President, I thank you for this opportunity in which I rise to support the Bill which is before this honourable House. I do not propose to regurgitate all that has been said by the hon. Attorney General in piloting the Bill. I also commend the other Senators who have commented on the Bill. However, I want to focus on one of the more potentially damaging and mischievous responses which we have heard from hon. Members on the other side both here and in another place. That is, that this Bill requires a special majority in order to be made law. To my mind, this is an instance which is somewhat calculated to incite the population that we are tampering with the fundamental rights of the citizens.

11.55 a.m.

We appreciate that this is a very critical and important right—and Sen. Rev. Teelucksingh alluded to it in terms that I myself was awed at, how far-reaching and important this right is to a citizen of this country. This right is not only accessed in criminal matters, but more and more in civil matters, particularly by spouses in troubled relationships and children in those types of relationships. A

husband may seize a child, take him away from Tobago to Trinidad and *vice versa*. All these are scenarios that this remedy can be used to address.

I wish to state categorically that this measure does not in any way attack, impinge, infringe, or abrogate the fundamental right of habeas corpus. In doing so, I remind us that the matter of interpretation of legislation on the Constitution is not a simple or straightforward one. We have heard that as many lawyers as there are can look at an Act and give as many different interpretations of the same piece of legislation.

We lawyers have the joke that the Privy Council is only correct because it is the final appellate tribunal recognized by Trinidad and Tobago. We say that if there were five others, each would have perhaps given different interpretations. As my Friend, Sen. Prof. Kenny has said, perhaps there is never an absolute resolution of these issues.

Mr. Vice-President, we as a Government must stand back and take a very balanced and objective look at the system and make a determination that the buck must stop here. This is what this measure before the Senate is intended to do. We must leave it, as Sen. Prof. Kenny has said, perhaps with the individual who feels that his right has been tampered with to take along the other path of seeking constitutional redress.

We have to have a fundamental belief in our system of justice in this country. We have to have a belief in the quality of our judges so that when we refer cases to them we have to abide by and surrender ourselves to them in the processes which are provided for determining those cases.

What has been made clear to me in reading and listening to the objections of the other side, is that they are somewhat, either deliberately or mischievously, conveniently—I will not say out of ignorance—seeking to bastardise the right which they so ardently argue for here today.

My Friend, Sen. Mohammed, has read to you *ad nauseam* from section 5(2)(c)(iv) of the Constitution about section 54, and I just want to read it once to show how the bastardisation arises:

"Without prejudice to subsection (1), but subject to this chapter and to section 54, Parliament may not—

(c) deprive a person who has been arrested or detained—

(iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful."

What my Friends on the other side are doing is reading this document as though it reads that Parliament may not deprive a person who has been arrested or detained of the remedy by way of habeas corpus argued before as many judges as he or she deems fit for the determination of the matter. This is what is being advanced to this honourable Senate. That is not the remedy that is protected and which this Government is committed to protecting. The remedy, pure and simple, is the remedy of habeas corpus and I am asking hon. Senators, when they leave this august Chamber, to ask themselves whether today they have altered in any way; whether they have tampered with in any way; whether they have interfered with in any way that sacred remedy of habeas corpus, which is entrenched in our Constitution.

I say no. What we have sought to do is to prune the remedy of the excesses, of the abuses, which we have all adverted to in our various presentations. What we have sought to do is to streamline the system of administering the remedy. What we have sought to do is not to deprive anyone of the procedural provisions necessary for the purpose of giving effect or protection to the right of habeas corpus. That right is still alive, kicking and well, even after we shall have finished our deliberations on this Bill today.

In support of my contention that there has been an attempt to bastardise—or perhaps I would be charitable and say that there must have been a misunderstanding of the provisions—I refer hon. Senators to the contribution of the hon. Member for Diego Martin East on this measure in another place. His contribution is riddled with references to this right to go from judge to judge, which he is saying is a constitutional right and is the right which is being interfered with. I would like to read his own words to you:

"At present a citizen of Trinidad and Tobago—any person for that matter—has a right under existing law to go from judge to judge seeking release under a writ of habeas corpus."

He goes on to say:

"The parent law is protected by a special majority of Parliament and the Bill before this House seeks to remove that present right of an applicant to go from judge to judge seeking release under a writ of habeas corpus."

Now, Mr. Vice-President, I pose the question: Is that right to go from judge to judge seeking release a fundamental, constitutional right? Is that the right for which section 5 provides?

12.05 p.m.

He goes on:

> "At present a person can go from judge to judge seeking release from detention under a writ of habeas corpus. Therefore, I think the Members on the other side should consider whether by removing that right they are in fact, removing certain fundamental rights of persons in Trinidad and Tobago."

He goes on:

> "The Government has brought this Bill that introduces certain clauses and, in our view, they have not presented an adequate case to show why we should remove the right of the person to go from judge to judge. They have produced no evidence that this process has been abused, and the point made by my colleague, the Member for Diego Martin West, that a person may feel he did not receive proper redress from the first judge that he went to. A person may believe that and may wish to go to a second judge. Nobody is saying that a person should go to 16 judges. I doubt that is the intention of this law."

How does one stop that, Mr. Vice-President? There is no mechanism to prevent a person going, as it stands now on the state of the law, from 1, 2, 3 or as many as 16 judges if he thinks that is what he can do in order to secure his release.

My Friend, the Member for Diego Martin East, continued and he challenged Members on this side to make a case, to show that the removal of the existing right of the person to go from judge to judge is not an infringement or alteration of an existing right. Mr. Vice-President, it may be an alteration of an existing right but that is not the question. The question which the Constitution seeks to protect is the alteration of the remedy to habeas corpus, and I repeat, that remedy remains very much intact.

I derive considerable support for my stance in a case which was decided some 20-odd years ago, called *Lassalle v. Attorney General* and it is found in the *1971 Eighteenth West Indian Reports*, at page 379. The said question was being raised there, and my Friend, Sen. Mohammed has raised the issue as to the Attorney General's reliance and authority. She has surprised me there because, Mr. Vice-President, we all know that lawyers do not do anything without seeking to derive

guidance and support from authorities. Law is not as engineering or geology that one could just look at the ground and say, "I will put a plant here or there." *[Laughter]* Law is a science that one must find authority and support for and thank God for that, otherwise we would have been on shifting ground in La Brea or somewhere about.

In this case the court was at pains to point out that in determining the need for a special majority one must have, forever before him, the substantive remedy. Is that substantive remedy being denied, altered, deprived or is it the excesses, abuses, trappings of this remedy which are being addressed? The court was at pains to point out that no reasonable court can deny the legislature that power by simple majority to make those kinds of adjustments where it is thought to be required in the changing social environment in our country. That is what I commend to us as we deliberate on this measure here.

I want to go further than that and to say how ironic it is—

Sen. Mohammed: Would the hon. Senator indicate to this Chamber what are the abuses and excesses that are presently being posed by the law as it is?

Sen. D. Moore-Miggins: One of the abuses and excesses to which I refer is the practice of going from judge to judge on the same facts, issues, evidence and on the same grounds seeking one who is sympathetic to his case in order to release him.

Sen. Mohammed: On a point of clarification, can the hon. Senator indicate to us, within the recent past in Trinidad and Tobago, whether there has been any case arising where the problem of going from judge to judge was an issue?

Sen. D. Moore-Miggins: Mr. Vice-President, there are several cases over the last five to seven years, in fact, it is a part of our legal system. It is like applying for bail every Monday morning. This happens! In Tobago you go to one judge, another judge comes up and you run there, does my Friend want me to extract from the records all the everyday cases in which this occurred? This is an everyday matter, people go to habeas corpus as a matter of course, except I would refer you later to the island of Tobago. That is so everyday that one can just pick up one's *West Indian Reports*. Perhaps even the *West Indian Reports* do not carry them now because they are mundane and everyday applications. To answer my Friend, there have been several cases which have come to my notice, I can name them if I am given some time but I do not have that information at hand. We have all adverted to the fact that that happens. Those on the Independent Benches have

referred to it and we who have practised for nearly 20 years know that is a regular occurrence in our court system.

The point I was making, Sir, is that it is ironic that those on the other side can come here today and talk about infringing the rights of people who are going from judge to judge seeking their fundamental remedy of habeas corpus. These new defenders of constitutional rights are the same people who have been in Government for over 33 years, who have known of the existence in Tobago of situations where, for months the residents go without seeing a judge sitting. It is to that fact that Dr. Mc Kenzie was alluding, and it is correct. As I speak today, if in June or July there is need for the remedy of habeas corpus, a Tobagonian cannot access that remedy until the month of November.

In fact, with a recent amendment to the rules of the Supreme Court he cannot even, as he used to do then, transfer his application to Trinidad, because that amendment has stated that where the subject matter of the application is in Tobago, the application must then be made in Tobago. As a result of that, we have to go cap-in-hand, petitioning the Registrar to send up a judge and by the time the administrative arrangements are made for a judge to come to Tobago to hear a habeas corpus application, some three weeks to a month has sometimes elapsed.

Those are the conditions under which Members on the other side have operated a government for a period of time. They are now seeking to come here and speak about defending the constitutional right to go from judge to judge 10 times, when today, in Tobago, a counterpart who has been detained would not have had one bite of the cherry. To my mind, Mr. Vice-President, that amounts to a breach of the fundamental right of every citizen of this country to the remedy of habeas corpus, it amounts to a breach of the fundamental right to equality of access before the courts, but one does not hear that being said on the other side. In their Port of Spain-centric focus everything for them is what touches and impinges on the rights of the man on the Priority Bus Route. Not the man in the outlying districts; not the man in the remote areas of La Brea and Tobago, but the man on the Priority Bus Route. That is the myopic vision with which they have sought to come to this House and attack this legislation.

12.15 p.m.

I go further—and Dr. Mc Kenzie has alluded to it—when one speaks of detention in the context of Tobago, immediately one must recognize that there are no facilities for detaining young persons, particularly boys and girls in that island.

So that if at any point in time a young person has been detained, whether it is by the state, the police or whatever, as Dr. McKenzie pointed out, that person is taken to the Youth Training Centre in Trinidad. As many times as his matter arises in Tobago he has to be carried back and forth until three, four or five months when the habeas corpus application is heard or determined. So that one would expect when a measure such as this comes before the honourable House, the concern of a fair, right-thinking Government—*[Interruption]*

Sen. Mohammed: Can the hon. Member of Tobago indicate any instance where there was a problem with habeas corpus concerning a matter being delayed for two, three or four months as the Senator has mentioned?

Sen. D. Moore-Miggins: I cannot recall that instance, but my answer to that is, the procedures for accessing the habeas corpus remedy are so prohibitive that people have just subjected themselves to being detained at the pleasure of the state, until the state either brings a charge or releases them. The point that brings this home, is that where a remedy exists, and can easily be accessed, people will seek to enforce their rights. If it does not exist, they would sit back in despair and hopelessness and allow the state to take whatever will it would over their freedom and rights.

Mr. Vice-President, I am saying to this honourable Senate that what I thought would have exercised the mind of my Friend is, how can the pruning or streamlining measures which are brought before this Senate assist in making available to all the residents of this country more judicial time to deal with, not only the habeas corpus remedies but all the other concerns which they may seek to come to a court to have addressed? That is the challenge. We have come here in a bid to seek to unclog the court list of all these applications which go round and round, and we have sought to do so in order to free-up judicial time to deal with other substantive applications. And I think it is commendable that such a measure can be brought before the Senate at this time.

Mr. Vice-President, I close by saying that we in Tobago yearn for a broader vision; we yearn for a more expansive purview of matters so that when we have to debate—on this I would have been happy to hear the hon. Senator on the other side raise issues as to how this measure would affect a broader strata of the population. We are saying that as a country policy-makers must demonstrate that type of sensitivity so that they can look at a matter from all angles, examine all the implications rather than focus on this one area that my Friend sought to do today.

Finally, we are saying that the young people of this country are becoming impatient with opposing for opposing sake. They are seeking greater responsibility when people oppose; they are seeking fairness and responsible, objective responses to measures. We do not think anymore that we can facilitate or accommodate these narrow party positions and these narrow positions which are dictated by self-interest. Until we recognize that in this Senate, we are, perhaps, heading for an era when the young will harbour little or no confidence in the effectiveness of an institution such as this.

Mr. Vice-President, perhaps I need to deal with Sen. Prof. St. Cyr's issue as to how does one determine fresh evidence. I think that was one of the points he raised. From my understanding, in preparing your documents in support for your second bite at the cherry, your documentation ought, on the face of it, to advert to circumstances or details which you rely on as proving your fresh evidence. Of course, when it is considered in the court it will be in the interest of the state to challenge that, and to say "this does not, in our view, constitute fresh evidence" or, "this was just another way of expressing what was already raised". In my limited view—I am not a constitutional lawyer as my Friend the Attorney General—it is then for the judge who is sitting on it for the second time to say, "this does not appear to be anything new and I agree with the state" or, "I do agree with the applicant, it appears that this was not taken into consideration, therefore, I think I have jurisdiction to entertain this application for the second time." I hope that I have answered Dr. St. Cyr.

With respect to the issue of the five years, I wish to say that without even specifying it on the face of the measure, I would think that any Government who sits in office for five, 20 or 50 years, as we hear some governments will say, will, after a period of time be in a position to assess how this measure would have functioned. If in one, two, three, five, ten years it is the view of the Government that we need to do some spring cleaning here again or, we do not think it is working, then it would be within its responsibility to do so. So whether it is stated to be five years or not I would imagine the demands of good government would require that, ever so often, these measures are looked at to see how they would have been working, in the flesh, with a view to modifying them as the case may be.

Mr. Vice-President, I thank you.

Sen. Prof. John Spence: Mr. Vice-President, Sen. Moore-Miggins has made the point that the law is a science, that allows me to speak because I am not a lawyer but I pretend to be a scientist.

It seems to me that we have had a lot of words to say over an issue that I think really is a non-issue. It seems to me that it is a very simple solution to the issue of whether a special majority is needed or not. If everybody in Opposition, Government and Independents are in favour of the measure, as I am, the simple solution is to call for a division and it will then be passed with the necessary majority. So the issue is, whether the majority is needed or not, it is a non-issue. Why are we spending so much time talking about it?

Sen. Pennelope Beckles: Mr. Vice-President, I rise to express my comments with respect to this Bill that is before this honourable Senate. We are seeking to deal with a particular legislation that is more than 100 years old and I think the critical issue in dealing with this Bill—particularly since what is before us are two sections that are identical to that of the English legislation—is what exactly would have influenced the changes in the English legislation as it relates to the Habeas Corpus Act, to the extent that they felt it was necessary to remove the right of the application from judge to judge and to go strictly with the issue of the appeal.

12.25 p.m.

Mr. Vice-President, Britain would have had a situation of the Habeas Corpus Act spanning from 1640 until 1996 and we are talking about three centuries plus, and over those three centuries, they would have had changes in the Act amounting to about five or six. When we examine the book to which the hon. Attorney General referred, one would see that one of the most important points that was made is the issue of abuse of process of the persons who are making those applications. As a matter of fact, in several of the chapters dealing with the different aspects of the habeas corpus, they went so far as to specify and to identify the extent to which these abuses had taken place. They were indicating in one particular jurisdiction, as many as 3,000 applications had been made as it relates to persons dealing with mental health and what they were clearly saying is that in Britain, there were cases where persons were definitely abusing the process and they were able to give statistics to show that the critical reason for this restriction in terms of going from judge to judge is that they felt there was a serious abuse of the process.

My colleague on the other side from Tobago, Sen. Deborah Moore-Miggins—whilst it is nice to make very general statements about the fact that we are aware of several cases where this situation would have happened—I have to recall Sen. Daly's point of debating very often, legislation on topics where we actually have no facts and this is one such legislation, Mr. Vice-President.

I know that the hon. Attorney General normally in his presentation before the court, is one of the persons who would provide very analytical, if not empirical evidence. I was very disappointed today that he has not fulfilled what he has normally been accustomed to doing, and that is to say yes, he has provided us with a comparative analysis of New Zealand, Australia, Canada and what have you, but that is insofar as the general legislation.

Insofar as our specific legislation, particularly now that we are computerized, I do not think it would have been very difficult for the hon. Attorney General to be able to come to this Senate and say to us that for 1996 we have had 15 applications for habeas corpus and out of those 15 there were several persons who would have gone before other judges 10 or 15 times. I think it would have been able, in a large measure, to assist other Members of the Senate to be able to understand the extent to which this appears, as they would have us believe to be a situation in crisis.

My colleague on the other side Sen. Moore-Miggins, would have us believe that because we have spoken about a special majority that we are inciting members of the population to do certain things. On the other hand, she went further to indicate that the law is such that very often the issue of interpretation is one that can cause persons to have different views and I found it very difficult that as an attorney, she would want to suggest that that is incitement. My colleague was very clear in saying that she was extremely happy that the hon. Attorney General had brought a very interesting and commendable aspect of the legislation which is to deal with the appeal.

All we are saying is that in terms of the issue of going from judge to judge, we felt that that was affecting the liberty of the person under the Constitution. I am sure the Attorney General would not see that as incitement because having practiced and dealt with constitutional law for all these years, I think he recognizes, and in most of his cases, he would have also dealt with the issue of breaches of the fundamental right of the individual and it is a question of whether the other side does not see it the way we do.

Sen. Prof. Spence dealt with it very nicely when he said it may very well be a non-issue because if we have a division, we may very well have sorted out the problem. We are maintaining that the issue of the appeal is exceptionally commendable and we have absolutely no difficulty with that aspect of it. Our problem is the issue of going from judge to judge.

Mr. Vice-President, as I said before, when one looks at the British and Australian position, as well as those in Canada and New Zealand, one sees that they were able to show that the persons who were taking advantage or bringing these applications for a writ of habeas corpus were definitely abusing the system. I do not think that it is sufficient for anyone to simply come to the Parliament and say that in Trinidad and Tobago we have several applicants abusing the system. My colleague on the this side asked Sen. Moore-Miggins to name an instance in Tobago where such is happening and she was not able to do so.

Clearly, if we are saying that law is a science, what do we mean by being scientific? Is it that we come generally and simply say that it is being abused without being able to provide any sort of empirical evidence that would obviously assist us in making the sort of decision that persons on the outside would be able to be satisfied that in Trinidad and Tobago persons have been abusing the application for the writ of habeas corpus? Can we say that by simply generalizing? I say no. I am sure that persons who have been listening to this debate or would like to benefit from it, would have been extremely happy if we were able to provide that sort of information.

At the end of the day what is very important, is the perception of the public as it relates to these types of legislation that are coming before the Senate. The issue of the reform and dealing with several pieces of legislation that would affect the administration of justice is being dealt with by the Attorney General and I do not think anyone would have much difficulty with that. The question, and I think the concern, of various members of the public is whether these pieces of legislation have brought about any serious impact on crime. I think that is where the critical issue is, not simply for one to keep beating one's chest and say we are coming to the Parliament and we are bringing legislation. Are we seeing any dent in crime?

Mr. Vice-President, it was very interesting that a couple days ago at the Rienzi Complex, the Prime Minister of Trinidad and Tobago indicated that there was a reason why crime was increasing. Now this is in total conflict to what the Attorney General has been saying. When I debated the Bill some time ago and I mentioned to him that crime was increasing, he said that he had statistics that crime was decreasing. The Prime Minister, the leader of his party goes to the Rienzi Complex where he is talking to his supporters, and he says that the reason why crime is increasing is because the drug barons are fighting each other for their turf.

