SENATE

Tuesday, June 10, 1997

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Brian Kuei Tung, Sen. Andrew Gabriel, and Sen. Prof. John Spence. Continuing leave of absence until July 16, 1997 has been approved for Sen. Hugh Donaldson.

SENATORS' APPOINTMENTS

Mr. President: I have received correspondence from the office of His Excellency the President of the Republic of Trinidad and Tobago, as follows:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON,
President and Commander-in-Chief of
the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: DR. JOHN BHARATH

WHEREAS Senator Brian Kuei Tung is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOHN BHARATH, to be temporarily a member of the Senate, with effect from 10 June, 1997, and continuing during the absence from Trinidad and Tobago of the said Senator Brian Kuei Tung.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 6th day of June, 1997."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON,
President and Commander-in-Chief of
the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: MRS. ELAINE TEEMUL

WHEREAS Senator Andrew Gabriel is incapable of performing his functions as a Senator by reason of illness:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ELAINE TEEMUL, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Andrew Gabriel.

Given under my Hand and the Seal of the
President of the Republic of Trinidad and
Tobago at the Office of the President, St.
Ann's, this 10th day of June, 1997."

OATH OF ALLEGIANCE

Dr. John Bharath and Mrs. Elaine Teemul took and subscribed the Oath of Allegiance as required by law.

REGISTRATION OF CLUBS (AMDT.) BILL

Bill to amend the Registration of Clubs Act, Chap. 21:01 *[The Attorney General]*; read the first time.

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

THEATRES AND DANCE HALLS (AMDT.) BILL

Bill to amend the Theatres and Dance Halls Act, Chap. 21:03. *[The Attorney General]*; read the first time.

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

LIQUOR LICENCES (AMDT.) BILL

Bill to amend the Liquor Licences Act, Chap. 84:10. *[The Attorney General]*; read the first time.

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

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Tobago House of Assembly for the year ended December 31, 1987. *[The Minister of Public Administration and Information (Sen. The Hon. Wade Mark)]*

2. Report of the Auditor General on the accounts of the Tobago House of Assembly for the year ended December 31, 1988. *[Hon. W. Mark]*

3. Report of the Auditor General on the accounts of the Public Transport Service Corporation for the year ended December 31, 1983. *[Hon. W. Mark]*

4. Report of the Auditor General on the accounts of the Public Transport Service Corporation for the year ended December 31, 1984. *[Hon. W. Mark]*

5. Report of the Auditor General on the accounts of the Public Transport Service Corporation for the year ended December 31, 1985. *[Hon. W. Mark]*

6. Report of the Auditor General on the accounts of the Tobago House of Assembly for the year ended December 31, 1989. *[Hon. W. Mark]*

7. Report of the Auditor General on the accounts of the Public Transport Service Corporation for the year ended December 31, 1986. *[Hon. W. Mark]*

8. Report on the Preparatory Meeting of Caribbean Heads of State and Government and the Caribbean/United States Summit—Bridgetown, Barbados (May 08 to 10, 1997). *[Hon. W. Mark]*

9. The annual audited accounts of the Small Business Development Company Limited for the year ended December 31, 1995. *[Hon. W. Mark]*

1.40 p.m.

10. Forty-fifth Report of the Salaries Review Commission on the review of salaries and other terms and conditions of service of Judges of the Supreme Court. *[Hon. W. Mark]*

11. Towards a new Public Administration—a Policy Agenda for the Public Service of Trinidad and Tobago. *[Hon. W. Mark]*

12. End of the First Year Report of the Consultative Committee to the Interim Operating Arrangement between the Government of the Republic of Trinidad and Tobago, Water and Sewerage Authority and the Trinidad and Tobago Water Company. *[Hon. W. Mark]*

13 Report of the Committee appointed by Cabinet to consider measures for the control and reduction of motor vehicle emissions into the atmosphere of Trinidad and Tobago. *[Hon. W. Mark]*

Towards a New Public Administration

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I had the honour to lay before this honourable Senate, a White Paper entitled, "Towards a New Public Administration—a Policy Agenda for the Public Service of Trinidad and Tobago. Not so long ago, it was my privilege to bring this Policy Agenda before this honourable Senate as a Green Paper. Since then, the document has received wide circulation throughout the public, private and non-governmental sectors and, indeed, to many of our nationals who live abroad but maintain a keen interest in the affairs of our country.

After approval was given to publish the document as a Green Paper and to have national consultation on it, 5,000 copies were printed and despatched to all corners of this country. The daily newspapers were also used to advertise the document and written comments were invited. In addition, a national consultation was hosted to give a further opportunity to our citizens, the stake-holders, to understand the vision and philosophy of the Government, to contribute to the creation of a new, modern, sustainable and relevant public administration and to underscore Government's commitment to consultation, transparency in its affairs and management by consensus. In so doing, Government expects to foster linkages to its goals, visions, priorities and desired outcomes between and among stake-holders. This strategy proved most successful as hundreds of persons attended the public consultation which was held in Port of Spain in April this year.

The structure of the consultation provided an opportunity to the participants to understand the underlying philosophy and framework of the Policy Agenda; to hear views from the leaders in the particular fields on the issues involved in the creation of a new public administration. Of course, an open forum allowed participants to share their views, criticisms and recommendations.

Letters of invitation were issued to the Leader of the Opposition and Mr. Gordon Draper, Member of Parliament. Mr. Draper advised that he had a previous commitment out of the country. My staff was also advised that Mr. Fitzgerald Hinds would attend for the Leader of the Opposition. Neither of them attended, but certainly an opportunity was presented in keeping with the philosophy of the Government, for consultation and collaboration. Nevertheless, the consultation did benefit from a presentation by the Hon. Sen. Philip Marshall who presented a paper on improving service delivery to facilitate and support the private, non-governmental and public sectors, in achieving their goals.

The driving force and objective behind the formulation of a new public administration is the goal and undertaking of the Government to improve the delivery of services to consumers, customers, stake-holders, and equally important, to manage the economy in a manner that promotes stability, sustainability, growth and social equity.

In recognizing that globally we are experiencing rapid social, political, economic and technological change, Government is keenly aware that the public service must be prepared for system-wide change for re-engineering, rationalizing and restructuring its structures and processes, if it is to be in a position to provide timely, professional, advisory, administrative management and technical services to meet the challenges and demands of the future.

The requirements for implementing these innovations demand fundamental change in orientation, values and focus. The requirements are for a new public administration in the Republic of Trinidad and Tobago.