I tried to understand exactly what the Prime Minister was trying to say and I could not understand. That has to be linked, of course, with the question of public

relations and I think we have reached the stage where the issue of crime is not a public relations gimmick, it is a very serious issue about which the members of the public are concerned. *[Desk thumping]* I cannot help but say that at the end of the day when we are dealing with crime and security it is a question of image and perception. If I might just refer to the *Trinidad Express* of Tuesday, May 7, 1996 in the Opinion section where it states:

"The sky is falling...on UNC credibility"

Mr. Vice-President, they spoke about the fact that a couple weeks ago, March 21, 1996 to be exact in the House of Representatives, and later in the Senate the hon. Attorney General indicated that the crime rate had fallen. They went on to say that the Commissioner of Police said otherwise and then they went on to quote and if I may quote from the *Trinidad Express* of Tuesday, May 7, 1996:

> "The issue of crime and whether it has gone up, gone down, and why, continues to bedevil the United National Congress. First, there was the claim by Attorney General Ramesh Lawrence Maharaj, on March 21 in the House of Representatives, that crime had, in fact, gone down during the months that the party had been in power. Police statistics, however, revealed that there had been an increase of crime over that period although murder, the ultimate crime, had gone down. Yesterday, the UNC's political leader, Basdeo Panday, put a different spin on the issue. Speaking at the party's annual assembly Mr. Panday said:
>
> 'I suspect that what appears to be an increase in crime in this country may well be the result of the battle that has begun to take place among the drug dealers shooting up each other for vacant turf as some drug lords are selling off their properties and trying to leave the country to avoid prosecution.'"

How very interesting, Mr. Vice-President. I am not sure whether or not the Attorney General and the Prime Minster might have had discussion as to whether or not crime is really going up or down. But the critical thing about it—

12.35 p.m.

Mr. Vice-President: Could the Senator indicate whether she can wrap up within a few minutes? Or could we take a break for lunch?

Sen. P. Beckles: No, Mr. Vice-President, I will be more than a few minutes.

Mr. Vice-President: I think it is a convenient point, hon. Senators, that we can break for lunch. The sitting is suspended for one hour. We will resume at 1.35 p.m.

12.36 p.m.: *Sitting suspended.*

1.37 p.m.: *Sitting resumed.*

Sen. P. Beckles: Mr. Vice-President, I am just continuing from where I left off before we took the lunch break.

If I might just quote from the case of *The Queen V. Miller*, stated there:

> "The remedy of habeas corpus is one of the most treasured and long-standing heritages that this country has taken from the United Kingdom. To surrender it in any case would be to cast away a treasured possession. It should not be done without the most clear cut and measured terms of legislation."

Mr. Vice-President, this Bill before this honourable Senate in terms of how the society perceives exactly what is taking place in this Parliament, is that they would be very much concerned with the impact that this piece of legislation would be having on crime and by extension, in relation to the administration of justice.

I am sure that the Attorney General would have been very concerned, particularly having regard to this legislation before this honourable House, and as it relates to a certain article in the *Trinidad Guardian* of May 07, 1996 at page 3. This challenge actually deals with the issue before the Senate, that is to say, the writ of habeas corpus. If I might quote what was stated:

> "Man Challenges 4-year detention
>
> Justice Bissoondath Ramlogan yesterday granted leave to a 56-year old man on a murder charge, to file an application for a writ of habeas corpus against the State to determine whether his detention without trial is legal.
>
> Gordon Springer, who is detained at the Golden Grove Prison, stated in his affidavit that he was charged with murder and was taken into custody in April 1992.
>
> Springer said since he was charged with murder, 16 other persons charged with murder have been indicted within a shorter period than him."

He also went on to speak about the conditions in the prison.

The reason why I said this would have been of great interest to the Senate is because here it is we are actually debating this issue on habeas corpus and we saw that just yesterday a person made an application before the court asking for such a writ.

The interesting thing about this application is the issue of the delays of trials and what certain persons see as other persons getting preferential treatment. That is why I talked about the whole issue of perception and how the population views this piece of legislation as it relates to dealing with crime and dealing with this perception that some people have in terms of indictment being served on time.

I also know that the Attorney General normally provides us very quickly with certain information particularly as it relates to the update of cases. I do not know whether he has been able to find out, but I am sure that he would indeed, be very happy. I am asking whether he has heard anything at all as it relates to the matter that was before the Privy Council this morning—since as indicated that result could affect several other indictments that are presently before the courts.

If we take the case of the Tokhai brothers who were charged in 1982 for wounding. The investigations were not finished until 1986. The actual hearing of the case did not come up until 1994. They had gone to the court and said that because of the delay in the administration of justice in bringing this matter that it should not really be dealt with.

In England, in terms of the writ of habeas corpus, together with the Administration of Justice Act, they have been able to ensure that persons have not been able to abuse the actual application for the writ of habeas corpus by claiming there is delay in trials. They have actually been able to guarantee persons that by a particular time trials would be heard. Unfortunately, we have not reached this stage where we can do so.

I do not know and I am hoping that, maybe, the Attorney General was able to get word as to the outcome of that particular case. I am sure that it would be extremely helpful because this would be very good information particularly as it relates to this issue of crime and the administration of justice, as it relates to other persons who are likely to want to take advantage of any decision that may or may not adversely affect how long trials take before they are actually started.

Mr. Vice-President, the perception of members of the public as it relates to this Bill and the other bills that are likely to come up, again, is how will they impact on

crime. The reason why I have mentioned the importance of statistics in terms of being able to properly consider the number of times persons would have made applications in terms of abusing the process, I was indicating that had we known how many such applications have been made by persons from time to time to certain judges, as we say, looking for a sympathetic ear and exactly what were the outcome of those decisions, I think it would have been extremely helpful.

It would have been also very helpful to advise us, and by extension the entire population, as to how that affects the whole system of the administration of justice in terms of the disadvantage that would have arisen to certain victims or certain persons who might have felt that these particular situations would have given an unfair advantage to the persons who have made that application for the writ of habeas corpus.

Mr. Vice-President, the whole issue of the perception is very critical. One of the areas that this Government spoke about continuously on the campaign trail prior to the election period, and I dare say may have considerably influenced certain members of the population in terms of voting in a particular direction, was that of dealing with the issue of crime and giving a certain assurance that this would have been dealt with expeditiously and that the population would have seen a considerable dent as it relates to this reduction in crime.

We cannot say that that has happened. As a matter of fact, if one does a survey and asks how does the population feel in terms of several of these bills and what is really happening and the influence it has as it relates to the reduction in crime, one may very well find that they do not agree that anything is actually happening. We have to take these bills and these measures that the Government is attempting to implement together with some of the other matters that it is involved in, very seriously for us to decide what sort of impact it is really making.

1.45 p.m.

When we are talking about bills, in relation to crime—and I see that the bill dealing with military training has also been laid and I imagine would come up again some time—then we have to look at how the Government is dealing with other issues relating to crime because it affects the whole issue of habeas corpus. As Sen. Daly said, when a person is in charge of a particular organization dealing with security—and I am referring to that of Major General Brown—and we hear statements being reported that the reason his contract was terminated was because

he was doing his own thing, what signal is sent when such a person, who has attained the highest office in terms of the military, is treated in that fashion?

"We intend to implement all these different measures which would convince the population that we are a government serious about crime." "Serious about crime" also means not doing certain things which might appear to be criminal. Sometimes we wonder whether or not certain activities in which they are involved, as they relate to the treatment of certain persons cannot be described as being criminal.

As my colleague and I said, as it relates to the appeal we have no difficulty with that. My colleague on the other side, Sen. Moore-Miggins spoke about the fact that young persons are becoming impatient on the whole issue of opposing for the sake of opposing. Again, law being a science as she indicated, I would be so happy if she can indicate how many bills we on this side have opposed since November 6. The impression that the other side wants to create very often is that we have been opposing and opposing. I imagine that the Senate is a place where bills are sent and if certain amendments need to be done, a Member should be free to express his/her concerns. People should not become paranoid if one has a different view or wants different suggestions.

Sen. Moore-Miggins: Mr. Vice-President, I rise on two points. One to request the hon. Senator to bring before this House any legal authority which supports their argument that this Bill before the House requires a special majority.

On a point of clarification, having consulted with *Hansard*, I want to clear the record that I did not say earlier that they were inciting the population to do all types of things. *Hansard* told me that I said that I was inciting the population into believing we were tampering with the Constitution. I suggest those are two fundamentally different concepts.

Sen. P. Beckles: As Lord Denning said in a famous case, that distinction is one without a difference, as far as I am concerned. I will go further to say that we do not need to bring any case to support out situation. We are talking about the Constitution. The Constitution is supreme! That is the law of the land. In terms of the special majority we are referring to the Constitution. The case would simply interpret the Constitution.

My Friend wants clarification. The point is that she is using the word incite. What does incite mean? They are continuously paranoid when people oppose anything that they say. They want people to simply agree with anything they say. We are a responsible Opposition. We are not here just to agree with everything

they say. We indicated quite clearly to the Attorney General that the issue of the appeal and this Bill in principle, we support. Unfortunately, my Friend apparently was not listening to that.

Since my Friend seems to be paranoid about this issue of incitement, I would read from the *Daily Express*, dated Tuesday, May 7, 1996. Page 8 states:

> "The imagination boggles equally at Mr. Panday's strident suggestion that the *Express* is in the business of writing headlines as a part of what he describes as 'a constant and deliberate attempt to engender fear and hatred.'"

It is the same thing about being paranoid.

> "Our response is simply to point out that here, again, he is doing serious damage to his credibility by his willingness to see plots everywhere, even in the determination by some headline writer to use words to fit a given space without a thought of the political connotation that a prime minister might draw."

When one opposes it is always a plot and somebody wants to overthrow. Somebody wants to incite. My Friend is getting a little caught up. As a lawyer she should be more aware of the right of people to have different views and not get caught up with those things personally and talk about opposing and impatience. She is being unnecessarily impatient. I am sure the Attorney General would deal accurately with the correct issues of law which have been raised.

As I said before, we on this side are very concerned with the issue of the administration of justice. We are prepared to support any Bill which comes before this Senate dealing with the entire crime situation. [*Interruption*] It is very easy for the Minister of Finance to talk about not doing anything. He will have the opportunity to do a lot. I cannot say that he has done anything so far because the prices of food are continuing to rise. I think he should not talk about doing. The population is anxiously awaiting to see what you are doing as the Minister of Finance. We on this side have done a considerable amount when we were in office, and we will return to government very soon and continue to do a lot more. [*Desk thumping*] A little laughter is good for the soul, Mr. Vice-President.

I think that on all sides concern has been expressed very seriously about the issue of the liberty of the subject and what is enshrined in the Constitution as it relates to persons being able to access that right to go from judge to judge. That is the area with which we are mainly concerned. We are saying that requires a special

majority. We have maintained that position and have in no way stated that the Bill itself, in principle, is not a very good one. I have indicated and outlined that insofar as New Zealand, Australia, Canada and Britain were concerned, they were able to do their scientific analysis to get their statistics to show where applications were made time and time again abusing the process, and using the fact that an applicant had the right to go from judge to judge. That is the critical issue with which they were concerned.

Sen. Daly's question related to whether or not the right to appeal would take away the whole issue of the person being able to go from judge to judge. Would that put the applicant at any disadvantage? If we go back to this case which I quoted from the *Trinidad Guardian* this morning, if it is that within the system just as the writ of habeas corpus is dealt with expeditiously, there would now be a system with these appeals, I hope that the Attorney General would comment on whether these appeals will also be dealt with expeditiously, as the initial applications have been dealt with. I think to a large measure that may satisfy certain persons that some measures have been put in place to deal with it.

I know and I am sure that the Attorney General knows, that notwithstanding all the efforts made at computerization and making every effort to get the appeals and matters that are going to the court dealt with expeditiously, there is always the problem of persons using the Constitution to say that a certain person has been there for a short time and has been able to get his matter heard quickly, and someone else has been waiting so long and has been unable to get his matter dealt with. I think those are some of the issues which I would like clarified.

The other issue I would like clarified is the issue of the fresh evidence and bail. In terms of the fresh evidence and the granting of the writ of habeas corpus, I imagine the judges would be looking at the specific requirements which have been laid down in the Bail Act, as it relates to granting bail.

1.55 p.m.

Now in some pieces of legislation, it actually specifies, as it did in the Bail Act, that these are the considerations that should be borne in mind in a person granting bail. Now, this is not specified here, but as I understand it—the Attorney General can correct me afterwards—those were the same issues contained in the Bail Act in terms of the fresh evidence, so that when one is making an application for bail, there are certain things that the court would look into.

As it relates to clause (2), can the hon. Attorney General indicate, in the last three lines, "to the same court or judge or to any other court or judge, unless fresh evidence is adduced in support of the application", what he is referring to when he states "any other court"?

My colleague, Sen. Nafeesa Mohammed, has dealt with the issue of the special majority—

Sen. Prof. Spence: Thank you, Senator, for giving way. Am I to understand that the Senator agrees with all the measures in the Bill but does not agree with the fact that it has not asked for a special majority? If that is the case, it seems to me that the problems I mentioned before can be solved by just giving it the special majority.

Sen. P. Beckles: Mr. Vice-President, I think that in the Lower House the Government's position was that it was a simple majority. We indicated there as well that it was a special majority and we are indicating that is our position.

Sen. Prof. Spence: *[Inaudible]* You are declining to give it the special majority you say it needs.

Sen. P. Beckles: As I understand it from the Lower House, it is flawed. If it is passed with the special majority, it is passed.

As I indicated, my colleague dealt with the question of the special majority and I have dealt with the concerns as they relate to that of fresh evidence and the fact that no empirical evidence was brought before the House as it relates to the whole issue of the abuses which would justify the right to go from judge to judge.

Thank you, Mr. Vice-President.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I still think it is right that persons without legal expertise should take part in a technical debate like this about habeas corpus, although I do wish that representatives of the Law Association, the Hugh Wooding Law School, and other such professional bodies could have been specially invited to sit in special places to observe the debate and be available for consultation with Senators during intervals. That presumes certain changes which may take quite a lot of time.

We all understand that habeas corpus is the most important single provision in the laws to protect and affirm the right of the individual to freedom and all that freedom implies. My understanding of it is that it is a right for which one has to

apply, but it is such an important right that it is enshrined in the Constitution and it is not a right that one has to apply for, but a right as a matter of course. I do not have to apply for it. I have to protest when it is being infringed or threatened.

Part of the debate which I think is taking place here is whether the Government is seeking to amend the Constitution or to modulate the procedures by which the right of habeas corpus is administered. That is my understanding of part of the question, and I do hope that the hon. Attorney General will refer to this in his closing remarks.

We in the Caribbean ought to be specially grateful for the existence of the habeas corpus provision, for it has been used to affirm the liberty and the very personhood of the black man in England. It was an important part of the legal fight against slavery. I would just like to spend two or three minutes driving home that point just to show that this is an important right which we have to defend.

In 1677, in *Butts vs Penny*, there was an action for trover in which one person was seeking to recover the value of his goods which were wrongfully held. The goods in that case were 10 slaves. The court upheld that the slaves were merchandise and since they were also infidels, property in them was sufficient to maintain trover. So, in 1677, there was the ruling that told us that the black man was merchandise; he was not a person and not entitled to all the liberties of the person. This was repeated in 1694 in *Jelly vs Cleve* when it was decided that trover applied to a Negro boy "for they are heathens and a man may have property in them". But in 1706, Lord Chief Justice Holt made a declaration that as soon as a Negro comes into England, he becomes free. This was repeated in 1762 by Lord Chancellor Henley who said: "A Negro may maintain an action against his master for ill usage and may have a habeas corpus if restrained of his liberty".

2.05 p.m.

The people involved in the anti-slavery movement pounced upon this and one of the most famous cases is the Sommerset case, but a briefer one is the case of Jonathan Strong who was found beaten, bleeding and nearly dead on the street in 1765 by Granville Sharp. This black man was nursed back to health and, in 1767, he was moving about the streets quite happily when his previous owner saw him and got slave-hunters to capture him. They slammed him into prison and said, "This is our property, we are taking him back to the Caribbean." When Sharp heard of this, he visited the prison. I would like to read one paragraph from a book called *Staying Power:*

> "Jonathan had been baptized, believed that this had set him free, and sent to his two godfathers for help. They went to the prison but were not allowed to see him. So Jonathan wrote an imploring letter to Granville Sharp, who went to the prison next day. The door-keeper denied that he had any prisoner by the name of Jonathan Strong. Sharp insisted on seeing the keeper of the prison and, after much argument, was at last allowed to see Jonathan. He lost no time in applying to the magistrates for the youth's release. The case came up at the Mansion House before the lord mayor, who said 'The lad had not stolen any thing, and was not guilty of any offence, and was therefore at liberty to go away'".

I think application of habeas corpus to Jonathan Strong made it possible for the famous Sommerset case to be won. I am just trying to show the way in which habeas corpus has been involved in winning the case about the very personhood, "I am a person, not a piece of property. I deserve liberty." This is an essential ingredient in the anti-slavery movement and certainly in the legal abolition of slavery.

Mr. Vice-President, later on I want to talk about the necessity to defend every scrap of this kind of freedom. I want to say at the outset that I am very happy about the state's right to appeal, and about the detainee's right to appeal being provided for by this amendment. In these two respects the Bill has my complete support.

I want to look, as well, at how the state operates habeas corpus and then I want to look at the whole thing from the point of view of the person in custody. The state, it seems, can detain you during a state of emergency. In some cases, the state can declare a state of emergency in order to detain you. The state can detain you while you assist them with their enquiries. The state can detain you arbitrarily, and the state can arrest you. We were accustomed to all of this. There would be a fight in the village, the policeman would come and take one of the fighters and put him in jail to cool off and let him go in the morning. They did not need any habeas corpus, the villagers just knew that was the recognized procedure for when one got drunk and behaved badly. Or, a man may be beating his wife and everybody would bawl. They would run and get the police. The police would come and pick up the man, throw him in jail. In the morning a whole set of Indian ladies would go to the jail and beg them to let him go as he would not do it again, and they would let him off. That is benevolent detention. *[Laughter]*

It is a very serious matter to detain a person without cause and I am wondering about the state's operation of this kind of behaviour. I would like the Attorney General to address the suggestion that the state's reply to a writ of habeas corpus is to arrest or charge. Could the Attorney General give us some instances of why the state—although I want them to have the right—would need to appeal against habeas corpus rather than simply to arrest and charge? These are technical matters I do not quite understand and I feel I need some help.

If the state respects the Constitution and recognizes the laws, especially the writ of habeas corpus, why cannot the state's answer to the writ be, to arrest and charge? On the question of the person in custody it is here that I do not have questions but I have serious affirmations and reservations. Ever since the 12th Century habeas corpus was intended to protect the individual from illegal detention or imprisonment by public officials or inferior courts and it has developed over the years to eliminate all forms of illegal detentions in public or private custody. As I understand it at present, Mr. Vice-President, these are the rights:

(1) To make repeat applications to another judge or judges.

(2) To make fresh applications with new or additional evidence, though on the same grounds.

(3) Make new applications on other grounds.

As I understand the present amendment, it seeks to remove the first provision, that is to make repeat application to another judge or other judges, and to put in its place the right of appeal to a higher court. It might seem that the substitution is acceptable, but I am not sure that the appeal procedure is going to be as quick as a repeat application might have been, and I am not sure it is going to be as cheap. I am wondering where the detainee would be while his appeal is being dealt with. It seems to me that the appeal leaves a longer time-span for the detainee to be in detention. Whereas the repeat application which just depends on one person can be handled quickly.

The virtue of the repeat application is that it is immediate and it is cheap access to another opinion or, I suspect, it is more immediate and cheaper than the appeal. It is also a very valuable protection against bias, incompetence and lack of sympathy. One might just happen to go to a judge who is not sympathetic, whereas another judge might be. I can see how giving a person the right to move *ad infinitum*, from one judge to another as when we were teenagers at a party, when we asked one girl to dance and she said no, you would move down the line,

scraping the barrel as it were, until you might meet somebody who was as desperate as you, and who would say, "Yes." I could see how to have that in the habeas corpus application would be very inconvenient, but need we eliminate it? Could we, for instance, not say, "Okay, you go to one guy and it is refused, you are allowed to go to another, but when it is refused, that is it, you then have to make an appeal to a higher court?"

2.15 p.m.

So at the lateral level, maybe, you could give them one or two shots and then let them use the appeal if they want. I do not know how these things operate but I do know that the second judge could be made aware that another judge has refused an application. He could also, perhaps, be given a copy of the application and the judgment and shown the evidence and reasons for the refusal. It seems to me that if we decided to grant two or three chances at the lateral level and we built into it that each successive application must be accompanied by all the facts about previous applications, I am sure that we would be able to hold on to some of the advantages of the lateral application while eliminating most of its disadvantages.

Mr. Vice-President, just to summarize, I am strongly in favour of the right to appeal granted to both parties by this amendment. I have reservations about the complete removal of the right to make successive applications and I would just like to tell you that I would have very great difficulty in voting on this matter. I just do not know how I can vote; whether I can say no, whether I must say yes, or whether I must abstain, because I feel very strongly about the removal of that little jot of freedom that the person has in making successive applications. I do not think that the right of appeal is an adequate replacement.

I thank you.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I rise in support of the Bill to amend the Habeas Corpus Act, Chap. 8:01. The purpose of the Bill is provided in the Explanatory Note and it states:

> "The Bill seeks to amend the Habeas Corpus Act. (Chap. 8:01) by providing that only one application for a Writ of Habeas Corpus may be made by or in respect of any person to a court or a judge unless a subsequent application can be supported by fresh evidence or is made upon different grounds. It also seeks to provide for the right of appeal in both a civil and criminal application for

such a Writ and seeks to stream-line the procedure upon application for such a Writ."

Mr. Vice-President, this means in essence, that the right of natural justice is protected in this particular amendment. The person is also given the opportunity to apply for a writ of habeas corpus. This Bill seeks to balance the right of the individual on the one hand to apply for habeas corpus and, of course, the public interest, in ensuring that the system of administration of justice is not in any way abused or clogged up.

I would like to indicate that the Government of Trinidad and Tobago and of national unity is fully committed to the enshrined fundamental rights and freedoms that we have in our Constitution under sections 4 and 5. In fact, the Government is setting new standards at such a very dizzying pace that the present Opposition PNM is virtually in a state of "bazodee." They cannot keep pace with what we are attempting to do. As you know, the last PNM government has had a legacy of talk and talk and no action and has now been placed in permanent exile.

We heard from Sen. Nafeesa Mohammed earlier about subversion of our democracy. She outlined at length to this Parliament what this Government has been attempting to do since it came to office. She said that this Government has been attempting to subvert our democracy. It is extremely hypocritical of this Opposition PNM Senator to accuse this Government of seeking to undermine our democracy. The Senator's government, at the time, spoke about subversion and the undermining of people's rights and freedoms. There was a gentleman named Glen Ashby whose blood remains not only on the hands of the then PNM government, but on their consciences as well. There is an international record which demonstrates the viciousness of this last regime that has now been placed in permanent exile by the people of Trinidad and Tobago. All principles of natural justice were denied.

We want to advise that it was the PNM administration more than any other that really attempted to undermine and subvert our democracy. We all know of the attempt by the last PNM administration to virtually overthrow the Police Service Commission and to get rid of the police commissioner, who is still in office today, because somebody in that regime, at that time, did not like certain persons at certain levels of both the Police Service Commission and in the case of the police service, the police commissioner.

Mr. Vice-President, the PNM's record is clear. They talk about press freedom in this country and they are against a press complaints authority. They are the ones who precluded a member of the press—*[Interruption]*

Sen. Jagmohan: Mr. Vice-President, it is regrettable that such a very experienced parliamentarian like the hon. Leader of the Senate is digressing continuously from the subject before the Senate and meandering in a calculative manner, which is not helping the Parliament in any way.

Hon. W. Mark: Mr. Vice-President, I am simply responding to the charges that Sen. N. Mohammed has laid. I cannot allow this to go into the records of *Hansard.*

Mr. Vice-President, we on this side find it a bit strange that we can get these statements from Sen. N. Mohammed. When they talk about subversion of democracy in this country, they must remember that it was the then PNM government which declared a state of emergency to lock up the Speaker of the House of Representatives. And they are talking about subversion of democracy.

2.25 p.m.

Sen. Daly: I thank the Leader of Government Business for giving way. Would he indicate now whether the Speaker is in the same house in Mary Street with the consent of his Government? *[Laughter and desk thumping]*

Hon. W. Mark: Mr. Vice-President, I want to say at this time that it was the then PNM government that declared a state of emergency to lock up the Speaker and in addition, it was the then PNM regime that precluded a member of the press from interviewing a government Minister for what they called "national security reasons". Do you remember that? Sen. Nafeesa Khan do you remember that? *[Laughter]*

Hon. Member: It is Sen. Nafeesa Mohammed.

Hon. W. Mark: You do not behave like a Mohammed you know, that is why I have to rename you. Your father must be turning in his grave where he is now. *[Laughter]* With you on that side I have to call you Naf Khan all the time man. You soil the name of the Mohammed's. *[Laughter]* Anyway, Mr. Vice-President—

Mr. Jagmohan: Mr. Vice-President, I am sorry, Sir, but I am glad that the hon. Minister of Public Administration and Information is kind enough to give

way. It is certainly ungracious to refer to the Senator's father who has left this world. It is ungracious and it is not good for Parliament. I wish, Sir, that you would guide the Senate in that regard.

Hon. W. Mark: I am sorry. I thought that was being complimentary, Sir. No aspersions, no offence meant, my dear.

Hon. Senator: My dear?

Hon. W. Mark: Mr. Vice-President, I wish to say—

Sen. Mohammed: On a point of clarification, can the hon. Minister indicate to this Chamber whether the former Speaker of the House is still occupying the house with the consent of the Government?

Hon. W. Mark: Mr. Vice-President, I want to indicate at this time that the Bill before this Parliament *[Laughter]* seeks to ensure that the administration of justice is not delayed and we are committed to the promotion of the administration of justice in this country. Therefore, I want to indicate that this Government of national unity is fully committed to enhancing our democracy, not weakening it, but strengthening it, Sir—

Hon. Member: What about transparency?

Hon. W. Mark: —and therefore, in the not too distant future, we would be bringing to this Parliament the Freedom of Information Bill. *[Laughter]* We would be bringing here, Sir, the Equal Opportunities Commission Bill, and something called the Race Relations Bill; and these are important matters in our drive to deepen the democratic process in our country.

If the truth is to be told, Sir, the PNM Members are suffering from what we call "political tabanca." They have not recovered, Sir, they are still recovering. In fact, there is a disease that is now raging in England which is called the mad cow disease and one gets the impression that somehow it has infected the body politic of the PNM. *[Laughter]*

Mr. Vice-President, we on this side are committed to the Constitution, the maintenance of the Constitution and the deepening of the people's fundamental rights and freedoms in this country, and therefore, Sir, with this limited intervention and without any hesitation, I commend this Bill to this honourable Senate.

Thank you, very much.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, may I express my thanks and the thanks of the Government for the contributions which have been made, and may I especially thank the Independent Senators for the very informed discussions, even though some of them had been very short in this debate.

I regret, however, that I was disappointed with some of the contributions being made by the Opposition. I think it is my duty to say that I kept looking and looking and trying to find out from the contributions of the Opposition, exactly what was worrying them about this Bill. I am hoping, however, that by the end of my contribution, I would be able to convince them that this is a Bill that the Opposition and every parliamentarian should support, because it is one which, under section 54 of the Constitution, is necessary for the peace, order and good government of Trinidad and Tobago.

Mr. Vice-President, I think that it is my duty as the Attorney General to give the assurance that this Government is committed to upholding the Constitution and the rule of law. If anyone at anytime feels that the action of the Government or any arm of the state has amounted to a contravention of any of the fundamental rights, this Government does not intend to interfere, and is committed to the independence of the judiciary to ensure that any such allegation is determined in accordance with the rule of law.

Many matters had been mentioned here, and one for example is the issue of Major Brown. I wish to say if Major Brown feels that the Government has acted unfairly, unconstitutionally, or unlawfully towards him, he has a recourse to go to the court to determine whether the action of the Government or the Minister was unlawful.

I think that one would appreciate that in the administration of government, there are many things a government can say and there are many things a government cannot say. Even with the Freedom of Information Bill as Freedom of Information Bills in other jurisdictions, there are certain exceptions to the rules. I would ask the Senate to understand that if we do not respond and give information with respect of some of the matters which have been raised, it is not because we would not like to give it, but we do not think it is right to give such information.

I would like to say Mr. Vice-President, that our Constitution is built on a certain basis, that there are certain safeguards entrenched in the Constitution and those safeguards are entrenched in order to ensure that no government, or no arm of the state whether it be the executive, the legislative or the judicial arm of the

state can either do anything, or refuse to do anything which would in effect, amount to a contravention of the fundamental rights without there being some form of redress. The purpose of entrenching these safeguards, is obviously to ensure that power in the hands of any individual and any government is not misused or abused. It is recognized that power given to individuals and governments—it has occurred in history and I am sure it will occur as we go on in life—can be misused and it can be abused and the only mechanism that has been found in order to prevent that is to try and put as many safeguards as possible to ensure that the exercise of state power can be controlled.

2.35 p.m.

Mr. Vice-President, it is in that context that when I was introducing this Bill I indicated that it provided for an amendment to the Habeas Corpus Act, but that the Bill was not taking away the safeguard of the remedy of habeas corpus, but it was enhancing the procedures and rights in respect of habeas corpus.

Mr. Vice-President, I think I should explain this at the outset. When it is stated that there was a right to go from judge to judge in respect of a habeas corpus application, it must be remembered that in 1959, as I mentioned in my contribution, before the British passed the Administration of Justice Act, it was considered in the case of re: *Hastings* of 1959 by a full court of the Queen's Bench Division whether that was right; and they ruled that it was wrong. Having regard to how the abuse of process doctrine has developed in public law, subsequent to that, in the case reported in *Times* which I quoted and which occurred about three years ago, to go from judge to judge in respect of the same facts is regarded as an abuse of the process of the court.

The common law has recognized by the development of public law that—whether in respect of bail, habeas corpus, or any application—it is wrong jurisprudentially to have a situation where a person can go from judge to judge on the same facts to have it adjudicated. Mr. Vice-President, common sense would tell us that, because it is not only a waste of judicial time, but also a waste of resources; and I am not too sure that it is less expensive because—and I can deal with it at this time—another application would have to be prepared; another set of fees would have to be paid to a lawyer, and it is not necessarily more expeditious.

It may be that the Court of Appeal may be more expeditious than the High Court procedure, but it puts a second judge in the position where he is sitting as a Court of Appeal over his brother judge. In principle, it would seem to me that it is

wrong; and much of the law which has been passed over the years has been looked at again. That is the whole purpose of law reform, Mr. Vice-President.

Law reform is that society must, from time to time, be able to look at its laws to see whether they are relevant or should be amended; whether the procedures which go with these laws should be looked at again, or kept, or thrown out the window. It is in that context, Mr. Vice-President, that I would like to quote some words of Lord Scarman which I like very much. Lord Scarman, as Chairman of the English and Scottish Law Commission, in delivering the Lindsay Memorial Lectures in 1967 said: "We demand not only that the tablets be brought down from the mountain and their meaning made clear, but that we have the liberty to smash and replace them."

Where laws are no longer serving the good of society, it is our duty as a people and a government to look at them, and if they are not relevant or amount to an abuse of the process of the court; or if the common law prohibits that kind of procedure, it is our duty to take steps to make the law certain. That is a duty.

Mr. Vice-President, it would seem to me, therefore, that to base an objection on the premise that, "I would not support this Bill because although I agree with the appeal procedures, I disagree with taking away a right to go from judge to judge"—First, I do not agree that there is this right. But even assuming that there is this right, it seems to me that it is inconsistent. Because how could you support having an appeal procedure for the applicant and the respondent? They are saying yes, there should be an appeal—that is the PNM position—Yes there should be an appeal procedure, we support the appeal procedure. So they support the procedure that when one is refused habeas corpus, one should have a right of appeal.

Mr. Vice-President, what is an appeal system in any society? An appeal system is where the society has put its trust and confidence in appeal procedures. And what is the purpose of the appeal procedures? The appeal procedures in the system examine what has happened below, have arguments for and against it; and then decide whether the inferior tribunal is right or wrong. Yes, the PNM support the appeal procedure, but they want to have a situation of going from judge to judge on the same facts and circumstances.

Sen. Mohammed: Can the hon. Attorney General indicate to us how long it takes for an appeal to be heard, on average, in the Court of Appeal?

Hon. R. L. Maharaj: I wish to assure the hon. Senator that I will deal with that, although I am sure that she knows that there is an appeal procedure and there

are rules to have matters heard expeditiously. But, Mr. Vice-President, the fact of the matter is that the PNM is saying—and look how ridiculous it is; I would be ashamed to advocate that—"I am agreeing that there should be appeals and yet I am saying that there must be a procedure from judge to judge on the same facts." In effect that is undermining and subverting the Court of Appeal. So the PNM wants us to come with legislation which would provide that you can go from judge to judge on the same facts, but yet the Court of Appeal would have the power to review what a judge does. Mr. Vice-President, it is not logical. It is not well thought out, obviously, it must be rejected.

What this Bill has done is that, even if a person has his application determined and later on there is fresh evidence, he can go back to the High Court with fresh evidence to have the matter determined. Mr. Vice-President, to use the argument that the appeal process is longer than from judge to judge, we all know that in respect of habeas corpus there is an unwritten rule and there is a rule of practice that that matter is given priority over all matters. As a matter of fact, there is the practice in the High Court or the Court of Appeal that in respect of habeas corpus matters, since it involves the liberty of the subject, *ex debito justitiae*, if my Latin is correct, a writ has applied, it is entitled to be given; because it is a writ of right it is given some sort of priority. It is sometimes the first matter on the list.

The rules of the Supreme Court of Trinidad and Tobago provide that in any appeal that the person can make an application and the court can deem the appeal urgent and expeditious and have the appeal heard immediately or within a matter of days. So what is the point? What is the submission? What is the objection to having an appeal procedure to enhance that right, instead of leaving it from judge to judge on the same facts?

I think, Independent Sen. Martin Daly's question, when Sen. Nafeesa Mohammed was making her contribution, really struck the matter at the core. That is the kernel of the matter. Does the appeal procedure not provide the protection and safeguarding effect they were complaining about? This appeal procedure is not only to the Court of Appeal, but also to the Judicial Committee of the Privy Council. So it is not a question of the Executive being able to lock up somebody, keep him in custody, and not let him have any of the judicial processes available to him.

This is a case where the person would not now be subjected to the harassment of going from judge to judge. This person would now have the right to go to the Court of Appeal and appeal as of right. At the present time there is no appeal as of

right in habeas corpus for a person who is reviewed. This person has an appeal as of right; goes to the Court of Appeal; and is entitled to have it considered and reviewed by appeal judges of the land; judges who determine whether a constitutional right is infringed, or not. What better forum can one want to have that determined?

2.45 p.m.

Mr. Vice-President, Bills like these demonstrate whether politicians really can have any credibility in Trinidad and Tobago.

The PNM knows that this Bill was drafted by the Law Commission and the Law Commission has the power, given under the laws of Trinidad and Tobago, to review all laws applicable and in effect, to come up with a view of its systematic development and reform. This Bill was drafted by the Law Commission. When I became the Attorney General I met, after discussion with the Law Commission, a Bill which was requested to be drafted by the last administration. The Bill was left there. It was drafted in the same kind of form. It was not a specified majority Bill as they say; it was an ordinary piece of legislation. The Bill was then subjected to the Legislative Review Committee which consists of lawyers and also lay members. The Bill was also reviewed by Justice Richard Crane who is engaged by the present administration in respect of law reform and in respect of drafting. I am saying this because I want to give an indication of how this administration considered this Bill to be of grave importance.

The Attorney General had consultations with several senior counsels from the Commonwealth. This Attorney General also got a written opinion from one of the leading constitutional lawyers in the United Kingdom to ensure that his view of this Bill was not in any way different from how other people looked at it. That is why this administration kept an open view as to whether, in any way, this Bill was taking away the rights and freedoms of the individual. May I say it was the unanimous view of all the persons who had to deal with this Bill, including the Law Commission that it did not require any specified majority; it does not tamper with the rights of the individual; it enhances the right of habeas corpus; it is necessary for the promotion of the criminal justice system in Trinidad and Tobago; it promotes fairness in the criminal justice system.

I am indebted to Sen. Daly for the compliments he expressed to me, but I must say, and I am saying this in a very humble way, I have been fortunate to see the law from all sides: I have seen the law as a student, I have seen the law as a

lawyer, I have seen the law as a litigant, I have seen the law as an accused person, I have seen the law as someone who had to apply for habeas corpus. I have seen the law on all facets that one can possibly expect to see them—with the exception of certain other things and I do not have any aspirations for that—but I recognize that no society can be free unless the safeguards which are built into that system remain and are not interfered with. This administration is committed to that. Therefore, I want to put on the record that this Bill was not drafted and considered by the Legislative Review Committee and the Government just decided to come with it. The Government decided to make the Bill available to people who could have input or who would think that something is wrong with the Bill and we would expect them to tell us that something is wrong with it.

For example, the Supreme Court of Judicature (Amdt.) Bill was sent to the Law Association on February 16, 1996; the Habeas Corpus (Amdt.) Bill February 16, 1996, and I have a whole list of the other Bills: the Jury Bill, the Indictable Offences Bill and others. It is because the administration is open and it welcomes comments from bodies, whether it is a law association, whether it is a parliamentary body, whether they are members of the public, because we recognize that one cannot pass legislation in a way that would shut out other people's views. The best process for legislation is consultation and consultation gives to any law-making person the ability to be able to listen to the other person's view, consider it and determine what is in the best interest of the legislation and the object of the legislation and the country. It was in this context, and I agree with the Independent Senators who have made this point, that perhaps, something is wrong with our system, in that there is need to have a measure whereby we could probably get, not only lawyers—because for some reason or the other, it may be that lawyers do not have any objection to these matters, or probably lawyers are too busy. Whatever the reasons, some machinery should be found in order to have the public participate more in the process of government and in the process of legislation.