The new public administration is a call and an undertaking to reform for continuous improvement. It is not a new call. Seven distinct public service reform and improvement programmes have been undertaken since 1964, the most recent of which was the Public Service Reform Implementation Programme, which began in 1992 and while there have been some achievements, this Government is delivering on a commitment that was made when it came into office, to provide the leadership and guidelines to reshape and re-orient the public service for greater relevance and higher levels of efficiency, effectiveness, professionalism, effective delivery of quality services, integrity and productivity.

The Policy Agenda recognizes that a new public administration must reflect the values, needs and aspirations of the citizens. Therefore, in creating this new public administration, the first step was to arrive at consensus on what must constitute a

modern public service which is focussed on the future. We agreed that the vision of the public service is:

> A re-created, continuously improving service organization, conducting its affairs purposefully and with the highest levels of professionalism and integrity. It is the ideal workplace for all persons who choose it as their preferred place of employment."

This vision impels the public service and the managers in particular, to be innovative and entrepreneurial in satisfying the needs of the public; to be more strategic in the delivery of services; to adopt a welcoming approach to change, to demonstrate values, work ethics and organizational behaviours based on competence and integrity; and to inculcate a new culture of strategic management.

The public service in representing a new public administration, must enable, facilitate and support collaboration and transactions among the Government, the private sector, labour, the general public and all the other partners who have a stake in the process of governance and national development. The vision also beckons the public service to continuously monitor and adjust as necessary, the infrastructure and institutional framework among the relevant parties.

The new public administration must reflect the mission of the public service which is:

> "to ensure that Government's priorities, policies, plans and programmes are operationalized and translated into direct services, for the benefit of the national community."

Identifying with this new vision and mission will require a shift in orientation and focus. While the Government would provide the leadership and the direction in this regard, critical agencies such as the office of the Prime Minister, the Ministry of Finance, the Treasury, Personnel Department, Service Commissions Department, the Service Commissions, the Ministry of Public Administration and Information and the Ministry of Planning and Development must provide leadership.

In addition, all public sector employees must be persuaded to identify with the vision and mission of the new public administration and be given the opportunity to be fully involved in the strategic planning process so that they may better understand their responsibilities in meeting goals.

1.50 p.m.

Consequently, the guidelines and framework developed for the new public administration are as follows:

Management by consensus principles and values;

Redirecting the public service;

Continuous improvement and management/quality programmes;

Operational efficiency audit;

Human resource management/human resource development;

The strengthening of the organizational infrastructure of the public service;

Planning and implementation of exercises that will focus on rationalization, restructuring, decentralizing the size and scope of the public service;

Update, publish and fully utilize the legal and regulatory framework;

Focus on human systems/customer orientation both internal and external service excellence;

Reforms in financial management, accounting, procurement and supply management;

Property management and real estate service;

Information technology will achieve the establishment of critical and strategic databases;

Labour and industrial relations;

Information and communication in the new public administration: the enhancement, elevation and positioning of information and communication services will also be targeted; and

Networking in the area of public administration.

Mr. President, I would like to add here that some of these objectives are even now being implemented for the most part by the Ministry of Public Administration and Information, the agency which has the responsibility for providing the required strategic direction. Other agencies such as the Personnel Department, Service Commissions, Ministry of Finance, Ministry of Labour and Co-operatives, Ministry of Planning and Development, Attorney General's Department and Ministry of Legal Affairs are also expected to take the lead role in some initiatives.

Change in the public service is not up for discussion as a matter of choice. It is a matter of obligation, duty, responsibility and accountability. Most certainly, when I am called to account for my stewardship to the people, I must be able to say with satisfaction, pride and conviction, that I purposefully and actively led this country's public sector to a dynamic, progressive and successful new public administration.

Mr. President, I invite all to save the service by supporting in any way possible, the new public administration. I make a special appeal for leaders in the public service to lead and to be seen and followed as leaders. Many persons in leadership positions can and must do better to bring about change. I may proffer that one way in which they can achieve this is to demonstrate by their own willingness and readiness, that change in our particular context, though requiring adjustments on everybody's part, can only point us in an upward and onward direction of national progress and enlightenment. To be sure, we must manage the change process well but just as surely, we must make change take and grow roots for a better future.

Other crucial arrangements for implementing a new public administration include making a change. The public service must create an environment in which change is considered to be a good thing, a necessary part of life. Critical institutions such as the Ombudsman and the Auditor General's Department are agencies which can prevent deterioration and detect failures, and deficiencies must be strengthened, among others.

Mr. President, specific proposals in this regard must include the strategic planning and management process which must be maintained and improved. Leadership for implementation should be achieved through the following sub-committee of Cabinet which has been appointed to drive this process, members of which are:

Minister of Public Administration and Information, Chairman

Minister of Finance

Minister of Legal Affairs

Attorney General

Minister of Trade and Industry

Minister of Social Development.

There is a sub-committee of Permanent Secretaries comprising the Chief Personnel Officer and Permanent Secretaries in the Ministries of Agriculture,

Land and Marine Resources; Legal Affairs; Trade and Industry; Finance; Public Administration and Information; Social Development; Planning and Development and the Attorney General's Department.

Mr. President, the Ministry of Public Administration and Information will function in the role of focussed advisory ministry and provide a secretariat for both committees. Tripartite discussions and consultation between the political directorate, senior public officers and public sector unions must continue and such consultation should also assist in shaping the new forms that a new public administration is certain to take on.

Mr. President, in closing I would like to indicate that it is my intention to initiate an initial five-year line to the year 2002 for the development of implementation schedules. It is also the intention of the Government through the Ministry of Public Administration and Information to launch P/A-21, that is, Public Administration for the 21st Century.

Mr. President, I thank you.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, I would like to move, with the leave of the Senate, that we take Bill No. 2 and at a later stage of the sitting, take Bill No. 1.

Agreed to.

CRIMINAL LAW (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Criminal Law Act, Chap. 10:04 be now read a second time.

Mr. President, this Bill seeks to amend the Criminal Law Act in order to give statutory effect to the rule of law known as the felony murder rule which was inadvertently abolished when the distinction between felonies and misdemeanours was abolished by the passing of the Law Reform Miscellaneous (Amdt.) Act, No. 45 of 1979.