That is something to which I give an undertaking that I am going to look at urgently. I think that there should be some machinery whereby the members of the public could be educated on what kind of legislation is being introduced. I should say that we give these pieces of legislation to the media also, and that they are not being hidden. It may be that there should be other measures through which we would be able to get these matters out to the members of the public to give them an opportunity to be able to express their views.

As Attorney General, in addition to consulting with the Law Association, it may be that I should try and get other law and non-law associations involved in the legislative process. I would be willing, if any Senators here have any views and would like to communicate them to me, either by seeing me or by writing to the Attorney General, to consider those—because there cannot be effective legislation by denying people the opportunity of having an input into them. We have done everything in our power in the conventional way and probably that is not working. I wish to say that I take that point.

In respect of the specific points raised by some of the Senators on the suggestion made by the hon. Sen. Mahabir-Wyatt, I wish to say that she is pushing an open door. I have already got legislation drafted in respect of an appeal by the state to a sentencing in the High Court. I am looking at the situation, and I think she probably understands some of the bureaucracy that exists. I have asked for legislation to be drafted. There is going to be a situation where this administration would have the pubic comment on this matter, that there should be a right of appeal by the state in respect of no-case submissions made and upheld by judges. That is an issue we would want to have consultation on and we would certainly like to have the Bill put out for public comment so that the public will be able to express their views.

That is a matter which has been given some urgency by my department. I have taken it up and if I may indicate to hon. Senators, that and some other measures, for example, a matter which has been very controversial—but I suppose controversy never seems to leave me—the whole question of the right of a wife to give evidence against her husband in a criminal trial is a matter which will also be out for public comment. We are trying to put all these matters in one Bill and they will be out for public comment shortly.

Sen. Mahabir-Wyatt: I wonder if the hon. Minister could give us a time frame.

Hon. R. L. Maharaj: I can indicate that I hope to have it out within the next two weeks, if not before.

With respect to the hon. Sen. Rev. Teelucksingh, I appreciate very much all that he has said, although he mentioned that habeas corpus is a privilege. This administration does not regard it to be a privilege. It is a right to habeas corpus. I have taken his points and I wish to assure him that in respect of these measures—and as I mentioned before, this Bill was subjected to a lot of scrutiny, the Law

Commission had a lot of input into it—he is properly advised, and that he can support these measures and has nothing to worry about them being unconstitutional or contravening the Constitution in any way.

2.55 p.m.

He talked about the civil right to go from judge to judge. I think I have explained that. I hope I have been able to allay some of his fears. The important thing to remember is that in any one of these matters, obviously it is a judicial officer who will have to determine these matters and the Executive will have no part in determining them.

Habeas corpus does not only apply before a person is charged. As a matter of fact, the way it has developed it seems that it is now being applied to most of the instances after people are charged. Even after a man is arrested and he is in custody awaiting trial and there is delay, one can use habeas corpus to prosecute his unlawful and illegal detention. If one is arrested properly on any matter and wants to raise a point that says his imprisonment is illegal, one is entitled to raise it on habeas corpus. It is not a situation where the Government on return would say let us charge him or not charge him. In 95 per cent of the cases the person has already been charged. It is not like long ago where habeas corpus was used when one was arrested and kept in custody and there was no charge against the person.

Quite rightly, the law has developed because it has recognized that there would be many instances of misuse and abuse of executive power. To deal with that the law has developed in such a way to protect an accused person not only before he is charged, but also to protect a person even after he is charged to ensure the state does not use the machinery to oppress and politically harass the individual.

I take the point with the appeal system, that there can be errors. I would like Sen. Teelucksingh to recognize that no system is infallible. One wants a fair system. When one looks at the issues objectively and puts them on the scale of justice, and puts on one side the rights of the person before, and on the other side the rights he would now be getting, it must mean that his rights would be further enhanced and protected, loaded in favour of protection in comparison with what it was before.

In respect of the Law Association, I have mentioned what I have done and what I would like to do with members of the public. I wish to assure him that a government must recognize that there will always be perception against it and must never be annoyed. We are never annoyed with perceptions which members of

the public hold because it is their right to hold those perceptions. Our duty is to try to remove those perceptions. I wish to give Sen. Daly the assurance that this Government has no conscious or unconscious plan to do anything which would undermine public confidence in its commitment to uphold the rule of law.

Sen. St. Cyr spoke about fresh evidence and tampering with the rights. If an individual applied for habeas corpus and for some reason did not know about evidence which existed before, or that the evidence was available, then that person would be able to adduce that evidence before the fresh tribunal. I do not agree that we are tampering with any right. A government would look at all pieces of legislation and if there is need to amend them, I think the public has a say.

Under the legislation setting up the Law Commission, Chap. 3:04, it states:

"**4**. (1) It shall be the duty of the Commission to keep under review all the law applicable to Trinidad and Tobago with a view to its systematic development and reform, including in particular the modification of any branch of the law as far as that is practicable, the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law, and for that purpose—

(a) to receive and consider suggestions for the reform of the law which may be forwarded to it (either on the invitation of the Commission or otherwise) by Judges, public officials, lawyers and members of the public generally".

The members of the public have a duty and they can make input in the whole question of law reform. If for some reason the law is being administered unfairly and there is abuse and criticism about it, bear in mind that the administration of this law will not be by the Executive apart from providing resources for the members of the Judiciary. The administration of this law will be done by the members of the Judiciary under the Constitution of Trinidad and Tobago. The High Court, Court of Appeal and the Judiciary Committee of the Privy Council are independent.

Sen. Kenny raised some important points. I agree with him that having regard to how the Constitution is drafted there can be collateral proceedings under section 14 in respect of habeas corpus. As a matter of fact, one of the cases on habeas corpus which attracted a lot of public attention was a case where habeas corpus was refused in the High Court in 1991.

3.05 p.m.

Leave to appeal was obtained from the Court of Appeal and the appeal was heard. There were also the habeas corpus proceedings and the proceedings under section 14. That is why it is important for bodies to become very involved in law reform. The Government would have to respond to what the public wants. In some jurisdictions in the Commonwealth there is a qualification to our section 14 of the Constitution that the court has a discretion whether to proceed with one matter where they have, under section 14, a proceeding and they have another application in respect of the same matter. The court has a discretion, can stay those proceedings, deal with them and refuse to give redress. What has happened in our jurisdiction is that the court has an inherent power to stay proceedings and it can even stay one proceeding and proceed with another.

The Attorney General would be willing to hear what sort of points would be made. I am in the process of planning some machinery whereby the public would be able to have some input into particular measures and I would try to have it as an umbrella situation where members of the public have a say in respect of all pieces of legislation.

There was one point that the hon. Sen. Rev. Teelucksingh made and which I skipped. It is the whole question of weekend detention. When I was in private practice, I always wondered why the police arrested many people on a Friday. I mentioned to the hon. Minister of National Security that he can look into that matter. Maybe if there is need to arrest people on a weekend, some sort of provision should be made for them to have access to lawyers and to have judges available to deal with applications for bail and so forth.

I can understand what the hon. Senator is talking about because only two weeks ago, there was a situation in which a man was arrested and bail refused and he could not get a judge to hear the application for bail. Much injustice can be done. That is a matter which I will look into, to see whether we should not set up some mechanism to improve the situation.

Another point raised by the hon. Sen. Prof. Kenny is on the whole question of freedom of movement. I think the Senator would understand that that is a very difficult matter. In some jurisdictions, for example, in the United Kingdom, quite recently, before I became a Minister, I had to pass through this line. I was searched. People were touching me. The only fortunate thing about that was that it was not only a man, but a lady. I think there should be some means of using

technology to do that. That is a long-term matter and one can understand that in the kind of situation that exists in the world today one has to have that protection. I do feel, however, that there should be some measures instituted whereby there should be some means of dealing with that in connection with people who occupy certain positions in the Parliament.

Sen. Mc Kenzie raised the issue of lenient sentences, which is also a very important issue. There is also the question of a resident judge for Tobago. I have heard that problem so many times that I thought that the problem was solved. I was amazed that the problem was not solved. I undertake to consult with the Chief Justice because I think that Tobago is entitled to have a judge resident in Tobago. I feel confident that the hon. Chief Justice would support that and make it possible. I undertake to have consultation with him and take every step to have it done.

Sen. Prof. Spence talked very practically about going for the vote and seeing who supports and who does not. I welcome that, but I must tell him that the Constitution even puts a safeguard on that. If a bill requires a specified majority and it is presented as an ordinary bill, it could be held to be unconstitutional even if it gets the required majority. There must be notice to the world that the bill requires a special majority. That is my view of the matter.

I think there is a particular case on that, too, which went to the Privy Council from one of the countries in the East. The bill did not have that particular format and the rationale is that the format is important, not for the Members of the House, but for the public so that they can lobby the House and say that the bill is bad because it needs a specified majority and Members must not support it.

I think that Sen. Beckles wants me to get involved in some of the matters which are before the court. It may be that this whole country would have to look at the question of delay in criminal trials. The Government has an obligation to look at it and the Attorney General has been looking at it in respect of a particular field. I hope that after consultation on the whole question of delays, if it is necessary to get the support of the Opposition, it would act responsibly to deal with this matter.

Sen. Beckles: I want to make it clear that I want the Attorney General to do no such thing. In light of the fact that we were discussing the Habeas Corpus (Amdt.) Bill, and based on what the Attorney General had said—that they were now bringing delay as a ground for habeas corpus—I thought that I would mention it so that he could have looked at it at the same time.

Hon. R. L. Maharaj: I am indebted to the Senator for drawing it to my attention.

The responsibilities of the Attorney General are probably the most difficult anybody can be given. The whole question of delay is something which this country would have to look at in relation to the criminal justice system. I think we will have to look at it as a people and decide what is best for us in the circumstances. There are many Commonwealth countries which have looked at it and have decided to approach it in a particular way. There is a particular Commonwealth country which has looked at particular situations and has made the decision to deal with them. For example, America and Canada and some of these developed countries do not hold that delay should prevent the execution of the death sentence. In some countries they regard certain kinds of delays. They do not regard delay for the normal process of a court matter. They regard delay from the final court. I wish to give the assurance that the Government is looking into the whole question of delays and obviously would have to come up with a plan. What the Privy Council decides would also be important. We are committed to the rule of law. The court must decide on matters. If the court decides on matters, we as a people can then determine what we are going to do with respect to particular situations. These are decisions we will have to make.

For the purposes of this debate, I give the hon. Senator the assurance that the Government has been looking at it, is very conscious of the fact that delays in pre-trial matters and post-conviction matters are matters of great concern which affect the criminal justice system and should be addressed and redressed.

I have dealt with all the points raised and I hope that I have been able to answer them satisfactorily.

3.15 p.m.

In conclusion, I would like Members to recognize that this Bill, as I said, enhances the human and fundamental rights enshrined in the Constitution, it enhances the right of liberty, it enhances the protection of the law, it enlarges the right and the procedural provision which would give effect to the remedy of habeas corpus.

Thank you, Mr. Vice-President. I beg to move.

Question put.

The Senate voted: *Ayes 21*

AYES

Mark, Hon. W.

Kuei Tung, Hon. B.

Theodore, Hon. Brig. J.

Baksh, Hon. S.

Phillip, Hon. Dr. D.

Gangar, Hon. F.

Moore-Miggins, Mrs. D.

Tota-Maharaj, Mrs. V

John. S.

Cuffy-Dowlat, Mrs. C.

Gray-Burke, Most Rev. B.

Moore, N.

Baksh, N.

Gabriel, A.

Richards, V.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Daly, M.

St. Cyr, Dr. Prof. E.

Mc Kenzie, Dr. E.

Kenny, Prof. J.

Senators V. Gilbert, N. Mohammed, O. London, D. Montano, P. Beckles, M. Jagmohan, Rev. D. Teelucksingh, Prof. K. Ramchand abstained.

Question agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Mr. Maharaj: Mr. Chairman, in clause 8 (2) the word "may" was omitted in error, "the court 'may' make an order". It was approved in the House of Representatives and the Clerk assured me that it did not necessitate my making an application to amend it.

Mr. Vice-Chairman: I trust that the circulated amendment would be amended accordingly. All Senators should take note that there is an inclusion of the word "may" in subclause (2) of the new clause 8 that was omitted from the circulated draft amendment.

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

Senate resumed.

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

ARRANGEMENT OF BUSINESS

Mr. Vice-President: Hon. Senators, earlier in the proceedings it was agreed that Motion No. 1 under Government Business, in the name of the Minister of Finance, would be taken at a later stage of the proceedings. I now call on the hon. Minister of Finance to proceed with this Motion.

CUSTOMS ORDER

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, I beg to move the following Motion standing in my name:

Whereas it is provided by section 7(1) of the Customs Act, Chap. 78:01 that the President may, by Order, increase or reduce any import or export duties of customs or impose new import or export duties of customs, and from the date of publication of the Order in the *Gazette* and until expiry thereof, the duties specified in the Order shall be payable in lieu of any duties payable prior thereto:

And whereas it is provided by section 7(2) of the Customs Act that every Order issued under section 7(1) shall, after four days and within twenty-one days from the date of its first publication be submitted to Parliament, and Parliament may by resolution confirm, amend or revoke such Order and upon publication of

the resolution of Parliament in the *Gazette* the resolution shall have effect and the Order shall then expire:

And whereas the Customs Tariff for the Assembly Industry (Reduction of Duty) Order, 1996 was made under section 7 of the Customs Act and first published in the *Gazette* on the 22nd day of April, 1996:

And whereas it is expedient to confirm the said Order:

Be it resolved: That the Customs Tariff for the Assembly Industry (Reduction of Duty) Order, 1996 be confirmed.

3.25 p.m.

Mr. Vice-President, this particular Order has its genesis in some of the economic policies pursued by this country in the earlier days. During that time the intent was to provide concessions to the manufacturing sector to allow them the opportunity to import their parts duty-free into the country and allow them the ability to produce goods at a lower cost than if such duties had been imposed.

So that in the old days, prior to the previous administration coming into play, the manufacturing sector was allowed duty-free concessions. In and around 1993, the previous administration imposed a duty of 5 per cent on the raw materials imported by the manufacturing sector and as a result of that a new system of customs rebate was imposed, whereby any goods that were imported and produced by the manufacturing sector were allowed to get duty refunds.

In 1995, the Minister of Finance, recognizing that the 5 per cent duty had imposed undue hardship on the manufacturing sector, attempted to have the duties reduced to zero. I said "attempted" Mr. Vice-President, because in so doing he ignored the 5 per cent duty that had been imposed on intermediate goods that have been used by the manufacturing sector which affected the assembly industry. By the assembly industry I refer to industries such as the electronics, appliances and the motor vehicle assembly industry. What is being attempted here is to honour a commitment that had been made by the former Minister of Finance.

You see, when I first came into office, the assembly industry in the form of manufacturers who are assemblying electronics such as televisions and video cassettes and so forth, as well as mini appliances for kitchen, came to me and indicated that whilst they had had discussions with the former Minister of Finance he had not had an opportunity to keep a promise that he made to remove the 5 per cent duty that had been imposed by him on the assembly industry.

So that the Order which is before this Senate for confirmation seeks to reduce to zero the rate of duty applicable to the goods set out in the Fourth Schedule to the Customs Act. The Fourth Schedule identifies classes of goods which are allowed the conditional reduced rate of duty under section 56(a) of the Customs Act including parts and components used by firms engaged in all assembly-type industries such as the electronics, appliances and motor vehicle industry. The conditional reduced rate of duty was set at 5 per cent on parts used in the operation of these assembly-type industries.

With the removal of the 5 per cent import duty on raw materials and intermediate inputs used in the manufacturing process in August, 1995, the Government is of the view that firms engaged in the assembly-type industries should be afforded duty-free treatment similar to firms engaged in the manufacturing operations. The Order which is before this Senate is therefore intended to give effect to Government's decision to afford equal treatment to persons engaged in the assembly-type industries.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Danny Montano: Mr. Vice-President, we on this side have no difficulty with the concept of the Order in that the wheels were set in motion by the former administration, but we have a little anomaly here. What we see is that on the one hand an incentive is being given to the manufacturing sector to encourage manufacturing, which, of course, stimulates the local economy, the saving of foreign exchange and employment locally, and we have no difficulty with that. Certainly these measures would go some way in assisting those manufacturing operations in that export drive. But the one anomaly that we face is the impact of the removal of duties on motor car spare parts.

Our understanding of this situation is that it is also going to apply to second-hand spare parts where people are engaged in the assembly process. We have not seen anything that would debar someone who is in the assembly business from actually assembling second-hand cars, and by virtue of other pieces of legislation these cars would be virtually free of any taxes and they would end up in a situation where they would only have to pay their $20,000 or $30,000 one-time tax as it were.

Mr. Vice-President, we submit that it is hardly a desirable situation in the sense that the assembly of second-hand cars raises a variety of questions, not the least of

which is that a great deal had been said hither, thither and yon—about the second-hand parts industry being a vehicle or, a channel for money-laundering operations. We view the facility under this Order with some deep concern. We would be shocked to think that in fact the Government, albeit unwittingly, was assisting such operations.

Mr. Vice-President, there seems to be conflicting signals coming from the Government on what exactly is its policy with respect to the importation of second-hand cars—sometimes one hears yes, sometimes one hears no; one is not quite sure what is the policy. Certainly what one sees is a facilitation of the importation of dismantled second-hand cars. What is it actually going to allow? Is it that very expensive used vehicles can be purchased abroad, dismantled partially, shipped down here as spare parts, have no duty at all and have no taxes anywhere other than the $20,000 or $30,000 as mentioned earlier, and be sold over for $100,000? The cost and the forfeiture would be—if treasury is going to be deprived of hundreds of thousands of dollars, certain operators are going to make millions of dollars with this sort of provision and we take that with a big jaundiced eye.

Insofar as the Bill is going to assist the assembly industries we are completely in support of the measures. The measures not only facilitate them but they facilitate the consumer in the sense that if the cost of the parts is less to the manufacturer/assembler then it means that the cost of the finished product should be less to the consumer and therefore the citizen of the country will ultimately benefit.

3.35 p.m.

Mr. Vice-President, I would like to read something from the Minister's contribution which I have some concern over. In his contribution he said:

> "What we need to do is to ensure that the Ministry of Consumer Affairs will continue to maintain a prices watch whereby they are assured that the measures we take are not going to be reversed because of unscrupulous businessmen."

He went on:

> "...firstly, we get a commitment from the merchants and businessmen that they would adhere to the Government's policy of trying to pass on these reduced prices to the consumers so that they will benefit and, secondly, where there are

cases of these unscrupulous businessmen, we are prepared to take them to the full brunt of the law as allowed."

Mr. Vice-President, I have difficulty with that. On the one hand he is talking about voluntary restraint on the part of the businessmen whom he refers to as "unscrupulous businessmen", and on the other hand he says he is going to prosecute them. Mr. Vice-President, I view that with grave concern.

This is a Government that has adopted very unfortunate postures, and have said all sorts of unfortunate things. In the debate earlier today, we received all sorts of assurances from the Members on that side which we were delighted to receive, but comments such as this do nothing to inspire confidence in the Government and confidence is necessary, as mercurial as it might be. The effect of that mercury is coming from that side not from this side. They have a responsibility to speak clearly and not to bully, or intimidate but to speak clearly and honestly.