Mr. President, a recent decision of the Privy Council in the case of Andrew Moses versus the State, Privy Council Appeal No. 1 of 1995, determined that whatever may have been the intention of Parliament, looking at the history of felonies and misdemeanours in Trinidad and Tobago and the fact that it abolished the distinction between felony and misdemeanour by Act No. 45 of 1979, the felony murder rule was undoubtedly abolished.

Mr. President, what is the felony murder rule? At common law, there was a rule known as the felony murder law or the doctrine of constructive malice where a person who killed another in the course or furtherance of another felony was liable to be convicted of murder notwithstanding the fact that he or she did not have the intention to kill or cause grievous bodily harm. Mr. President, to put it in common parlance—if I use that expression—is that if Mr. A was in the act of raping a woman and in so doing, he placed a sheet or his hands on her throat or nostrils and death resulted even though he did not intend to kill her, the fact that he was committing a felony which is a serious offence of violence, the law construed that he would have intended to kill her and there was no need to prove a specific intent to kill.

2.00 p.m.

Mr. President, those of us who are familiar with the principles of law whether as police officers, law students or lawyers or persons who have read around the subject know that in a criminal matter the prosecution must prove the intention of the offence, and with respect to murder, that intention is to kill or to do grievous bodily harm. That is referred to as the *mens rea* of the offence and it is known in murder as malice aforethought.

The law, over the years, historically, stated that you can have expressed malice; you can prove an intention to kill by proving expressed malice, an expressed intention to kill or to do grievous bodily harm or one can imply the intention from the circumstances of the case. From looking at the circumstances you can determine whether a person had the intention to kill or do grievous bodily harm. There was expressed malice, implied malice and constructive malice. Constructive malice in respect of murder was where a person embarked upon an enterprise to commit a felony which was regarded as a serious offence and, if in the furtherance of committing that act he killed the individual, the law could have assumed that he acted with constructive malice and the jury could have found him, on appropriate directions, guilty of murder.

Mr. President, in the United Kingdom in 1957 there was a movement to abolish capital punishment which swept the whole of Europe some 20—30 years later. A Criminal Law Revision Committee and commission were set up to determine whether capital punishment should be an offence. Based on reports that were obtained in the United Kingdom in the 1950s, the United Kingdom Parliament passed the Homicide Act—and all law students would remember section 3 of the Homicide Act of 1957 which abolished the rule of constructive malice in England. It specifically stated that a person in England could not have been convicted for an offence of murder if he did not have the specific intention to kill.

There was the famous case in the United Kingdom of this man raping this woman and in the course of the rape, the victim died and it was held it was murder. So the United Kingdom abolished that rule in 1957 and stated that unless the jury could be convinced that on the circumstances of the case the person had the intention to kill or do grievous bodily harm, the person could not be convicted of murder.

Section 1 of the Homicide Act provided that where a person kills another in the course of furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought, expressed or implied as is required for a killing to amount to murder when not in the course of furtherance of another offence.

For the purpose of completeness, I should let the honourable Senate know that subsequent to that case, there was a famous case of the *Queen and Vicars* in 1957, 2 Queen's Bench at page 664. In that case the Court of Appeal in the United Kingdom decided that although there was the abolition of constructive malice, the principles of implied malice were not abolished. So in any case in which there was a killing done in the furtherance of a felony such as robbery and rape, one could look at the circumstances of the case to see whether a jury could have found whether there was an intention to kill or do grievous bodily harm, but they could not use the fact that the person had embarked upon an enterprise by itself and a killing occurred to form the basis of a person being found guilty of murder.

Therefore, what you then had in the United Kingdom is a situation where you could not use the constructive malice principle, however, prosecutors tried to secure convictions by attempting to get the jury to agree that malice could be implied. Mr. President, one knows that even though the jury convicted, at times, on appeal there have been many reversals because the facts did not support the basis for the findings.

So what happened in the United Kingdom—I am doing it in this way to show that when we merely copy legislation we end up in difficulties—constructive malice was abolished and in 1967 the Law Revision Act which abolished the distinction between felony and misdemeanour was passed.

Felonies were regarded as very serious offences while misdemeanours were regarded as less serious offences and over a period of time the distinction between felonies and misdemeanours became very archaic. One merely had to look at the list of the serious crimes which were classified as felonies and a table of the offences which were classified as misdemeanours—and if one looks at the 1966 edition of Archbold's the 36th edition, one would see that from the list of offences for felonies and misdemeanours that numerous misdemeanours outrank the gravity of several of the grave felonies. In this context there was a movement, not only in the United Kingdom, but throughout the Commonwealth, to abolish that distinction and place the distinction in respect of arrestable and non-arrestable offences. So that was the distinction that was had.

Mr. President, in Trinidad and Tobago, however, we did not have a Homicide Act of 1967 because we did not abolish the principles of constructive malice. The Parliament of Trinidad and Tobago never intended to abolish constructive malice but in 1979 it was decided to abolish the distinction between felonies and misdemeanours. What did we do? We attempted to do it in the First Schedule of the Law Revision (Miscellaneous Amdt.) Act of 1979 and we used the same words the English legislation used without considering the history of the English process.

2.10 p.m.

In England they had already abolished the question of constructive malice by statute and they were merely abolishing the distinction between felony and misdemeanour so that nothing was mentioned in the Act about the doctrine of constructive malice, and what the Privy Council stated in the Andrew Moses case was that it must presume that the intention was to abolish the constructive malice rule.

What happened also—and probably it is important for me to let this Senate know that about four months before we passed the Law Revision Act of 1979, there was a case from Trinidad and Tobago in the Privy Council which concerned the felony murder rule. That case was the case of Gransaul and Fereira, and a decision was given on April 9, 1979. Lord Salmon who gave the judgment of the Privy Council found that the convictions—there were two people who had

embarked upon an enterprise to commit a robbery and in the course of the robbery they shot the van driver and they were saying that the gun went off by accident. The state was saying, the fact that they embarked upon this joint enterprise and they intended to rob, and the fact that a person got killed, they were liable to be convicted of murder. The defence contended that the felony murder rule did not exist in Trinidad and Tobago. The Privy Council held that it remained a common law; it was the law of Trinidad and Tobago; it was not abolished and they affirmed the convictions in that case.

That was a case before we passed our Law Revision Act abolishing the distinction of felony and misdemeanour. When this matter of Andrew Moses went to the Privy Council, this was a case decided after the passing of the Law Revision Act and the argument was put forward that the Parliament did not intend to abolish the constructive malice rule; if it had to be abolished, it had to be expressly abolished. The Privy Council did not accept that. They said the fact that you abolish the distinction between felonies and misdemeanour, you have indubitably abolished the rule.