The impact of this can be seen, and statements like this can be seen in all sorts of ways. In my contribution last week I talked about the lack of confidence in the economy and I gave indications how the things had slowed down including business activity. I gave indications how employment was on the rise, interest rates on the rise and basically, statements like these do nothing to instil the confidence of the people in the Government.

Hon. Kuei Tung: Mr. Vice-President, I am really confused. What statement is he talking about?

Sen. D. Montano: This statement here that I referred to last week by Sen. The Hon. Kuei Tung, the *Hansard* date was April 30, 1996.

Insofar as the confidence that is necessary, insofar as this Order is concerned as it relates to the undermining of the natural market forces that exist, you can have a look at what has been taking place on the stock exchange this year. In January of 1996, trading figure was $229,790,000; in February, it fell to $20,273,000 after the budget; the comparable figure for February, 1995 was $77,799,000. In March, 1996 it fell again to $14,714,000, and in March, 1995 it was $168,642,000. That is what we are talking about here and the statements that are made that intend to threaten and intimidate, hurt the national economy in gross ways.

Mr. Vice-President, with this slowing down of the national economy which is slowing down primarily because of a lack of confidence in the system, unemployment is rising. In the last quarter for 1995 under the UNC's management,

unemployment rose by about 5,000—approximately 3,000—9,000 persons. That must be at least over 100,000 and certainly by the end of this year it will cross 100,000 and it does not make anyone happy.

Mr. Vice-President, we do not only need a balancing of the treasury. A Government does not work like a business, it works very differently and moneys must be spent to stimulate the national economy, not just to be saved to balance and to make a surplus of profit in an accounting context. It must be spent for the benefit of the people.

Government spending is the most important piece of expenditure that takes place in a country, that is what starts the whole economy rolling, and holding it back, when construction is down and when the hardware dealers confirm that their sales are significantly down from previous years, one knows that the construction industry is failing and with it, unemployment is rising. That does not serve anyone of us any good. We are all in this together and just balancing the books and trying to produce a surplus for the accounting exercise is not what is required. It is leadership and confidence in the system that must be engendered. *[Desk thumping]*

In closing, I ask the Minister to think again insofar as this Order relates to the motor car parts industry in this country, and particularly as it relates to the second-hand parts.

Thank you very much.

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, each week I come, I hear the same sad story. Each week I hear the same story about confidence, and I listen to a number of comments made by the hon. Senator with respect to the state of the economy. The Senator has just added a new dimension to that problem; he says that what we should do is tolerate unscrupulous businessmen who are exploiting persons. In taking the comment that I made out of context, he seeks to misguide and mislead this Senate into thinking that my comments were intended to intimidate businessmen.

At the time I was talking about the question of the removal of Value Added Tax (VAT) on certain items. I indicated that that was not necessarily the preferred approach of the Ministry, but having considered the fact that prices had been rising, that we removed VAT from a number of items. It is therefore, in the context of having removed the VAT from those items that I indicated that there are persons who immediately after removal of the VAT, would be prepared to say that they have dropped their prices to reflect the fact that there was no VAT on these items.

3.45 p.m.

There are some unscrupulous businessmen who try to take advantage of the fact that prices have now been reduced and that prices slowly creep back up. In essence, these same unscrupulous businessmen end up putting back the same 15 per cent on these items and pocket the profits. This afternoon I hear the hon. Senator say I should not threaten these unscrupulous businessmen.

I have been a businessman, I am still a businessman and I hope, one day, to return to business. I am not going to contribute towards any businessmen who feel they could hold the buying public to ransom and take advantage of government measures like these and be cowed into thinking that I am intimidating businessmen. No such thing. The businessmen I refer to are in the minority, and these are the unscrupulous ones. When we speak to businessmen, we speak to the Chamber of Commerce; the Manufacturers' Association and ask them to understand Government's policies so that when they buy in to those policies, they themselves will understand their responsibility in ensuring that the consuming public is allowed to get the benefit of any policies which reduce prices. That is what I said.

To suggest that I am here intimidating businessmen and that sort of intimidation affects the economy, in my view, is intended to mislead this House. Therefore, Mr. Vice-President, I am really not going to be able to accept that the measures we are taking are intended to cause the economy to sputter. As Minister of Finance, I am not going to spend money, as has been done in La Brea, merely for the sake of slowing down the economy. [*Desk thumping*] That is unproductive money. I am not going to be tempted to spend money for which the country has nothing to show afterwards.

In terms of containment of expenditure, we contain our expenditure on the basis that we do not allow wastage, spoilage and unproductive money to be spent. That is what I mean by balancing the books. But I am on record as saying that if there are surpluses, those would be directed into the development fund so that we can develop the capital budget of this country.

I have said on record that we are monitoring our finances and that by the end of June, if it is necessary, I will come to this very House and ask to increase the amount of money that we spend under the development budget, if the funds allow it. That is the way we hope to be able to get some more jobs going on in the country. But, for the time being, I am also on record as saying that there is a huge debt that I have to provide for by the end of next year, a debt of US $150 million

which was incurred in 1992 and at the then rate of exchange at $4.25 only brought in a little over $600 million and which I have to repay with almost $900 million. That $300 million increase does not take into account the interest we have had to pay on the debt in the meantime.

It is out of an abundance of caution of being able to meet that debt, that I had to budget for a surplus because I have to ensure that the credit rating which the country has now earned is maintained into next year. A debt that was incurred by the previous administration. So to hear that "merely to balance the books to a surplus" is not a desirable exercise—That is not the desire that we have—not just to balance books or create surplus, but to ensure that we can safeguard the tenets of the economy that are already there and maintain those tenets.

Mr. Vice-President, with respect to the question of the use of these duty-free concessions, I thought it was fairly public knowledge that duty-free concessions that are awarded under the Fourth Schedule of the Customs Act have to be applied for. They are not concessions you get as a matter of right, they are granted based upon certain applications that are made. Prior to the formation of TIDCO they were applied for at IDC, but now application has to be made to TIDCO.

Therefore a *bona fide* company that is doing business in the assembly industry has to justify its need for duty-free concessions; and it is within that context that this is now being given. The assembly industry which is considered to be a *bona fide* part of the manufacturing sector is now saying that it is entitled to get duty-free concessions like the rest of the manufacturing industry because it was promised by the previous Minister of Finance who had imposed an arbitrary 5 per cent, I think, in 1993. It is in that context that this Order is being done, so that the assembly industry can be brought in line and given the same treatment as the rest of the manufacturing industry.

Mr. Vice-President, there is every reason why I would like to commend this Order to this honourable House and I would hope that, having made those very few remarks that the Opposition would see the need to support us. I note that the hon. Senator said that he had no difficulty with it, but that his fear was that we were going to be creating an opportunity for the used-car industry. I would give the assurance, Mr. Vice-President, that the used-car industry is really not entitled to any duty-free concessions under the Fourth Schedule.

Until we make a specific policy decision with respect to used cars—and as I said in the last sitting of the Senate, we have a subcommittee of Cabinet that is

looking at the whole question of the used-car industry—I would think that the new-car assembly industry would be able to enjoy this particular benefit.

With these very few words, Mr. Vice-President, I beg to move. [*Desk thumping*]

Question put and agreed to.

RESOLVED: That the Customs Tariff for the Assembly Industry (Reduction of Duty) Order, 1996 be confirmed.

JURY (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Jury Act, Chap. 6:53 be read a second time.

Mr. Vice-President, this Bill attempts to reform the Jury Act and to make jury trial more effective. It attempts to ensure that a criminal trial may not be frustrated or stopped if, in respect of capital matters, the amount of members of the jury is reduced to ten; and in the case of non capital matters, reduced to less than eight.

The Supreme Court of Judicature Act, Chap. 4:01 makes provision for the holding of sittings of the High Court at specified places and at places to be designated by the Chief Justice at times appointed by him with the concurrence of a Puisne Judge. The Act also provides for special sittings of the High Court to be held if required by warrant of the President at times and places directed by the warrant.

Mr. Vice-President, clause 3 of the Bill seeks to make some provision for the interpretation and construction of expression used in the amendments proposed in the Bill which relate, at clauses 4 and 5, to the panel of jurors for every criminal session at Port of Spain, San Fernando, Tobago and now at places designated by the Chief Justice and at special sittings. These proposals at clauses 6 and 7 also relate to the adoption of alternate jurors in a criminal trial.

3. 55 p.m

Mr. Vice-President, the purpose of the proposed amendment at clauses 4 and 5 is simply to specify the minimum number of jurors who will now be required for the additional places to be designated by the Chief Justice and at special sittings.

The alternate jurors for whom clause 6 seeks to provide would be empanelled and would sit at the trial simultaneously but separate from the common jurors who constitute the original jurors and who try the facts of the case.

Mr. Vice-President, any juror, common or alternate, who is unable to continue would be replaced by the alternates remaining from whatever number the trial judge directed should be polled to constitute the panel of alternate jurors. It is proposed to amend section 21A(2) to spell out that alternate jurors may be called upon to take part even after the jury considers its verdict.

Mr. Vice-President, you will see that in the House of Representatives that amendment was effected. I am conscious however, of the amendment proposed by hon. Sen. Martin Daly, and I wish to assure him that I am giving consideration to his amendment and I shall await his contribution. I also assure him that I have a very open mind on this. One of the factors which influenced the insertion of the requirement to continue even whilst the jury was considering its verdict, was a situation where a verdict was taking a very long period of time and there was a question of more than one juror not being able to function. That was a consideration which influenced us.

In the formulation of laws and in dealing with laws it is the duty of all of us to keep an open mind. I wish to give Sen. Daly the assurance that the Government will keep an open mind and will obviously consider what he has to say and I hope that we would be able to have a consensus in this matter.

Clause 7 seeks to restate rules relating to challenges so as to remove the uncertainty which attends the challenge for cause to be made without stint about any matter which, on the commencement of this Act, that is August 22, 1922, would be good cause for challenge to pose.

May I point out that in clause 6, the court has a discretion and it is not that in every case a court would appoint alternate jurors. So the court obviously would have a discretion. It says the court may direct not more than 12 jurors.

In clause 6, Section 21A(3):

"Alternate jurors shall be drawn in the same manner, have the same qualifications, take the same oath, and have the same functions, powers, facilities and privileges as the common jurors.

(4) An alternate juror who does not replace a common juror shall be discharged after the jury delivers its verdict.

(5) In relation to alternate jurors, the prosecution and the accused in addition to the challenges permitted under section 23 shall be entitled as follows:

"(a) where one person is indicted, shall be entitled to one peremptory challenge;

(b) where two or more persons are jointly indicted:

(i) each shall be entitled to not more than one peremptory...

(ii) the prosecutor shall be entitled to one peremptory challenge in respect of each person charged."

Clause 7, as I said, merely sets out the facts that there can be peremptory challenges in respect of jurors and then in the amendment to substitute 23A (1) it says:

"The prosecutor and the accused shall be entitled to any number of challenges on any of the following grounds:

(a) that any juror's name does not appear in the Jurors Book, save that no misnomer or misdescription in the Jurors Book shall be a ground of challenge, if it appears to the Court that the description given in the Jurors Book sufficiently designates the person referred to:

(b) that any juror is not indifferent between the State and the accused;

(c) that any juror has been convicted of any offence for which he is sentenced to death or to any term of imprisonment with hard labour exceeding one year;

(d) that any juror is disqualified as an alien;

(e) that any juror cannot speak, read, write and understand the English language; or

(f) that any juror was returned to serve as a juryman contrary to the provisions of this Act relating to the summoning of jurors.

2. No ground of challenge other than those mentioned in subsection (1) shall be allowed."

Mr. Vice-President, in clause 7, section 23B it states:

"Every challenge shall be tried by the Judge, and there shall be no appeal from his decision."

Clause 8 of the Bill seeks to enable the trial judge to allow a juror supervised access to other persons upon matters not relating to the trial when the necessities of the circumstances so require.

This proviso would clarify doubts raised by recent decisions as to the power of a judge to do so in our courts. And may I explain this clause 8. The following is added:

> ",so however, that where the exigencies of such sufficient cause so require, the Judge may allow such supervised communication with other persons (not relating to the trial) as he considers fit and proper, and where appropriate the Judge at any time during the trial may require the report on oath of the Marshall thereon."

Mr. Vice-President, if a criminal trial is going on—assuming that the jury is sequestered—and a member of the jury wants to communicate with his or her spouse, and that communication takes place, it has been held by the Court of Appeal in Trinidad and Tobago having regard to the provisions of our Jury Act, that that communication can in effect amount to a communication which is not permitted in law and the trial would be regarded as null and void. With this amendment, for example, if a member of the jury wants to discuss with his spouse or a member of his family something concerning family matters under supervised communication administered by the judge, the judge can permit that kind of communication, bearing in mind that the rules already exist for the Marshall to be present at these communications and the judge has the power to have a report done, to have counsel present in order to get a report so that the parties to the matter through their counsel, can in effect know what the discussions were about.

Clause 8, is to try and prevent a jury trial from being aborted when there is a sequestered jury and a juror has to discuss legitimate matters with either his spouse or a member of the family or in respect of any matter.

4.05 p.m.

One saw quite recently in the *Trinidad Guardian* dated April 25, 1996 the heading where two trials had to be aborted. This Bill is an attempt to deal with that kind of matter. To put it in layman's language, if a jury trial starts and it is a murder trial, the law provides that the trial can go ahead with 11 persons. If it is a trial which is non-capital it can go on with eight out of nine persons. If for some reason whether by death, sickness or inability to attend a capital case ends up with

10 members of the jury, the trial cannot go on and it is nullified. It is in these circumstances that this amendment has been contemplated.

One should understand that in the olden days criminal trials were not as long as they are today. Therefore the criminal justice system must be reformed in such a way to meet the difficulties which confront it. Obviously, those reforms must be done in a fair manner which will ensure that there could be no possible prejudice to an accused person in getting a fair trial. In that context it has been regarded as providing a system as obtains in other countries, not only in the United States of America, but also in Grenada where there are alternate jurors in criminal trials.

I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. Vice-President, here we are this afternoon with yet another attempt by the hon. Attorney General to give the impression that he is doing such a wonderful job as Attorney General and so much to reform the legal system in this country.

The provisions of the Bill before us is yet another attempt at tampering with one of our institutions of long-standing. I refer to the jury system. May I hasten to add that we welcome some of the amendments or provisions in this Bill. We are of the view that with this particular institution in our society that has been in existence for such a long time, any attempt to reform or introduce changes in this system should be undertaken in a very comprehensive way and not just in an *ad hoc* manner as we can see from this particular Bill.

We heard so much about transparency and consultation. I believe that earlier on the Attorney General mentioned that a copy of the Jury (Amdt.) Bill was sent to the Law Association. Have consultations been held with the Chief Justice, the Registrar of the Supreme Court and members of the public? Has the public been allowed the opportunity to comment on this particular Bill? It is just another attempt in his haste. I understand his enthusiasm. He is an attorney-at-law with many years standing and I know there is a lot of enthusiasm to deal with some of the problems which he may have confronted in his practice as a criminal lawyer and constitutional law.

My argument is that if we are dealing with the Jury Act we should do it in a proper manner. Over the years several commentators have been calling for reform with respect to our jury system. In this Bill it seems as though it was yet another

wholesale copying of a system which operates elsewhere into our own jurisdiction. This Bill deals with the provision for 12 alternate jurors to be appointed. Why the need for 12 alternate jurors?

In a book written by Mr. Ramesh Deosaran entitled *Trial by Jury Social and Psychological Dynamics* at page 71, the point was made that there is a shortage of jurors in the country. At the time when this book was being published interviews were held with the then Chief Justice, Sir Isaac Hyatali, the then Attorney General, the deceased Selwyn Richardson, the Chairman of the Law Reform Commission, various state prosecutors and defence counsels among others. There was widespread discussion.

From the statistics which are provided in this book relating to trial by jury in Trinidad and Tobago, it is clear that a small pool of jurors exists in the country. Here provision is being made for 12 alternate jurors. The problem associated with this, quite apart from the small pool of jurors in the country, is that the possibility of juror tampering is being increased. That is a fact with regard to the operation of our system.

Page 71 of this book states:

> "On January 6, 1982, Justice Lennox Deyalsingh, commenting on the need for jurors, stated: 'The jury stands between the state and the individual and one of the important duties a citizen can be called upon to perform is jury service.' The grave matter of bribing jurors had also been raised several times in court and privately by judges. Jurors, too, had their own story. Many times, they publicly expressed strong dissatisfaction with their accommodation in court, or the length of time they spent in court waiting to be called to serve."

This was published in 1985.

> "The overall impressions conveyed by such widely publicized concerns suggest that all is certainly not well with the operations of the jury system in Trinidad. This point was strongly underlined by the President of the Bar Association, Mr. Frank Solomon, when he publicly criticized the presence of 'wayward juries' and the adverse conditions under which they operate. The President of the Law Society, Mr. Oswald Wilson, also concluded: 'Our jury system is one of those cherished institutions which now need a thorough re-assessment.'"

There were proposals for revisions.

"During the last five years, a number of other calls were also made for a substantial review of trial by jury in Trinidad. One of the more notable occurred in Parliament in 1979. In that year, the Government laid a 'White Paper on Law Reform' before Parliament. During the debate over that document, Mr. Hector McClean, a barrister, said:

It is about time in this country that one's attention be turned to the question of juries. There have been too many instances in which allegations of improper practices have been made against jurymen and I think that in any serious discussion on law reform it is necessary to look to the genesis of juries. How did juries come into being in the first place, and, indeed, the type of work that is administered in the Assize Court?

He talks about being judged by one's peers.

Mr. McClean gives the assurance that he was not arguing for the abolition of juries, he was instead making a strong plea for substantial review, especially since the jury system was inherited from colonial times."

4.15 p.m.

I have read this particular part of this book simply to make the point that we have a very energetic and enthusiastic Attorney General who is attempting to review our legal system. The point I am making is that we should do it in a thorough and comprehensive way. We need substantial review of the jury system. We are not against a review of the jury system in the country.

As has been highlighted, there have been several administrative problems associated with our jury system. There is the problem of physical accommodation. The court rooms, even in the new Hall of Justice, are relatively small. The way the courts are designed, they can only accommodate a certain number of jurors. Now there is a situation where the Government is seeking to increase the number by having alternate jurors and the Bill is stipulating 12 alternate jurors. If these jurors cannot fit in the jurors' box, it means that they will have to sit in the area designed for members of the public. This increases the opportunity for interfacing with members of the public.

There will also be the problem, if there are additional jurors, of cost. What about payment to these additional jurors? What about the cost of travelling to and from court? What about loss of earnings? What about the loss of productivity?

These jurors have to take time off from their jobs. There is also the question of housing accommodation when there is a jury that is sequestrated. There is the problem of additional work for marshals of the High Court because they are the ones who have to summon the jurors when necessary and to supervise them generally.

Mr. Vice-President, this whole question of tampering of jurors and some of the difficult problems which exist, were highlighted in an article by no less a person than Miss Dana Seetahal, who is presently a lecturer at the Sir Hugh Wooding Law School, an Assistant Solicitor General and someone who has worked in the office of the Director of Public Prosecutions for very many years.

In the *Lawyer* Magazine, dated January 19, 1994, Vol. I, No. 5, there is a very interesting article written by Dana Seetahal pertaining to two particular cases which were determined in the Court of Appeal. I believe the hon. Attorney General himself was the attorney involved in these two matters; the matter of *Bunny Brann vs The State* and *Mohammed vs the State*. A reading of this article highlights some of the concerns which exist with regard to jury tampering.