The policy of the Government of Trinidad and Tobago is that persons who embark upon enterprises to commit arrestable offences involving violence, if a killing occurs in the course of that or any arrestable offence involving violence, such persons should be liable to be convicted for murder. This is an instance in which the Government of Trinidad and Tobago is not going to follow the statutory rules of another country, even if it is regarded as the mother country.

In the United Kingdom, there are different factors which influenced the passing of the Homicide Act. One of those factors, obviously, was that the United Kingdom population and its government decided to abolish capital punishment. This Homicide Act was all part and parcel of that programme to have capital punishment abolished. On the contrary, the people of Trinidad and Tobago, based on an Enquiry which was conducted known as the Prescott Commission of Enquiry—and the Government of the day accepted that report—decided that capital punishment should remain.

That is only one factor, but we have decided that in respect of criminal liability, for persons who embark upon enterprises to commit serious arrestable offences involving violence, if a killing occurs in those circumstances, then the persons could be liable to be convicted of murder. We say, “liable”, because it does not necessarily mean that the person will be convicted. It will depend upon all the

circumstances of the case and the person would be at liberty to show that, from the circumstances, he had no intention to kill. It does not prevent him from trying to convince a jury of that, because you still have the law of implied malice.

So with the doctrine of constructive malice you would have the doctrine of expressed malice and the doctrine of implied malice. But it would entitle the prosecutor to address the jury and say that if they believe that these persons embarked upon this enterprise to commit this act of violence, it is an arrestable offence and they cannot say as a defence that the fact that they did not have the intention to kill, that exonerates them from liability. They would have to establish that they did not have such intention. Even if they establish it, the judge would have to give certain directions in respect of the felony murder rule.

It is a Bill with a simple history. It is a Bill which, even to non-lawyers, would be simple to understand; it is a Bill which, in effect, attempts to declare that the policy of the criminal law and the criminal justice in Trinidad and Tobago is that there should be the felony murder rule. But strictly speaking, it cannot be called by that name again because there is no felony, but it is putting in statutory form what was, in effect, the common law principle before this matter was decided.

Sen. Daly: Mr. President, before the Attorney General takes his seat, I wonder if he could assist me with something. I notice that a complete deletion of the Bill as originally framed was made in the House of Representatives on May 2 and a new section was put in. I wonder if the Attorney General could assist me on what was the thinking behind that revision, because I find it somewhat flawed.

Hon. R. L. Maharaj: Mr. President, maybe I should explain. The Bill as drafted states:

> "Where a person kills another in the course or furtherance of an arrestable offence, the killing shall amount to murder even if it was done without the intention to cause death or grievous bodily harm."

Before this Bill reached the Parliament, as a result of representations made, consultations were had and it was felt that the way the Bill was drafted, it could give the construction, if there was a killing in the course or furtherance of any arrestable offence that one could have been convicted of murder. The principle was that it was really not an arrestable offence itself, but it must be an arrestable offence involving violence in which you had to have some—it is not limited to, but it involves some unlawful force on an individual. There are several offences which are arrestable but they do not involve violence. So that they wanted it to be more specific.

The other matter was that with the use of the words, "the killing shall amount to murder", they wanted the words, "liable to be convicted" so that the jury would consider whether it amounted to murder or not. When we read and re-read the Andrew Moses case and the Law Commission and the office of the Director of Public Prosecutions looked at it, it was felt that in order to give effect to the common law principle and to be quite clear, this is how it should be drafted. So that the principle, really, is that it is not if the person embarked on the commission of any arrestable offence, but if the person embarked on the commission of an arrestable offence involving violence—and rape is an act involving violence—and killing occurs in the course of that offence or any other arrestable offence involving violence, all persons—that meant also not only the person who was doing the act but the person who was acting as a watchman or any other person who was engaged in the commission of an arrestable offence—shall be liable for murder, even if the individuals at the time did not have the intention to kill or to do grievous bodily harm.

2.20 p.m.

Mr. President, the advice which prevailed to have the Bill re-amended was in order to make it quite clear that it would not cover where the person embarked upon the commission of any arrestable offence. It also would not be automatic that the person would be liable to be convicted which would mean depending upon the directions of the jury and so forth. We had thought—and I said "we" because when it was originally drafted—that "shall" would not have given that meaning in any event, but it was felt by the draftsperson that since the representations were made, and since the DPP's office had requested that there be no problem in having "liable", we acceded to it and we redrafted that particular section.

I should also mention that there is the other amendment which, I think, speaks for itself. In the original Bill one would have seen that under subclause (2) it says:

> "For the purposes of subsection (1), a killing done in the course or for the purpose of—
>
> (a) resisting a member of the security forces...
>
> (b) resisting or avoiding or preventing a lawful arrest; or
>
> (c) effecting or assisting an escape or rescue from legal custody,
>
> shall be treated as a killing in the course of furtherance of an arrestable offence."

Then one saw that in subclause (3), in defining a member of the security forces we had put the police service, the prison service, the fire service and, indeed, the supplemental police, but we had put:

> "(d) the Defence Force to the extent that such member had been assigned to act in aid of the Police;"

It was found that was too limited, so therefore, we just left it to the defence force where there was in effect, a member of the defence force not where the person was actually assigned to act in aid of the police.

Mr. President, I hope that my explanation is acceptable.

I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, I rise to make a very short contribution on this particular Bill. Having listened to the hon. Attorney General—and as I look around this Chamber, particularly, in regard to the Attorney General, I know he is, in fact, more—how shall I put it?—given his criminal background—and I mean in the field of law—this would be one of his babies. *[Laughter]* I certainly mean no disrespect, Mr. President.

Mr. President, as I listened to him a while ago, I felt like a law student once again; and we on this side certainly have no difficulty. In fact, we welcome any efforts that are designed to improve the administration of justice in this country, and in this particular case, with regard to the criminal justice system in our country.

Many years ago when I was a student studying criminal law, I heard the discussions about the felony misdemeanour distinction and it is a matter that has been going on for some time. Today we heard that this Bill seeks to codify a particular common law principle, but I do have some concerns. A couple months ago the impression given of our hon. Attorney General was that he would plug the loopholes in our legal system. I am wondering whether he is going to bring a bill to deal with each Privy Council decision that he may have been exposed to.

Mr. President, I say this because I am very concerned, as indeed many others, about the very serious and worsening crime situation in our country. It is a fact that crime has been escalating. Only this weekend we read a story about a woman being shot in a motor vehicle in Curepe. Nobody knows how, who, when or why.

Every day that goes by one reads about the most gruesome and violent forms of crimes being committed right here in Trinidad and Tobago.

Certainly, I would have felt much better if I had heard of a connection with this particular piece of legislation and how it is going to impact on the crime situation in the country. How is it going to help reduce crime in the country? Certainly, not just with crime, but in terms of our criminal legal justice system. How is it going to improve the very serious problem we have in the administration of justice?

Mr. President, somehow I feel this is another one of the several window dressing measures that we are fast becoming accustomed to in terms of the Attorney General bringing legislation so that at the end of the day he can talk about how many pieces of legislation he has passed, and, perhaps, how many loopholes he has plugged.

Certainly, if they are designed and geared towards reducing crime in the country we would welcome them. *[Interruption]* I am not saying it should not be brought, but certainly as a government with such a crisis on its hands one would think that there will be some urgency in terms of the measures that it is seeking to introduce. Whilst we welcome any attempt to reform our legal system, indeed, to update our laws, we have difficulties with a criminal bill being dropped here and there, every month or two weeks in order that some coverage will be given in the newspapers. We have difficulties with that and this is what we see happening on a daily basis; more and more window dressing, public relations and very little substance in terms of getting the country moving forward. I have a serious problem with that.

Mr. President, another concern of mine is with the much talked about Green Paper, in which I am sure the hon. Attorney General had a significant input. I wonder to what extent those persons directly affected by media law—particularly those persons in the media—were consulted with respect to that particular paper.

I have concerns with respect to this Bill in terms of consultations that have taken place. We do have a law association and I am very curious as to what extent there was consultation with the persons within that body who are involved in the criminal bar and, indeed, the law association as a whole, and certainly, those involved in the criminal justice system.

Mr. President, these are some of the general concerns we on this side have, and I am sure my colleague would deal with the specific Bill in greater detail. If this

Bill is simply another window dressing measure, then I wish the Government would get on with the business of dealing with the serious problems of crime and other burning issues in the country.

I thank you, Mr. President.

2.30 p.m.

Sen. Martin Daly: Mr. President, the policy issue contained in this Bill is one of the most serious decisions which we have had to make in this Parliament in recent times. I have a few differences with the Attorney General in the way he has placed the framework with which we have to work. Therefore, I would have to exercise political power allocated to me by the President for this debate to take some kind of shape. I do it to balance the very important issues which are involved in the felony murder rule. This debate is an important check and balance in the democratic life of this country. I do not care whether I come out of it scathed or unscathed. Not having a criminal background, I propose to balance as best as I can, the issues which are involved in this debate to my colleagues. I think when this debate is over we would see that the check and balance of ideas is an essential feature of our lives which ought not to be threatened by anyone. With that contemporaneous prologue, let me get down to the important issue in this debate.

I differ from the Attorney General in that I do not think that we are rectifying anything which was destroyed by inadvertence. I do not accept that. Insofar as the Explanatory Note of the Bill says that, and the Attorney General said in the course of his presentation that it was never intended in Trinidad and Tobago to abolish the felony murder rule, I disagree with him. Probably, we would end up on the same side in the course of this debate. I have horrendous problems with the amendment which was made in the House of Representatives. In due course I would explain why.

It is very important to understand that we are not rectifying any inadvertence. We have to take a very careful and considered decision about what our law should be in the event that someone is killed while a crime is taking place. Make no mistake about it, that is what we are debating. The law could be very broad, and as the Attorney General pointed out, it can be so broadly framed, that in the course of shoplifting a sweet someone might be killed and there might be a charge of murder. Quite rightly, insofar as it was represented to the Government that the original Bill may have been too broad, it was sought to introduce amendments to narrow the scope.

There are many different types of circumstances under which a murder could occur in the course of a crime. Let me give a hypothetical example. It is very important for everyone to understand that we are making serious choices and the drafting would determine which choice we make. Let us assume that a bank robbery is in progress at Tragarete Road, a shot is fired and is accepted as accidental. One of the robbers running into the bank is bounced by a security guard who is running out. The shot is accidentally fired in the sense that as a result of the impact by the security guard, the bullet strikes someone in the bank and the person dies. Should the person who was holding the trigger at the time be subject to a murder charge? That is one variation.

The less liberal among us might say that if one is going to rob a bank with a shot gun and someone is killed, that is too bad. That is fine. I am setting out the choices as best as I can. Let us suppose that in the same circumstances the bullet struck the wall of the bank, it ricochetted into a nearby street and someone was killed. That is a more indirect form of death in the course of the commission of a crime. That might present different choices. A person may not want to be held liable for murder in those circumstances.

Let me restate my position. I am a retentionist where the death penalty is concerned. One of the difficulties I have with passing this legislation now, is doing so prior to the Attorney General's indication that the Government has accepted the recommendations of the Prescott Commission. The Prescott Commission did not only recommend that the death penalty be retained, but also that we enact laws to have different degrees of murder. I would be a lot less concerned about the choices we have to make here if we were not talking about a capital offence as a result of passing this legislation. I would give the Bill more superficial scrutiny if for example, we were talking about second or third degree murder. There are no degrees of murder in this country and when we are exercising these choices, we must be conscious that the result of the choice may be a conviction for murder and a capital sentence.

I cannot and do not want to attack the Government for the sequence in which it does things, but this piece of legislation would have been far better placed in legislation which was dealing with degrees of murder at the same time, in acceptance of the Prescott Commission Report. I want everyone to be aware that whatever we pass here may result in capital punishment. I have no problem with capital punishment as long as it is administered to the right person and not for something comparatively trivial.

I think it is important to understand that. We could be more relaxed about the choices if this was being done in the context of degrees of murder. The choice with which we are faced is the only degree of murder that we have which is capital. Therefore we have to examine this Bill against that background. That is a very important feature of the choices we have to make.

With the greatest respect to the Attorney General, I do not think it is inadvertently and entirely right to say that the felony murder rule was abolished in England as they moved towards the abolition of capital punishment. I disagree with the Attorney General for two reasons. It may not lead us to much difference in the end in the legislation we pass. There are many persons who are concerned about this and may not have had the benefit of reading the judgment of the Privy Council.