I have in my possession a letter dated March 26, 1996, addressed to the Attorney General, a copy of which was given to me. I do not wish to mention the name of the particular case, but it refers to a High Court decision which was recently delivered. It is a very controversial situation. In this letter, a complaint is being made that the state attorney had to complain about a Mr. R. Mohammed's enquiry regarding the address of the forewoman of this jury. He said that he suspected that Mr. R. Mohammed had ulterior motives. Not surprisingly, we have been informed that at least two daily newspapers had telephone calls from persons claiming they were jurors in this case and stating that they had been intimidated by R. Mohammed.

So, Mr. Vice-President, there are some very real problems that exist within our jury system and by increasing the numbers by so many alternate jurors, the problem is just being compounded. For this reason, I am in full support of the amendment being proposed by the hon. Sen. Martin Daly that instead of 12 jurors, that figure be substituted with three. We on this side fully support that amendment.

We have not really been provided with the empirical data to show that there are many cases being aborted whether for the death or the illness of a juror. So, it is our respectful view that if the Government is seeking to provide for additional

jurors so that a case can continue, we will support the measure insofar as a case is made that it be limited to three alternate jurors.

Another aspect of this Bill is the amendment with respect to peremptory challenges. We in Trinidad and Tobago are a very small society and there are problems associated with the selection and empanelling of jurors in our small multi-racial society. Under the system of peremptory challenges, it means that one can reject without any cause a particular juror simply by looking at him. It is my respectful submission that we should discontinue, if not reform, this system of peremptory challenge and maintain that system where there are challenges for cause.

At pages 242 and 243 of this book, *Trial by Jury: Social and Psychological Dynamics*, by Mr. Ramesh Deosoran, he was indeed very instructive on this whole question of peremptory challenges. In the last paragraph reference is made to a statement written by Lord Denning in 1982 when he wrote:

> "The peremptory challenge enables the accused to "pack" the jury with those whom he thinks will be sympathetic to his point of view. Just by what the jurors 'look like!' The accused will be the exponent of sex discrimination, hair-cutting discrimination, youth discrimination—any other kind of discrimination which suits his book. That is all wrong."

And, in Trinidad and Tobago, may I hasten to include racial discrimination.

4.25 p.m.

It is my submission that we should not use the jury system as a scapegoat for dealing with the problems in the criminal justice system. We know that there are many problems plaguing the criminal justice system and today we heard a lot about those problems with respect to the hearing and listing of court matters. These problems also have to do with the amounts of courts, judges, magistrates and state prosecutors we have.

Mr. Vice-President, it is a fact that the office of the Director of Public Prosecutions is understaffed and there is an acute shortage of state prosecutors, so it is a real difficulty when prosecutors have to appear in court throughout Trinidad and Tobago. I am sure my Friend, Sen. Debra Moore-Miggins, who is from Tobago, can testify to the fact that very often matters have to be adjourned for one reason or another. This is where one would have the problem of delays in the administration of justice.

This Government is tampering with the jury system to give the impression that it is reforming the law and so forth. Mr. Vice-President, by all means we welcome reform if it is in the interest and the future well-being of this country, but it should be done in a proper and systematic manner. We must have some comprehensive review of our jury system before rushing to Parliament with measures just to give the impression that something is being done to deal with the whole question of the administration of justice. Or, to give the impression that this new coalition Government—this Government of public relations and propaganda—is dealing with the crime situation in the country.

Mr. Vice-President, we got certain assurances from the hon. Attorney General that he is open to dialogue and consultation. I am suggesting that we should have some further discussion with respect to reform of the whole jury system. We need to enhance this whole administrative system to improve jury efficiency in this country, we have to provide better accommodation and we have to improve the physical facilities. Mr. Vice-President, to simply come here to increase the number of alternate jurors to 12 is really not a measure that we want to support, but as I mentioned before, we are in full support of the proposed amendment by Sen. Daly.

I thank you, Mr. Vice-President.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, I am in support of this Bill to amend the Jury Act, however, I have a couple of questions that I would like to ask. The Attorney General's response to the points raised by Members of this Senate during the debate on the last Bill was measured and logical; he spoke with such authority that I really welcomed the assurances he gave us. I am just hoping that, perhaps, he could provide some similar help in relation to a couple points arising out of this Bill.

My first question had to do with the mechanics of how it was going to operate but I think Sen. Mohammed covered those. I wonder—you will have to forgive me, Mr. Vice-President, as I do not have the language at my fingertips—when the jury retires to consider a verdict, will the alternate jurors also retire with them? If they do not and somebody dies in the middle of consideration, they would have to consider all over again. Perhaps the hon. Attorney General can enlighten me on that matter.

The other issue is, while he was speaking, he specifically mentioned the point about spousal discussions and family matters. I am a little uncomfortable about this, not because I think that there should not be such discussions, but we are

talking about criminal cases. The Attorney General made it very clear that the jury system applies to criminal cases.

Mr. Vice-President, while doing some research over the weekend—trying to find out what this Bill was all about—one of the judges to whom I spoke pointed out to me that in criminal cases, one of the possible things that could happen is the intimidation of family members of jurors. I wonder whether this would allow for withdrawal? I believe Sen. Daly told me that the correct term is "withdrawal on the grounds of evident necessity".

Mr. Vice-President, nothing could be more important in terms of a family matter that would call for a spousal discussion, than where a juror will be told by his spouse that a family member is being intimidated and unless that juror falls ill conveniently, something is going to befall the family member. We know what happens in criminal cases in this country. We know that witnesses get shot, files disappear, people are intimidated and irregularities do take place. It is not without the realm of possibility that intimidation of family members of people who are on the jury, will take place. I would be pleased if this Bill is attempting—and I think it is—to offer a measure of protection to these people.

We have experienced so many irregularities in relation to things that happen in criminal cases and over the last four or five years, it seems that the more financial resources the accused can collect the more likely it is that files or witnesses will disappear, intimidation will take place and cases will not be called. I picked up the newspaper this morning and on the front page I saw pictures of two prominent, wealthy businessmen who have been accused. The comments made in relation to that were very interesting and we would be watching this case with considerable interest to see how that criminal matter proceeds. While I am uncomfortable about that, I would like to get some information as to how it will work.

I am also uncomfortable about something else. I was really going to stop whatever I had to say but I thought this was worthwhile. There is a matter which was raised in the Senate today, which I think has been dealt with in a very cavalier fashion, and to my mind it is a matter of abuse of power and justice. It has to do with references made by several Senators about the dismissal of Major-General Ralph Brown.

When this matter was raised this morning—Major-General Brown is, after all, someone who did contribute in a very great degree and who was instrumental in saving this country from insurrection, the fact that he was fired by an ex-colleague

alongside whom he fought was notable. I thought that tradition of honour amongst officers and gentlemen was relevant here—when it was raised by Sen. Mohammed, I saw the Minister laugh. He sat there and laughed. To me, Mr. Vice-President, this was rather shocking. At the tea-break I picked up a copy of the *Newsday* in which it was reported that during the insurrection there were certain things that had to be done. I quote from the *Newsday* dated Sunday May, 5 which says:

> "'...but there was disagreement between Brown and Colonel Joseph Theodore, who was then head of the Defence Force and Brown's superior'.
>
> Acting President Carter advised that the soldiers take orders from their own commanding officer, Brown."

I do not know, Mr. Vice-President, whether the mention of Major-General Brown's dismissal this morning, caused Sen. Theodore to laugh. I certainly hope not.

4.35 p.m.

The question of credibility has come up a few times and it seemed to me, from what the Attorney General said in his winding up—and I have not spoken to him so I do not know what he feels about this other than what I read in the newspaper—that "if he is offended let him go to court"—that if this Bill relates to the protection of the jurors it is a really good thing. But what about protection for the major general and his family when we are living in a country in which, as friendly as certain parties are accused of being with the Jamaat Al Muslimeen, they have nonetheless gone free? If the major general has been instrumental in removing them from any chance of holding revolutionary power in this country, it does seem to me that it is not just jurors who can be intimidated. The very fact intimidates me. What protection is there for the major general and his family?

Sen. Daly referred to the zigzag explanations that arose out of this whole incident, and I must admit that I am very uncomfortable. I am uncomfortable with innuendoes, lies and character assassination wherever they come from. I am uncomfortable with the lack of accountability which accompanies so-called transparency. I am uncomfortable when boards of directors that are supposedly directing in the name of the public make movements to dismiss people without any explanation to the public in whose name they are acting, as to why and how they came to those conclusions.

Sen. Daly spoke about $450 million that other people have spoken about, and other various things that make us confused, uncomfortable and unhappy. This morning Sen. Dr. St. Cyr spoke about brute force winning out over ethics and morality in this country, and I was impressed with that.

I am hoping, Mr. Vice-President, that the Attorney General is not going to allow this kind of abuse of power to continue. I was so impressed, as I said, by the calm professionalism with which he dealt with matters that arose this morning that I raised this issue this afternoon so that something would be done about it.

Thank you, Mr. Vice-President.

Mr. Vice-President: Hon. Senators, the sitting of the Senate is suspended for half an hour. We would resume at 5.06 p.m.

4.38 p.m.: *Sitting suspended.*

5.10 p.m.: *Sitting resumed.*

Sen. Pennelope Beckles: Mr. Vice-President, I will be very short, and just raise some concerns in respect to the Bill.

As already indicated, our major concern on this side, is in respect to clause 6 that is the clause dealing with the alternate jurors:

> "The court may direct that not more than 12 jurors in addition to the common jury be called and empanelled to sit as alternate jurors".

Mr. Vice-President, as my colleague has indicated, our only concern was with what may have influenced the Attorney General to suggest the number 12. I know it is stated that there may not be more than 12 jurors, but we have not been provided with the empirical evidence to suggest in how many instances there would have been trials aborted as a result of jurors either dying or becoming ill and the fact that the necessity for matters to be aborted would have arisen. The issue of 12, I think may be a number which, in my humble submission could be considered to be reduced.

I would just like to indicate to the Attorney General that in terms of the substance of the Bill, I think this amendment would be particularly helpful. I know there have been two cases this year, in which the necessity for the trial to be aborted actually took place. What I would ask the Attorney General to also consider is that sometimes, even though we complete and make these amendments

to legislation, in practice, it is not always that easy for the legislation and the intention of Parliament to actually materialize.

Sometimes there are very simple issues of matters having to be completed very early at 1:00 p.m. or 1:30 p.m. because provisions have not been made for lunch for members of the jury. I think that when these various pieces of legislation are brought before this Senate, and efforts are made to deal with the administration of justice, we can also see that once some of these things are put into place—what may appear to be simple aspects—when matters start, we can look forward to some of them going much longer than that particular point in time.

In one of the cases—the Attorney General mentioned two cases which recently came before the court—that caused one of the matters to be aborted. What I would also ask the Attorney General to consider again, in some of the pieces of legislation that he would be looking at, is the whole issue of the capabilities of persons who are called on the jury.

That matter that was referred to by the Attorney General which dealt with a murder charge of straightener/painter Anthony James, where one of the persons who was sitting on the jury became ill after seeing some particular pictures of the deceased. The second juror actually appeared to be mentally imbalanced and that was only found out after a couple days when the juror started talking to himself during the trial.

Our present system, of course, does not in any way provide for such circumstances, and whilst it might be difficult to be able to determine if a person who is called to jury service, is mentally imbalanced, I think that it may be possible for us to put some sort of measures in place so that as we saw in the *Trinidad Express*—"Jumpy Juror delays justice"—would not occur. The juror started seeing some strange things. Therefore, we would want to put into effect some sort of system where the possibility of these things happening could be reduced.

In the American system where they have this similar system of alternate jurors, the Attorney General would indicate that it is very detailed and complicated where they actually interview the jurors and find out certain information about them in terms of their knowledge of the matters, where they had worked and other things about their health and so forth. They do not go into the meat of the matter, but by the time the persons are actually selected for the jury service, at least they are informed fairly well enough about those persons who are going to sit on the jury

so that the likelihood of some of the problems that have been occurring in Trinidad and Tobago, do not occur.

Very often there are persons, who are aware that they know the accused persons appearing before the court and sometimes, it might just be a matter of fear, or a matter of other things and it is only when they go to sit in the room together and they talk to the foreman that they realize from that discussion that they know "A" or "B" and at that stage, the trial has to be aborted. Therefore, I am saying that those issues might appear to be "little" but at the end of the day, the trial is aborted because of them and maybe, having brought this amendment here, at sometime we would be looking at it. I hope that the Attorney General would also look at the entire system so that some of these things that have been causing the trials to be aborted would also be looked at.

I know that having the system of the alternate jurors would mean, now, that some of these problems could be easily dealt with and we would not have a situation where we would have to start all over again. I am saying that even up front, before we reach to the stage where the trial has to be aborted, we could look at some of these issues. As a matter of fact, what could happen, is that the whole system of having the use of the alternate jurors may not even necessarily arise so that, as my colleague indicated, we are prepared to support the Bill with the amendment to clause 6 as stated in the amendment proposed by Sen. Daly, which is the reduction from 12 to 3 jurors.

As I have said, I am willing to hear from the Attorney General what would have influenced the issue of the 12 as distinct from any other figure.

Much obliged, Sir.

Sen. Martin Daly: I have had a very positive indication from the Attorney General concerning my amendments and I almost made him a vow of silence, but I do want to say a few words about this Bill.

5.20 p.m.

Again, Mr. Vice-President, I want to say what a good Bill it is. I also want to reassure my colleagues, just from my own perspective, that of course there are other political events, as I said earlier, surrounding this Government that make people jumpy. But this is a meritorious Bill, and I would just like to remind everyone that as the Attorney General said, trials have not only become longer, they have become much more dangerous. Therefore the time for alternate jurors is

more than here, and again, it is a specific requirement to meet a specific need and I think that the Government should be commended for bringing this legislation.

The administrative difficulties referred to in the contribution of Sen. Mohammed are administrative matters which the Government can take up. Conditions are much better than they were, and I am quite sure we can improve them. Therefore, Mr. Vice-President, with those few words, I would support the Bill.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, just a brief comment. I, too, would like to lend my support to the Jury (Amdt.) Bill, 1996, making provision for alternate supplemental jurors. I just want to deal with that article concerning the abortive trial to which the hon. Attorney General made reference. There are two matters there. Section 5 of the Jury Act, which is a disqualification section reads:

> "Every person shall be disqualified for being a juror who—
>
> is of unsound mind, or imbecile or deaf, or blind or afflicted with any other permanent infirmity of body or mind;"

Recently there was a case referred to by the hon. Attorney General in April. I would like to ask whether there are monitoring mechanisms to record in the Juror Book physical and mental capabilities of jurors. Do we have that? What happened is that there was some erratic behaviour of a juror who was talking to his friend; the judge and the lawyers present realized something was wrong with him; and the day before another juror had to be absent because she could not tolerate seeing a picture of some mutilated person.

Mr. Vice-President, are we seeing the need to address the question of the mental and physical endurance of jurors? A case had to be aborted because there were two jurors recently who could not take the "jamming", if you know what I mean. Are we having jurors who are serious cardiac or hypertensive cases? How does one check on this, not to mention the one who seemed to be a definite mental case? Are we seeing the need for us to ask, maybe, for an annual medical certificate for jurors? How does one monitor this?

One cannot have, in the middle of a case, people behaving as though they have been mental cases and so forth, or people who have physical problems. We have known of that, you know. We need persons who can really endure several weeks of a trial. How does one go about this? Not only having alternate jurors, but this case has to do with the mental and physical stability and endurance of jurors. I

think that this is one of the very serious recent concerns about the jury system we have.

I thank you, Sir.

Sen. Prof. Kenneth Ramchand: Mr. Vice-President, I do support the Bill and I do agree with Sen. Daly's amendment that the number of alternate jurors be reduced to three. Some of the objections to the amendments have been that the—

If we look at section 7 of the Jury Act which gives a list of exceptions, such as Members of Parliament, judges of the Supreme Court; magistrates and their clerks; justices of the peace; ministers of religion; mayors and deputy mayors; Consuls and Vice-Consuls; members of the Medical Board; licensed druggists; persons who, other than licensed shopkeepers registered under the Medical Board Act; barristers and solicitors; officers of courts of justice; schoolteachers; jailors and persons employed as deputies under them; members of the Defence Force, Police Service and Fire Service; officers and servants of the Post Office or the Customs and Excise department; pilots who are licensed under the provisions of section 5; members of the air crew and the spouses of the following persons. A whole list of exclusions, Mr. Vice-President, making sure that some of the people who are most qualified by training and education, who understand technical and legal issues, who are unlikely to be intimidated by judges and attorneys, are automatically excluded from the jury pool.

Mr. Vice-President, I have also been looking at the size of the jury pool and it does not seem to me to be large enough considering the size of the population. So in addition to the exceptions, there is a further depletion through persons who do not co-operate and send out all the names of those they employ who are eligible; persons who "beg off" and so forth.

One of the problems that this amendment is going to cause is that it is going to put a strain on the quantity and quality of the jury pool. There are one or two solutions, one could think about, to find a way of increasing the pool: one could reduce the size of the jury; one could try to increase the quality of those who already belong to the pool—that would take a lot of work, the kind of matter that Sen. Rev. Teelucksingh was alluding to; the jurors would have to be trained, it would be necessary to give them pre-trial sessions with the judge in the presence of counsel. One would have to teach them about proof and evidence, give them the right to ask questions and to take notes, allow them to take certain documents into

the room when they go to consider the case, and so forth. There is a lot of training necessary, one might even have to hold seminars for jurors.

Mr. Vice-President—we all want to go home early—I am supporting the amendment, but I am suggesting that because a system of alternate jurors, using 12 jurors, would put such a great strain on the jury pool, both in terms of numbers and quality, I would like to support Sen. Martin Daly's amendment that the number of alternate jurors be reduced to three.

I do so with a kind of confidence because over the weekend I ran up a pretty big bill ringing attorneys, asking them whether, in their experience—because no statistics have been presented with this Bill—first of all I asked them how many trials have been aborted as a result of jury depletion; and they said not many; and then I said, of those that had to be aborted, how many were aborted because more than three jurors fell out. Nobody could remember any such instance. So, three, except in times of war or the shooting of jurors and so forth, would be a safe number. That is why, Mr. Vice-President, I support Sen. Martin Daly's amendment, but I recognize the dangers of the times we live in and if they want to go to four, maybe, I would support that too.

Thank you.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, I think I will be correct in saying that it appears that with respect to this measure, the Opposition and the Independent Senators have agreed, in principle, with the measure; but there have been some reservations, and in particular, having seen the amendment proposed by Sen. Martin Daly, I gave consideration to the matter with respect to alternate jurors. Probably in explaining this, it will answer some of the matters about which Sen. Diana Mahabir-Wyatt wanted to find out.

Mr. Vice-President, how can I explain this? When a trial is being held, if there is a system of alternate jurors, they are sworn just as the common jurors are sworn. They are kept nearby; they are not kept in the same jury box. Whilst the evidence is being led they would be listening, as the common jurors are listening.

5.30 p.m.

Mr. Vice-President, if for some reason during the trial one, two or three members of the common jury become ill or unable to act and the judge agrees that those be relieved, the alternate jurors who would have listened to all the evidence also, would in effect fall into place. When the common jury, however, retires to

consider its verdict the alternate jurors cannot be in the same room and cannot listen to what has happened. That is not how the system operates; then there would be possible interference and there would be other persons around. The alternate jurors are in a separate room.