In the Moses' case to which the Attorney General referred the Privy Council held quite clearly that the felony murder rule in Trinidad and Tobago was deliberately abolished. They said so in terms and considered whether it was inadvertent, but they came to the conclusion that it was deliberate. I think it is important to know that there is a body of opinion different from the Attorney General's and mine that does not think that the exercise in which we are engaged today is merely correcting a piece of inadvertence. They expressly considered the argument that the rule went as a result of blind copying and they did not accept that. They said that the draftsman did not blindly copy the English Act but made several alterations to reflect local conditions and terminology. I do not want to bore everyone by reading the whole thing.

There is a serious body of opinion which holds that we are not dealing with anything inadvertent. When we came to pass the law we did it with our eyes open. It is important to know that. If everyone approaches this Bill on the basis that we are correcting something inadvertent, they would approach it with far less scrutiny. I think we are making deliberate choices. It colours the argument very slightly to suggest that the abolition of constructive malice in England was as a result of the drive towards the abolition of capital punishment.

2.40 p.m.

I am very bad at sums, so I will just give the dates. Constructive malice was abolished in England in 1957 and capital punishment in 1965. Anyone can see that there was a considerable period of time between the two. I am not saying that in the background there was not agitation about capital punishment. Indeed, the

presence of capital punishment may be one of the things which caused the English legislature to abolish constructive malice in 1957.

I have a different view about what we are doing today. We are not correcting something inadvertent, and we are not looking at something which is directly connected to any drive to abolish capital punishment; we have to make a policy choice and we must be very clear about that. It is completely open to us to have something equivalent to a felony murder rule, that is to say, a killing occurring in the course of the commission of a crime would make you liable for murder.

As I have tried to indicate in the two theoretical examples that I have given, there are many, many situations that are embraced in this policy decision. I think, therefore, that we have to scrutinize this legislation very carefully indeed in order not to cast the net too wide. It is commendable that the Attorney General was astute to see that the Bill in its original form did cast the net too wide. The questions now are: Have we gone too far to the other extreme? Have we fallen into using jargon that has no meaning in law? We will come to that.

No one can be more bloodthirsty about the criminal element than I. I am a retentionist. Regrettably, they have started hitting our office block again, so I am really not in a very forgiving mood. I very rarely am. At the same time, in the discharge of the constitutional responsibilities allocated to me by the President, I have to keep a very calm head and simply not allow my passion and disgust at losing two of my dusk-to-dawn lights last week cause me not to examine this Bill carefully and not to lay out the choices as I see them.

Mr. President, that brings me now to the nitty-gritty of the Bill. At the risk of repetition, we are making a very serious policy choice today. I have no barometer for this, but I dare say that I was right when I said that the country was not in a forgiving mood, and I do not think that the country is in any more of a forgiving mood today. It might be a somewhat futile task to suggest that we should not make a policy choice relating to a killing taking place in the course of the commission of a crime. In other words, we must make a different policy choice from the so-called mother country. I have no difficulty with that, but it has to be carefully circumscribed and full of checks and balances whether people like them or not.

I entirely agree with the Attorney General that the original bill had a flaw, in the sense that any arrestable offence, for example the stealing of a dinner mint, could have resulted possibly in a murder conviction. There is, therefore, need to

inject into this, some reference to the use of violence. If my colleagues, who always try to follow me, however obscure I am, would look at the original bill and the amendment, they would see that we have created other problems because—and I say this with the greatest respect for the draftsperson—we have left normal drafting language and gone into information-kit or press-release language.

I have great difficulty with the use of words like "interface" and "addressing". I know that we address envelopes, but we seem to address everything else other than envelopes, and every form of interaction seems to be an interface. I also have a great problem with the word "embark" and I will explain why. It is not only my dislike for jargon, but nowadays, instead of embarking on ships, we seem to embark on everything, including crime. I do not know what happens if a person embarks, which as far as I know means begin, and then stops. Is there some point at which a person can stop acting in the furtherance of the offence and so escape liability. I think it is a dream for lawyers, and the Attorney General may regret the considerable sacrifice he has made in giving up private practice because I think he can make a whole other career on this amendment which is very fatally flawed.

I certainly think that the word "embark" has absolutely no place there. First of all, it is jargon and, secondly, it will produce all kinds of problems, as if a person starts and then stops, then runs around the corner to get a pack of cigarettes and then returns and somewhere in the running back with the pack of cigarettes the person is killed. It is a crazy world. I do not mince matters and I do not say "crazy" by way of attack: I say it by way of description.

It is always very important to look at precedence. I do not know why we need to look at words like "embark" when there are time-honoured words like "attempts" or "takes part". We cannot use "commits" because we have to take care of an "attempt". Secondly, I do not know what is the meaning of the phrase "involving violence". That is more jargon. Any time anyone is pressed for a way of describing something, they say it "involves something" and I have a great problem with the expression.

Not being a criminal lawyer, I tried to get some help. I see that in all the other criminal statutes, a very simple phrase is used—"personal violence". That is the more normal phrase. I accept that there may be difficulties about using the phrase in that particular form because one may want to get away from the direct use of violence. I am neither parliamentary draftsman nor criminal lawyer, but I have great problems with the expression "involving violence". When we go back to the

original bill I think the formula there is much better for reasons that I will explain. It is far better to say, "where a person kills another, in the course of furtherance of an arrestable offence...". We can simply insert there, "in which personal violence is used". We want to ensure that we are talking "personal violence". That is the traditional phrase.

Secondly, if the Government does not want to have the expression "uses personal violence", meaning that that will constrict the law to the alleged killer himself using the violence, the whole purpose of this is, if a person is there as part of a joint enterprise while someone else is using violence, we want to convict him. The way to deal with that is to say, "in the course of furtherance of an arrestable offence in which personal violence is used". It does not matter who uses it. By putting it in the passive—I will have to rely on the linguist who is a better draftsman—it would ensure that anyone using violence in the enterprise would be caught, as opposed to using the active "uses personal violence".

I am not saying these things ought to be technical or dry. I would like everyone to understand the choices we are making. We are making a choice that if someone is part of a criminal enterprise and as a result of something that someone else might do, he can be liable for murder, we need to know what the choices are.

I do not think we need to go into all this jargon about "embarking" and "involving". I do not think we should "embark" on any drafting that involves jargon. I think it is very important. A little further on, we will see the importance of not using words like "embark".

I think the original formula is the same language used in the Homicide Act, 1957, but in the negative, that is, when they were abolishing constructive violence. It is the same language and it is time-tested. It has nothing to do with coming from another country.