The principle of having the alternate jurors coming in after the jury has retired would have posed a problem—and that is one of the amendments that Sen. Martin Daly has proposed—because it can be argued that you would be treating the accused very unfairly in that there would be a situation where a person would be coming in after the jurors may have started to discuss the matter and certain positions would have been taken. Therefore, there are strong reasons why, after the jury has retired to consider the verdict, there should not be a situation where alternate jurors can supplement the common jurors.

May I mention, however, that one of the reasons which prompted the Government to have that particular clause inserted was the fact that there is a tendency now in relation to certain kinds of matters, for the deliberations to take longer than is normal and, therefore, if there is a situation where the jury is considering its verdict for two or three days, that is the only risk in the whole matter. Again, one has to consider that the price of justice is sometimes very high and the state may have to pay that price in the event that there is a consideration for a long period of time.

The alternate jury system obviously, which members have agreed with, is trying to fill that loophole, if I may use that expression, where you can have a trial starting and sometimes it can last for months, a lot of money is spent by the state; there can be witnesses brought down from abroad, the judge takes a whole month and if for some reason or the other two jurors become ill, that is the end of the matter. We are living in a world in which accused persons—one sees what happens with respect to certain kinds of trials and, therefore, one merely has to try one's best to see whether one can have procedures which will be fair and will be able to achieve some of the objectives. It is in this context that this Bill has been presented.

I would also like to answer the point made about the supervised communication between the juror and members of his family or whoever the person may be.

Mr. Vice-President, when a jury is sequestered the state has a duty to ensure that there is no risk of contamination of that jury and this risk of contamination of

the jury would include the juror not being able to communicate at all with members of his family. What has happened is that there have been instances where, for very legitimate reasons, as I have mentioned, if the member merely communicates, it has been held that that renders the trial null and void. The clause does not make an automatic right for the juror to communicate; it is "....where the exigencies of such sufficient cause so require, the judge may allow such supervised communication with other persons as he considers fit and proper, and where appropriate the judge at any time during the trial may require the report on oath of the marshall thereon." In practice how it happens is that a request would have to be made to the marshall—the marshall is watching the jury—and the marshall will then communicate with the judge, but the juror will have to say exactly what is the reason because the marshall will get the information from outside. Let us say if a member of the family is dead or some member of the family is ill, or a daughter of a mother on the jury is going away on illness, that information will be communicated and the judge would then be able to arrange it in such a way that in his discretion, with the proper supervision, he will be able to have a report and monitor what would happen then.

In a criminal trial a judge is in charge to ensure that there is that fairness. We are putting this responsibility on a judge who is presiding at the criminal trial. If, for example, a juror's husband or member of the family got a threat that may not be a matter that a judge may consider should be reported to the particular member of the jury, it would be the discretion of the judge to decide whether he would permit the communication and under what circumstances that communication would be permitted.

I think however, that I owe a duty to say that in respect of some of the matters raised by Sen. Mohammed, I do not think it was very fair for her to say these things because this Bill really does not tamper with the right to jury trial. As a matter of fact, if this Government really wanted to tamper with the right to jury trial, it could have brought a Bill with a simple majority to abolish the right of the jury, because the right to jury trial is not a constitutional or fundamental right. The judicial committee of the Privy Council has held in a case in Jamaica that a right to trial by jury is not a fundamental right.

Sen. Mohammed: Mr. Vice-President, on a point of clarification. I would just like to let the hon. Attorney General know that I talked about tampering with the jury system, and not the right, and a fundamental right.

Hon. R. L. Maharaj: If this administration wanted to tamper with the jury system which was opened, and if it wanted to abuse power with respect to jury system and jury trial, it could have done that.

We believe that the jury trial is an important safeguard. It is there to ensure that people get fair trial in respect of serious offences and we want to ensure that jury trials are not frustrated, and that the system is not contaminated.

In other jurisdictions, other commonwealth countries have even gone for a majority verdict, that is to say in respect of murder cases. You do not have to have a unanimous verdict, you must have a majority verdict. We have not gone for this in this Bill.

With respect to consultation and information from the public, we have done our best and as I have mentioned, we have tried to see whether there can be more opportunities available. I would like the hon. Senator to know that when we were in Opposition and when the government was being accused of not having proper consultation and legislation, the Opposition party at the time recognized that it also had a duty to ensure that the public was informed—and the Opposition party had forums, had opportunities where people would have been able to air their views. Then we brought it to the Parliament and said we had met with the Maxi-Taxi Drivers' Association, the Land Tenants Association, and this is what they said. We did not just do it like that.

I think that the Senator could help the parliamentary system because the Opposition is a very important part in the democratic process, and the Opposition must show that it is an alternative government and it must show how it would operate if it got into government. In this case the alternative government would not be government for a long time.

5.40 p.m.

I think with respect to Sen. Diana Mahabir-Wyatt, I could only assure her that this administration is committed to upholding the rule of law in respect of the matter she mentioned. We are conscious of the fact that sometimes when a government is involved in reform, there can be action which may be construed as not acceptable. If a government in respect of state boards or any other matter has the public interest at heart, then obviously, it would have to take action to protect public interest. Sometimes, in executing a plan to protect public interest, the immediate reaction may be that it is wrong, but in the long run, perhaps those who

have that perception would recognize that what was done was in the best interest of the country.

Sen. Prof. Spence: I wonder if the hon. Attorney General would not agree that it would perhaps be appropriate for the population to be given the principle, the way in which it is being protected; the policy behind the action, so that if the policy is clear, then perhaps the action may be judged differently.

Hon. R. L. Maharaj: In the United Kingdom, the United States of America, Australia and in the Commonwealth or any country with a commitment to the democratic process, there are certain areas of government which at times cannot be disclosed. In respect of matters in the United States of America, there is freedom of information legislation. In that context the Government merely has to accept some of the criticisms that it gets and hopes that later on, by its subsequent conduct and action, it would show that its action at any given time, on any particular topic was vindicated.

Sen. Prof. Spence: I was not referring to any particular issue. Surely, the Attorney General's response could not apply to all state boards and the other state enterprises. These could not all come up under the rubric of defence matters which cannot be discussed.

Hon. R. L. Maharaj: The hon. Minister of Finance has given the criteria for the membership of the state boards and we have published it. One does not want to get into that aspect of it. I am sure if there is a motion in Parliament in respect of any particular board or matter, this Government would be quite open, subject to whatever restriction, to give whatever information is required. I take the point from the hon. Senator that the Government must obviously be aware that there is this perception at times when reform is being done in order to protect public interest.

The only other matter I think I need to respond to is that of Sen. Prof. Ramchand. He also spoke about the whole question of the heavy strain which it would put on the jury system. We know that there is a problem with respect to getting people to serve on the jury. There is also the situation where at some time you cannot get a sufficient panel. I would like Members to know that according to the amendment there is no guarantee that in every trial there must be six, nine, 10 or 12 alternate jurors. There may be an ordinary trial or a special sitting. I ask that Senators bear that in mind. The clause says that: "The court may direct that not

more than twelve jurors in addition to the common jury be called and empanelled to sit as alternate jurors."

I take the point generally that we should look into the whole question of the amenities made to members of the jury and the point that Sen. Teelucksingh made, that one has to look very closely at the mental conditions of some of the jurors. Under the system which operates one would only know the physical condition of the jurors. One would be very fortunate to know beforehand the mental condition of a particular juror. If the information is obtained, then it could be given to the marshall, judge or the prosecuting attorney, and he could challenge that juror on the basis of his condition.

Sen. Rev. Teelucksingh: Hon. Attorney General, what do you think about an annual medical certificate for all the people on our list? Is this asking too much? At least we have to make a start.

Hon. R. L. Maharaj: I would not be able to answer that in fairness to the Senator because I do not know if the machinery is in place, and if one wants that, how long it would take. I can assure him that the whole question of the Jury Act and the criminal justice system has to be looked at. Steps are being taken to look at it comprehensively and the Jury Act will be part of that.

Some reform cannot wait until a comprehensive study is done. This is one such reform which needs reasonably quick action. It is in this context that this particular piece of legislation is brought. I ask that it be regarded in that way.

Sen. Prof. Ramchand: Can the Attorney General give us a sense of how the wind is blowing by commenting on perhaps the need to train the jury we have and to set up a different relationship among them, the judges and counsel, so that they can form a group when trying to arrive at a verdict and understand the issues before them?

Hon. R. L. Maharaj: Mr. Vice-President, I feel that I am in a witness box today. I appreciate it very much. Before one does that one has to conduct a proper study. In the United Kingdom there were all sorts of royal commissions on criminal procedure. We have had very little in that respect. Some reform would need that kind of study and others would need looking at how the system works. I am unable to say what system would be put in place. I give the assurance that the criminal justice system must be looked at comprehensively in terms of reform and review. The whole question of procedures in criminal matters must be looked at to ensure fairness and that trials would not be as long as they are. In the criminal justice

system as there are measures for discovery, there are measures for pre-trial work. Maybe we should follow the system which operates in other countries, that in respect of a criminal trial nobody must hold anything up one's sleeves. There must be a system whereby there could be discovery and people would be able to get information. The system might work smoother.

5.50 p.m.

I want to make it quite clear, however, that that has not yet been decided, but those matters are being explored with a view to bringing pieces of legislation for debate.

Mr. Vice-President, we on this side would very much like to accept the substance of the amendment proposed by the hon. Sen. Martin Daly, but, with respect to the 12 jurors, we would ask for six in light of the fact that there may be a long criminal trial, which in some circumstances can possibly last two and one-half to three months. We can foresee that at some stage of our history we may have a trial lasting three months. The fact that we have "not more than six" would not in any way affect the rationale of the objection.

I would also go with the proposal made by the hon. Senator that the alternate jury should really cease at the time the jury retires to consider the verdict. In other words, there should be no situation where the alternate jurors should be able to participate at this stage of the trial.

I have instructed my department to draft the necessary amendment and I will deal with it at committee stage. 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 5 ordered to stand part of the Bill.

Clause 6.

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

Sen. Daly: I withdraw my amendment to clause 6 in favour of what is being proposed.

[Amendment withdrawn]

Mr. Maharaj: I beg to propose the following amendments:

(a) In line 2 of the new subsection 21A(1), delete the words "twelve jurors" and substitute the words "six jurors".

(b) In line 4 of the new subsection 21A(2), delete the words "at any time during the trial" and substitute the words "prior to the time the jury retires to consider its verdict".

(c) In line 3 of the new subsection 21A(4), delete the word "delivers" and substitute the words "retires to consider".

Dr. St. Cyr: We are leaving discretion so that the alternate jurors be anywhere from zero to six. Do we want to do that? Who will decide how many are needed?

Mr. Chairman: The way the clause is worded, it says that the court will decide the number.

Dr. St. Cyr: So my substantive question is: Are we happy to leave it like that?

Mr. Maharaj: The court will decide that in the exercise of its discretion, in a judicial manner. That is the best way to do it.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clauses 7 and 8 ordered to stand part of the Bill.

6.00 p.m.

Mr. Maharaj: Mr. Chairman, just to make it quite clear, in my contribution in the House—and this amendment has come from the House—there was an amendment to clause 6(2) in the House which was, that after the word 'trial' there were the words, "including during the retirement of the jury to consider its verdict" which has been deleted, having regard to the amendment.

Sen. Daly: Could you formally propose the amendment?

Clause 6 recommitted.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 6 be further amended by deleting the words, "including during the retirement of the jury to

consider its verdict." This is the amendment which came from the House with respect to clause 2.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

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

Senate resumed.

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

EVIDENCE (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Evidence Act, Chap. 7:02, be now read a second time.

The purpose of this Bill is to make documents which are attested in a foreign country and purporting to bear the seal or signature of a notary public or a commissioner for oaths or any other person, duly authorized by statute to administer oaths or take statutory declarations in that country, to permit that the documents be admitted in evidence, subject to the normal rules of evidence.

Mr. Vice-President, section 19 of the Evidence Act, Chap. 7:02, provides for the admissibility into evidence in the courts of Trinidad and Tobago documents affixed or imposed with the seal and signature of any diplomatic agent of Trinidad and Tobago in a foreign country.

The Evidence (Amdt.) Bill 1996 seeks to enlarge the scope of section 19 by the introduction of a new subsection 1(a), in order to make admissible into evidence, into any court in Trinidad and Tobago, documents attested in foreign countries and purporting to bear the seal and signature of a notary public, commissioner for oaths or any other person duly authorised by statute to administer the oaths in that country.

Prior to 1988, it was a practice in this jurisdiction to allow affidavits and other documents sworn before notaries in non-commonwealth countries, where the office of Commissioner of Affidavits does not exist and there is no resident consular officer to be used in court proceedings. This facilitated our nationals

resident in foreign countries from whom affidavits may be needed and who do not have ready access to consulate offices in Trinidad and Tobago. But in the case of Pronan Inc. v the National Gas Company of Trinidad and Tobago, High Court Action No. 3848 of 1988, it was held that documents sworn before notaries in foreign countries were not admissible as evidence in the courts of Trinidad and Tobago, as such documents did not comply with the requirements of the Commissioner of Affidavits Act, Chap 6:52, which relates to the appointment of commissioners in Trinidad and Tobago or the Diplomatic Agents and Consular Officers, (Oaths and Notorial Act), Chap. 17:03, which, not unlike section 19 of the Evidence Act, makes admissible in evidence, only those documents attested by a Trinidad and Tobago diplomatic agent or consular officer.

This court decision has resulted in undue hardship and inconvenience for our nationals resident in foreign countries and the amending legislation attempts to remedy the situation by providing that such documents, which are signed, as mentioned in the Bill, can be admissible in evidence and that this Bill will therefore regard those signatures as evidence as if they were duly sworn in Trinidad and Tobago.

The Bill also proposes a consequential amendment to the Second Schedule of the parent Act to enable fees to be taken by the appropriate officers of the judiciary and the magistracy in respect of those documents.

Mr. Vice-President, I should mention that I have been given a draft of Sen. Martin Daly's amendment and have been looking at it, but I must confess that I did not get much time to consider it. It seems that the concept of the Bill is accepted but it has to do with the drafting. Perhaps I would probably hear what Sen. Daly says and that will give me some time to look at it and discuss it with officers from my department who are here.

I beg to move.

*Question proposed***.**

6.10 p.m.

Sen. Pennelope Beckles: Mr. Vice-President, first of all, let me say with respect to the amendment circulated by Sen. Daly, I looked at it but I would like to have a little more opportunity to be able to properly respond to it. To my mind, it makes considerable changes to what is proposed by the Government.

As it relates to the amendments suggested by the Government, as I understand it, this Bill is seeking to allow documents attested in foreign countries and purporting to bear the seal or any signature of a notary public, commissioner for oaths and any other person duly authorized by statute to administer oaths in that country. The difficulty that I have with that amendment is, whether or not there is any reciprocity between Trinidad and Tobago and those other countries. Of more fundamental concern is, who are the other persons duly authorized by statutes to administer these oaths? It is specified notary public and notary public is accepted internationally and I really cannot see that we would have much difficulty with the issue of the notary public.

With respect to the whole development as it relates to the commissioner of affidavit, those persons normally have what we might refer to as local jurisdiction. Even in Trinidad and Tobago the commissioner of affidavit would normally be a person who deals in a particular jurisdiction, be it whatever county, such as St. George East and West, San Fernando, so that they, as I understand it, relate to particular local jurisdictions. So that when we say "any other person duly authorized by statute to administer oaths in that country"—Mr. Vice-President, I just wondered, that outside of the notary public and the commissioner for oaths, why would we want to have such a wide list of persons. Clearly it might just suggest that when we say "any other person" there might be a situation where documents could come in from different countries, even though they may be authorized by statute they may not have the recognition of the notary public in terms of what is acceptable under international law. Therefore, that is our major concern.

I am sure the Attorney General and other attorneys on the other side would recognize that very often when affidavits are sent to Trinidad and Tobago or, if it is necessary for Trinidadadians and Tobagonians to send affidavits abroad, the extent to which they concern themselves with the nature and quality of the persons who are actually responsible for ensuring that those documents are properly attested to. As a matter of fact, some of the requirements are very, very stringent. Very often when it is requested that documents are attested to in Trinidad and Tobago to be sent abroad, most other countries insist that the documents are attested to in the presence of a notary public. The reason behind that is because that is hardly ever questioned in any other part of the world. But when you come to putting notary public, commissioner for oaths and then you say "any other

person," Mr. Vice-President, we have a serious difficulty with that, because we are not in a position to say exactly who these "any other persons" would be.

Arising from that then, would be the consideration of what are the qualifications of these "any other persons". Would we be simply satisfied to say that "any other persons duly authorized by statute in another country" is sufficient to be able to have those documents properly attested and then sent back to Trinidad and Tobago and we accept them?

Mr. Vice-President, I looked at the contributions of the Attorney General and the Minister of Legal Affairs in another place. What they were indicating was, that those documents, having been duly attested, are simply *prima facie* evidence that was duly sworn and that such documents shall be as effectual as if administered, taken or done by or before any lawful authority in Trinidad and Tobago. So that what I understood that to mean is, as it relates to these documents going before the court, there is still the Supreme Court Rules Order No. 38, and the rules of evidence relating to the criminal law which would then decide on the validity of those documents before they are actually put into evidence. So that the concern as it relates to those documents having more than just *prima facie* evidence, being effectively sworn to, would have been put to rest, but the concern as I said, goes a little further. The question as to whether it becomes admissible is another issue.

Mr. Vice-President, I ask: what are the qualifications of those persons: “any other person duly authorized by statute to administer oaths in that country”? I think our concern in Trinidad and Tobago is always to ensure that we do not have mediocrity and allow all sorts of persons to say that what is written in a document is true and correct, and we simply accept it as good information.

Mr. Vice-President, we can have a situation where citizens of Trinidad and Tobago, realizing that this particular Bill becoming an Act is in place and saying well, look this person here is duly authorized under their statute to administer an oath, therefore, you do not go to the normal acceptable notary public and you go to those persons. I am sure that those of us who would have travelled sufficiently would notice that there are all sorts of persons who qualify in some places to be notaries public and the commissioners of affidavits. So the point is, are we going to get into a situation where we would simply accept that? Assuming for argument sake that those persons may have qualified under their particular statute for whatever reason, we subsequently found out that those persons, maybe, are of questionable character, in what position does it put the Trinidadian or Tobagonian

who would have been exposed to that particular situation? As I said, that is our major concern.

I am hoping that the Attorney General, in his winding-up, would indicate the reason for that very wide provision of "any other person duly authorized by statute to administer oaths in that country." I feel that particular clause in that amendment is likely to be abused, and persons who want to have all types of affidavits sworn to abroad can use and abuse that particular aspect of it. I am hoping to hear from the Attorney General in terms of why that particular clause is so wide—Mr. Vice-President, I know that all the attorneys here in the Senate would know.

Again, I remember reading the Attorney General's presentation in another place that sometimes it is absolutely necessary, depending on the nature of the matter that is before the court, to get these affidavits in support of one's different applications because the various persons needed to support those applications may not even be living in Trinidad and Tobago and therefore one may have to go to the United States, be it the Far East, wherever it is. I do not think we have a difficulty in recognizing that at times it is absolutely necessary to have these affidavits come from abroad. Our major concern on this side is to ensure that we meet the criteria of international standards and to ensure that persons do not casually get affidavits sworn to and filed in other places and simply send to Trinidad and Tobago and say, "well, I am one of the authorized persons under our statute to administer oaths and therefore the documents could be accepted as being properly sworn to."