Let me tell you another difficulty I have with this amendment. "Where a person embarks on the commission of an arrestable offence involving violence and a killing occurs...". A killing of what? A passing corbeau. Nowhere in this amendment does it make it specific that we are talking about one person killing another. The word "killing" just hangs there and that is why it is important to look at the original draft to see where a person kills another in the course of furtherance of an arrestable offence. That is fine. That captures everything. A crime is going on, an arrestable offence is taking place, one person kills another, those are two qualifications for liability.

2.50 p.m.

In this roundabout way in which we did it, where in this amendment have we defined—and it might seem stupid but this is why we have privy councils—and nowhere in here does it say the killing is the killing of another person because the draftsperson completely lost sight of the original objective in all this "embarking" and "involving". I am not attacking or undermining anyone, I am using what is called *reductio ad absurdum.* So one lets off a gun and a corbeau is passing, and it kills the corbeau. A killing has taken place, the person will be liable for murder. This is court drafting. I am not undermining anything, I am just pointing out what I think is the difficulty.

Mr. President, I think it is very important that we consider these choices very carefully. I take the Attorney General's point about "not automatic" and I will come to that. Probably, if it becomes necessary, I will try to formulate this in terms of an amendment. I am in double jeopardy here, I am not a parliamentary draftsman, neither am I a criminal lawyer. The President has put me here by virtue of some section of the Constitution whereby my colleagues and I qualify.

I think it would be far better if we forget about this amendment and work with the original draft and I think it is important, therefore, to insert the phrase in which personal violence is used. I am doing this, and all the time I may be doing it badly, but I am doing it so that everyone may understand the type of choices we are making here. This is not just correcting inadvertence, one has to understand the choices we are making. I entirely take the Attorney General's point and his good faith, and I do not think there is any window-dressing here, it is a very important issue, and it must be properly debated. Even if one circumscribes the liability very carefully, one may want to hint that it is not completely automatic and, therefore, one may want to say "shallow mouth", but I think it is perfectly possible to introduce the concept of "shall be liable for murder", in the original draft, without all this jargon.

There is another point in the amendment which I know the Attorney General has seen, which is not in the original, but I am trying to find the middle ground between the two. The amendment makes it explicit that all persons engaged in the commission are liable, so we may have to look again to see where a person kills another because I may not be the killer, and I know that is another matter that is going to form the amendment.

I really think we need four ingredients and the original Act does not capture them, neither does the amendment. Firstly, we need the killing of a person; the second ingredient is where it takes place in the cause or furtherance of an arrestable offence; the third ingredient is a personal balance which must be used in the course of the commission of the offences; and the fourth ingredient is that we have to make it plain, that it is not only the person who kills another person in the course of an offence, but all persons engaged in the commission need to be the fourth ingredient, otherwise the original amendment will amount to a re-statement of murder except in the case of an arrestable offence, but the amendment has the other difficulties which I have raised.

Mr. President, I think we need to look at this drafting extremely carefully. Because of the risk in repetition, we are making a very serious policy choice and we are doing so against the background of only one degree of murder. Just think of the ricocheted bullet and all these different permutations. One does not have to be a lawyer to think of all the strange things that happen in the course of a road accident, or in the course of acts of violence or anything else. We could end up with very hard cases for persons, even like myself, who are not in a forgiving mood.

I have no problem with the reintroduction as a policy choice of a rule that ensnares other persons who are committing an offence when one of their group may cause someone else to die. I think it is a very sensible policy choice for us at this stage of our development, and I agree with the Attorney General that we need to look at it for ourselves free from the constraints of what other countries tell us. I shall say in passing, that it is rather ironic, or perhaps it is a good thing, because this is a Bill we are debating where there are policy choices because there are no agencies lending money for murder, so there are choices. It is rather ironic in that the Trade Marks (Amdt.) Bill in which we are threatened with sanctions if we do not pass the legislation precisely as we are told to pass it, is also on the Order Paper today. I am very grateful that the international lending agencies have left us a choice on matters of life and death. Long may it remain so! Sometimes I worry about that because we were threatened with the trade marks legislation, but apparently we may have a choice here. That is very important.

Mr. President, I think we need to get these ingredients right. I hope it is not at the risk of upsetting everyone that I have raised drafting matters in the course of my contribution, but I have done so to try to outline the choices which we have to make. It is regrettable that it falls upon me, but I am not sure that we have as yet

got to the point where those choices are sufficiently and carefully expressed. I know that I will have at least one sympathizer in Sen. Prof. Kenny who has a somewhat different view from me as regards capital punishment, but I am not doing this because I am concerned about capital punishment. I think it is important that we make an informed choice and certainly, although I am a retentionist, I would not like us, by some inadvertence, to start making persons liable for capital punishment for degrees of murder, but perhaps rather less serious than all of us envisage, or read about in the newspaper everyday.

Mr. President, I really will have to look at how this develops in order to see whether we can accept this legislation in this form, but I think we must be very mature and we need to set an example. We must debate this important issue without worrying too much about the personalities and the name calling. It is a very serious matter, one could be sending persons to judicial death, and I support it. I therefore think it is important that it be debated in a spirit of informed policy choice.

Thank you very much.

Sen. Pennelope Beckles: Mr. President, I rise to make my contribution on a Bill to amend the Criminal Law Act, Chap. 10:04. I read yesterday's newspaper and I realized that a young lady from Maloney was killed at point blank range whilst sitting in a motor vehicle with her husband, and up to today no one has been arrested.

The police have indicated that it is a case which has them totally confused, and knowing that today we would be discussing this issue as it relates to an amendment dealing with the felony murder rule, I clearly looked at this legislation again and when I saw the amendment, I felt a little more comfortable, but then as I read it, I am not sure that this amendment does not confuse the issue even more by making it more difficult to understand.

3.00 p.m.

I have some serious concerns with the first five lines of the amendment which state:

> "Where a person embarks upon the commission of an arrestable offence involving violence and a killing occurs in the course of that or any other arrestable offence involving violence, all persons engaged in the course of the commission..."

As you know, Mr. President, in terms of murder persons can be accessories before and after the fact. The impression I am getting from this legislation is that the words: "...all persons engaged..." could take into account a very wide category of persons who may have been engaged in the commission of this arrestable offence. For example, one may find oneself in a position where one could be in a vehicle and may not have known exactly what may have taken place, but other persons may have given statements or the police may have, subsequently, gotten some information, and one might be arrested for murder. I am, therefore, concerned that these particular words: "...all persons engaged in the course of the commission of the arrestable offence..." may be extremely wide.