6.20 p.m.

Mr. Vice-President, as I have indicated, I hope that the Attorney General could address those concerns that I have raised which are all major concerns. If the Bill is saying that it would be *prima facie* evidence being duly sworn, we would not have a problem with that, except for the fact that I think that those persons who then have the authority to authorize and administer those oaths should be persons who are accepted internationally.

With respect to Sen. Daly’s amendment, as I understand it, and indicated to him that other than having it now, I would not have had sufficient time to really do some research on it. I will be happy if I could get a little more indication from him as it relates to that, because my major concern is that whether or not—

SITTING OF THE SENATE

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I beg to move that the Senate continue to sit until the conclusion of the debate on the Evidence (Amdt.) Bill 1996.

Question proposed.

Question put and agreed to.

EVIDENCE (AMDT.) BILL

Sen. P. Beckles: I am hoping that I would be able to get from Sen. Daly, a little more insight into this amendment. As I understand it, in terms of Order 38 of the Supreme Court Rules dealing with the civil aspect and the normal rules and regulations of the criminal law as it relates to the admissibility of the documents becoming evidence, I am just wondering whether or not his amendments are saying that these documents, having been duly attested to and sworn, actually become evidence in any court in Trinidad and Tobago.

I am not sure if my understanding of it is correct, but assuming that it is, then it becomes even more critical that this—"any other person duly authorized by statute to administer oaths in that country"—very wide clause, outside of the notary public and the commissioner of affidavits, I think it becomes even more important that this particular area is very clear and precise. We do not know what will be the qualifications of these "any other persons..." so that I would want to get Sen. Daly's contribution on that particular aspect.

Thank you, Mr. Vice-President.

Sen. Martin Daly: Mr. Vice-President, this apparently simple matter is very difficult indeed and I had hoped that we would have had the assistance of completing amendment from the Opposition but there it is.

What I am actually going to propose, Mr. Vice-President, is that I hope that we would have some more time to consider this. Let me explain what I see is the problem and what my difficulty is, and I am trying to be reasonable.

An affidavit and a statutory declaration in Trinidad and Tobago are normally sworn before a commissioner of affidavits. A commissioner of affidavits is someone who is given some kind of licence—I have not really checked it—but I am sure Mr. Vice-President knows much more about this than I do. A commissioner of affidavits is someone who has been approved by the appropriate

authority and given a licence or a permit to act as a commissioner. Once he puts his stamp on an affidavit, it is accepted in the court that he is a commissioner and he has really put his stamp, and it is not a forgery and so forth. One does not have to actually call the commissioner of affidavits to give evidence to the effect that he has put his stamp on a particular date. Therefore, if one is putting in an affidavit or a statutory declaration taken in Trinidad and Tobago, there is no problem.

I am explaining this for the benefit, as I understand it, of my colleagues. I want to emphasize that affidavits and statutory declarations are needed for many, what one might call, routine purposes, particularly to do with a person's status. One has to sometimes tender these documents in relation to births, deaths, marriages, divorces, visas; fairly routine things, paternity and things of this nature. It is not necessarily to do with high profile court cases or criminal matters.

The problem is, that one may be a national resident outside of Trinidad and Tobago, and may need to provide an affidavit or a statutory declaration for some purpose, including those routine purposes which I mentioned. If a person has that document dealt with—and I am using the Trinidad language—by a consular officer of Trinidad and Tobago for example—we have an ambassador, I think, in Washington, we have consular officers available in New York. I do not know if we have consular officers in Miami, we may or we may not. Certainly there are persons living in Maryland, Baltimore, Boston and all these different places, where we do not have consular offices and also we do not have diplomatic agents. I take it that diplomatic agents would be some kind of honorary fella—like the "fire by fax person"; anyway, a representative of the Government. There can be a diplomatic agent, and if there is one of those, then one can go to him, have his document sworn, and likewise, one does not have to prove that fella really—what is his name, Lee?

Hon. Senator: Lau.

Sen. M. Daly: —that there was a Mr. Lau in Hong Kong and he had not, up to the time that he was fired by fax—have to prove that he was not fired by fax. It is accepted on the face of the document. You see, even in the United States, and I gave the examples, Maryland, Baltimore, Memphis, wherever, and we meet these people in carnival bands and at the Lions Civic Centre every year. They come from all over the United States. It would mean that they will have to go to New York, fly from Baltimore or Maryland, Memphis or wherever and go to the place where there is a consular officer or diplomatic agent with the attendant expense and

difficulty. I think what is being attempted, is to provide some facility whereby, if one is living in Boston or Malaysia or some place like Tuvalu where there is no representative at all, but there is need to provide an affidavit, one has to have some facility for getting it sworn.

Putting aside the drafting difficulties, I think that is what the Government is trying to achieve. In Tuvalu, they may not have notaries public or commissioners for oaths, they may be called "swearing fixers" to use a word and they may be appointed under a "Swearing Fixers Act" of Tuvalu 1902 and one wants to be able to recognize the validity of what they have done. I believe that is the problem the Government is trying to address. The difficulty about extending it like that, although there are good practical reasons to assist nationals—and I keep emphasizing this is frequently needed in relation to births, deaths, marriages and status things, legitimacy, paternity and things like that—is that people could pretend to be " affidavit fixers" or "swearing fixers" and you would not know. So the point taken by Sen. Beckles that we are losing control over the class of persons whose attestation we will accept is well taken. I will come back to that.

6.30 p.m.

My concern in the amendment is that I want to make the document as neutral as possible and I certainly do not want it to have any advantage that it is *prima facie* evidence of anything. Apart from the poor drafting, a document cannot be *prima facie* evidence of anything except its contents. What I tried to do in my amendment is to make sure that we are not giving the document any better status than a document sworn before a consular officer, and therefore I have followed the language of 19(1) in relation to consular officer as closely as I can in relation to this other class of persons whose oaths we are going to accept.

I certainly totally reject *prima facie* evidence, because then it puts a burden on someone. It makes the document non neutral and more weighty than an oath taken under 19(1). So my amendment was designed to follow the format of 19(1) as closely as possible in relation to these other people. I do accept, having heard Sen. Beckles, that we do have another problem which is, we are really losing control of this class of persons. Maybe, there needs to be some more thought put into this to see whether we can narrow the class, at least, by not maybe excluding any other person duly authorized by statute to administer oaths. It is a difficult problem because not every country will have a notary public or a commissioner for oaths. They may have some completely different type of swearing system.

So that, if this is to be passed, while I would like it done in terms of my amendment, which I tried to make consistent with 19(1) to keep the document as neutral as possible, I do not know whether the Government would be prepared to see whether there are any other safeguards we can put in, which is why we may have to give some more thought to this.

To summarize, Mr. Vice-President, I see this as attempting to solve a practical problem for nationals abroad. The language of the amendment should be as neutral as the language of 19(1), but maybe we need to think some more about how we control this wide class of persons whose oaths we will accept.

Thank you, Mr. Vice-President.

The Attorney General (**Hon. Ramesh Lawrence Maharaj**): Mr. Vice-President, I must thank hon. Sen. Martin Daly for the contribution he has made, because I think he was able, with all his experience of advocacy, to really put this matter in perspective. I think, if I may add a little to that, when the document comes there is no requirement to prove that it was signed by X, Y or Z. It does not necessarily mean, if it contains hearsay evidence, or evidence which should not be admitted, that the judge automatically has to admit the evidence. It also does not mean that if, for example, you need depositions to be admitted in criminal trials, the fact that you pass this amendment that an affidavit can be put into a criminal trial.

I have spent some time getting the basis of this Bill, because as I said, I met this Bill, which was done by the last administration; and I wanted to find out why it was that this Bill had to be passed. There are many cases of wives who lived in other jurisdictions where there are no commissioners of affidavits, no notaries public and there are other functionaries authorized by statute to swear to these matters. It has to do with maintenance, children, and all sorts of matters. Unless something was done where there was a situation where not only the rights of people would be affected, but they would not even have the money to go elsewhere to try to get a commissioner of affidavits in another jurisdiction. So it is in that context that the Law Association looked at this Bill.

Even in the other place there was a point raised by the Opposition that, to limit it to the question of the commissioners of affidavits and the notaries public, would be doing some injustice to many people. We decided the safeguard really was that if, for example, there is an affidavit sworn to by Mr. A, in a particular part of the world which does not have a notary public or a commissioner of affidavits, and the

husband or the other party believes that that is not a proper affidavit, there is still an opportunity to challenge it because it does not have to be accepted by the court. I would agree, however, with hon. Sen. Martin Daly, that the law should be clearer; and in respect of his proposed amendment, I think it would be better understood and would avoid *prima facie* evidence which can be misleading.

The gist of his amendment would mean that the document which is attested to in a foreign country "and purports to have affixed, impressed or subscribed thereon the seal and signature of a notary public, a commissioner for oaths or any other person duly authorized by statute to administer oaths or to take statutory declarations in that country"—words to the effect that such document shall be admitted in evidence in any court of Trinidad and Tobago without proof of its seal or signature or due authorization and such document shall be as effectual as if administered, taken or done by or before any lawful authority in Trinidad and Tobago. That is the gist of hon. Sen. Martin Daly's amendment.

In principle, I would agree with that, and I have given instructions to have the draft done, but it will probably come in different wording. May I say that the Government accepts the fact that the principle is there and the drafting language should be made clearer. I accept that, and I beg to move, Mr. Vice-President.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Prof. Spence: Mr. Chairman, while that is being done, could I make another suggestion for an amendment? I want to get the concept that "any other person duly authorized by statute to administer oaths" should only come in if the notary public or the commissioner for oaths is not available.

Mr. Maharaj: As a matter of fact, Mr. Chairman, that is what I was now thinking of doing. What we can do is—

Mr. Chairman: Shall I get the committee stage going and then we can discuss this?

6.40 p.m.

Clause 1 ordered to stand part of the Bill.

Clause 2

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

Mr. Maharaj: Mr. Chairman**,** may I propose that in respect of clause 2, after the word "or" in line, 5, it should read:

> "where there is no such office any other person duly authorized by statute to administer oaths or to take statutory declarations in that country..."

Then we would come to the written amendment that is before us which reads:

> "In line 9, delete the words '*prima facie* evidence that it was duly sworn', and substitute with the words 'admitted in evidence in any Court of Trinidad and Tobago without proof of its seal or signature or due authorisation."

This takes in what Sen. Daly said in the latter part, and in the first part what Sen. Prof. Spence mentioned.

Mr. Chairman: Hon. Senators, before we take that suggested change to line 5, there is circulated in front of us a suggested amendment from Sen. Daly to line 1.

Sen. Daly:. Mr. Chairman, I withdraw that amendment.

Mr. Chairman: There is a suggested amendment to line 5, after the words "or" "where there is no such office" and then it continues.

The second amendment is as detailed in a circulated amendment sheet which involves the deletion of "*prima facie* evidence that it was duly sworn" and substituted with some new words.

Sen. Dr. St. Cyr: Mr. Chairman, would there be a difficulty that before we could admit a third signature we would have to establish that there is no notary public or commissioner in that place?

Sen. Daly: That is why we could—which is a little more partial because all my colleagues are good draftsmen.

Mr. Chairman: Could I ask the Attorney General to read the new suggested subsection (1A) which has substantive amendments to it before we take a vote on it?

Mr. Maharaj: It states:

> **"**Where a document is attested to in a foreign country and purports to have affixed, impressed, or subscribed thereon the seal and signature of a notary public, a commissioner for oaths or where there is no such office any other person duly authorized by statute to administer oaths or take statutory

declarations in that country, such documents shall be admitted in evidence in any Court of Trinidad and Tobago without proof of its seal or signature or due authorization, and such documents shall be effectual as if administered, taken or done by or before any lawful authority in Trinidad and Tobago."

Sen. Prof. Ramchand: I do not want to get into these legal tangles but why could it not be, notary public, commissioner for oaths or equivalent officer?

Mr. Maharaj: I think, in effect, it would cover if there is no commissioner, no notary public.

Sen. Prof. Ramchand: One does not have to prove that there is no notary public or commissioner for oaths. You are saying one recognized that in some countries they will be called commissioner for oaths, notary public and there may be an officer in a particular country that has a title and he performs those functions.

Mr. Maharaj: What happens normally in this is that you would get documents from the appropriate High Commissioner or embassy to show that there is no such officer. In most cases there are the commissioners for oaths and a notary public. There are some countries where many of our nationals are and you do not have these kind of oaths.

Sen. Daly: Mr. Chairman, the last three lines:

"...shall be as effectual as if administered, taken or done by or before any lawful authority in Trinidad and Tobago."

Those lines do not appear in section 19(1). What is the need for those three lines? Does that mean, as Sen. Beckles raised, the provisions about the Evidence Act? What is the necessity for those three lines?

Mr. Maharaj: Since an affidavit will have to be under the rules of the supreme court, it will have to be sworn in Trinidad and Tobago. One does not have to prove that it is sworn in Trinidad and Tobago unless it is challenged. If you are in effect making a provision for such documents to be admitted in the courts of Trinidad and Tobago, the concept is that it is regarded as if it is sworn before a lawful authority.

Sen. Daly: Why do we not have those three lines in the existing section 19(1)? I am just very concerned that we are not giving more weight or a stronger character to a section 19(1A) document than there is in 19(1). If it was not necessary for 19(1) why is it necessary for 19(1A)? I wish the Chairman had a copy of this.

Mr. Maharaj: Drafting improves from year to year and in effect to ensure that there could be no question of points being taken, that the rule says that it has to be sworn in Trinidad and Tobago and the law does not cover that it is regarded as being sworn in Trinidad and Tobago. It is really to make it as comprehensive as possible.

Sen. Daly: Then we should have added those three lines in the proposed new section 19(1).

Mr. Maharaj: It may be that some point can be taken that although this Act is passed, and if one does have that the affidavit must be sworn to someone in Trinidad and Tobago and the Bill did not say it must be regarded as being sworn by a lawful authority in Trinidad and Tobago.

When I saw this Bill, those were just some of the matters that were raised and the explanation I got was that in order to be sure that the affidavit would be admitted or in effect there would be no problem having them admitted if they are signed abroad, that this was the drafting that was necessary. I do not see it as any damage.

Sen. Daly: Like the sequestered juror, I give up.

Sen. Prof. Spence: Mr. Chairman, by strengthening section 19(1A), does it weaken section 19(1)? Will section 19(1) now be queried because it does not have that phrase in it?

Mr. Maharaj: I do not think so. It may be that we have to look at it. If it comes up I may have to get the Law Commission to look at it again. I do not think it will weaken it. We would not want to prevent people who have come and they have got their affidavit. The point is taken that the affidavit should be sworn to by someone in Trinidad and Tobago and the Bil does not make it quite clear that it must be regarded as it is sworn in Trinidad and Tobago.

Sen. Prof. Spence: What I gather is that suppose they come with one signed by a consular officer, then they may say this in fact was granted in Trinidad and Tobago because look, it is in the amendment.

Mr. Maharaj: It may be we have to look at section 19(1). It might take another proven case.

Sen. Prof. Ramchand: I am of the view that we do not have to say "shall be as effectual as if administered..." If we are saying admitted in evidence in any Court in Trinidad and Tobago without proof of the seal or signature or due

authorization, we are saying in effect, it is as if administered, taken or done by or before any lawful authority in Trinidad and Tobago.

The effect of it being administered, taken or done by or before any lawful authority in Trinidad and Tobago. If we are saying it is admitted in evidence then we are granting it status of something that has been done in Trinidad and Tobago. So I think we can safely leave that out.

Mr. Maharaj: Senators probably would feel that maybe, to be sure that a law is not being misused or abused—If the law is drafted in such a way to ensure that there can be no difficulty in getting documents admitted for technical reasons, the judge still has the power in order to determine what weight he will place on the evidence.

6.50 p.m.

Sen. Prof. Ramchand: If the Attorney General were dealing with a matter and a judge had such a document, and he then says it is admitted in evidence but he cannot take it because this is not as if it had been done in Trinidad and Tobago—

Mr. Maharaj: Normally, the whole concept is that evidence must be given; that is an affidavit sworn to in Trinidad and Tobago. If there is law which would say that we would accept as evidence, a document sworn to abroad, the concept is that it must be regarded as if the evidence is given in Trinidad and Tobago. It does not prevent it from being challenged if it were not sworn to properly.

Sen. Beckles: We have reached an area that we need to be very careful about. I know from what the Attorney General is saying and based on what Sen. Daly mentioned that this will solve many problems which come up from time to time. The point is that once there are sections which clearly indicate that one is saying one thing, and the other is saying something else, problems would arise. When these matters go to court there is the whole issue of interpretation and that is where the problem comes. I think that we need to be exceptionally careful in terms of ensuring that the legislation is very clear and no one is subject to having two interpretations.

I cannot see the harm in us taking a week or two to look at it to ensure that we do not have a problem. If the Attorney General is saying that when he looked at it he had some concerns as it relates to that, it means that we have not resolved our concerns. If we have not resolved them, it means that those who would be interpreting them would definitely not be clear as to even what our intentions were.

Mr. Maharaj: If Members feel very strongly about it then the Government would have to consider going without it, especially if the Independent Senators feel that they would not want to live with it as it is. I ask Independent Senators and Members to consider if the purpose of the legislation is to permit evidence which is sworn to abroad to be admitted into evidence, and if the Bill is giving recognition that it would be regarded as if it is being sworn to in Trinidad and Tobago. That is the concept of the Bill.

Would it do any injustice to have those extra few words? When that is weighed against any possible injustice which may be done when the matter may come, points can be argued that the legislation was not comprehensive enough to deal with the particular matter. If there is a problem with the original 19, one may consider looking at whether it needs amendment. With regard to the particular provision before us and the evil we want to cure, would Members consider that the whole purpose of it is to regard the concept if it is sworn to abroad?

Sen. Prof. Spence: May I suggest a compromise? I would go along with what the Attorney General is suggesting if he would give us the assurance that he will now put it back to the Law Commission and if it needs an amendment in line 1 to come back and get it.

Mr. Maharaj: I accept that unreservedly. I will undertake to do that.

Question put and agreed to.

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

Clause 3 ordered to stand part of the Bill.

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

Senate resumed.

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

7.00 p.m.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, before moving the adjournment, let me inform fellow Senators that, having regard to this marathon session in which we have successfully concluded three bills and one motion, we would wish to give Senators an opportunity to relax themselves next week. *[Interruption]* No, we are not

travelling. Would the Senator like to come next week? I will change my mind immediately.

In consultation with both the Leader of Opposition Business and the Leader of the Independent Senators, we have agreed, at the next sitting of the Senate, even though it is Private Members' Day, to do Bills Nos. 4 and 5 on today's Order Paper: An Act to confer certain privileges and immunities on the Commonwealth Development Corporation and An Act to re-enact the Rent Restriction Act, Chap. 59:50 and to validate things done thereunder.

Those two matters will be addressed on Tuesday, May 21 and thereafter we shall begin Private Members' business. The following Tuesday we will continue Private Members' business.

I beg to move that this Senate do now adjourn to Tuesday, May 21, 1996 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.03 p.m.