What these particular words then call for is whether it may not be necessary to specify the degree of participation of aiders and abettors, that would be necessary in order for persons to be dealt with under this Bill. The Bill says "all the persons engaged in the course of the commission of the arrestable offence...". There might be the situation where many innocent persons could be brought before the courts. As I said before, I am very concerned because I feel that this amendment is extremely wide. When I look at the original Bill that was laid before the Parliament, I am wondering what was the thinking, in terms of putting in these words: "...all persons engaged in the course of the commission of the arrestable offence...".

There could be situations where persons' names are called or even if they are not called, one may, for example, be helping particular persons to escape, the act having already been committed, one might find oneself caught by this category. Whilst we might very well say that may not be the intention of the Bill, I think that it is quite likely that is the interpretation that could be given to that clause. The degree of participation in which one would have to be involved in order to qualify for this act is not clear in my mind. "...all persons..." seems to incorporate all persons who may have been part of the activity in terms of the commission of the offence. Once it is not clear as to the degree of participation in which the persons need to be involved as it relates to being guilty of this offence, I think it is quite likely that a very liberal interpretation could be given to it, leading to some serious injustices.

Whilst the Attorney General gave us the history of the felony/murder rule, where he referred to the case of Andrew Moses v the State, The Privy Council Decision, the concerns I have is that early in 1996, the Attorney General indicated that he would be bringing legislation to this Parliament to deal with the degrees of

murder—murder in the first degree and in the second degree, and quite a number of persons were extremely happy with that. I have been attempting to reconcile if he still intends to bring that legislation before the Parliament, how we would be able to reconcile it with what is before us at present. It seems to have some sort of conflict and it may cause some sort of confusion in the minds of others.

In other words, assuming at some stage those different categories of murder come before the Senate, how would it be reconciled in terms of what is before the Senate today. With respect to those categories of murder, I recall when the Attorney General gave the explanation, he was actually referring to the American system in terms of their present position. Subject to what other persons have to say, I do know that several persons in Trinidad and Tobago felt that there may have been a much better way of dealing with the present situation. Once the instructions are given to the police as they relate to the categories of murder and they are clear, then to me, it seems to be totally different from what we are actually dealing with today. Probably in the Attorney General's winding up he could indicate whether these two situations would be in conflict or whether that position as it relates to the categories of murder will be brought before this honourable Senate.

The other concern I have is that in the last couple of lines which reads: "...liable for murder even if the killing was done without the intention to cause death or grievous bodily harm." When I read the entire amendment together, I am concerned that the intention to kill is no longer relevant in terms of this whole issue of manslaughter versus murder. Once the person embarks on the commission of an offence or engages in the offence, that is strictly defined as murder. Notwithstanding the fact that the Attorney General indicated the whole issue of the *mens rea* for murder and the fact that the prosecution still needs to prove all the ingredients of the offence, the impression I am getting from the last three lines in this particular amendment, is that a person whether his intention was to kill or not, is automatically caught by this amendment because one does not now have that category of manslaughter/murder as one previously had.

It appears as though it will be most difficult for a person who gets involved in the commission of any offence where murder results, to be charged with manslaughter, which is normally available and which is now totally out of the window, as is clearly stated in this clause. That is why I have a serious concern with that because it appears as though one is actually eliminating the whole issue of the *mens rea*.

When one looks at the original amendment from the House of Representatives dated May 2, 1997, and the present amendment, I am not sure if any change has really occurred, in the sense that at the end of the day, with the exception of the fact that we are stating "arrestable offence involving violence", the person will still be charged with murder. We do have a very serious situation in Trinidad and Tobago. Presently, we have almost 100 persons on death row and it is almost two or three years that anybody has been hanged. There was a recent matter—I think about two weeks ago—going to the Privy Council where the death sentence was actually read on a particular person. Last year, there were also two or three persons on whom it was read. Mr. President, the society is extremely anxious to hear exactly what is the Government's position as it relates to the death penalty.

3.10 p.m.

Of course, the impression that one would get from reading this legislation, is that once one has been engaged in the commission of the arrestable offence involving violence and murder results, it appears to be going in a particular direction, that is to say, the retention of the death penalty. I would not want to assume that. I think it would be for the Government to say that. Nonetheless, we are all aware that in terms of the issue of crime and what has been happening over the past few months, both in relation to women and men, that we are extremely concerned as to what is the Government's position as it relates to the death penalty.

I think what the society is really concerned with, is that in terms of these several pieces of legislation, in addition to this one that is before this honourable Senate, is there any guarantee? Can we see, over the past few months, that there has been any reduction in crime? I think one always has to go a step further. Assuming that this legislation is passed and it becomes law and several persons are being charged and convicted of murder, where do we go from there? I think that is one of the serious concerns that all citizens of Trinidad and Tobago have at this particular point in time.

Bearing in mind as I said again, that we have to always ensure the whole issue of balance—whilst we all agree that crime has been constantly on the rise—we have a situation where the average Trinidadian or Tobagonian is extremely concerned, whether it is driving one's car and going out at nights, about returning home alive. On the other hand, where the whole issue of justice is concerned, we do not want it to appear that legislation is passed in Parliament, seemingly to deal

with the increase in crime and the impression is given, well, anybody who gets involved in any criminal activity and a murder results, would be hanged. That really is not what is happening. One may be convicted, but not hanged. If we were to do an analysis over the past few months, there are some matters which were dealt with very quickly. In some instances, from six months to a year. There are other instances where there are matters pending from five to 10 years and over, and some of those matters have not been addressed. So the question arises: What gave those matters priority over some of the others that have been existing there for quite a long time?

Mr. President, these are all the relevant issues that the citizens of Trinidad and Tobago are concerned with in terms of justice; in terms of expediting these matters and in terms of ensuring that when we bring legislation before this Parliament and it is passed and becomes law, that we can actually see some sort of consequences down the road. I am not sure, in my mind, that the society has been really consulted in terms of what are their views on this matter. We may very well have a situation where, during a particular point in time, when crime is on the increase, people call for the death penalty, they call for hanging. Very recently, there was a situation in terms of a very personal attack on a female in Trinidad and Tobago. At that time, people were saying, "Well, hang him." The point is, we have to always ensure that when we make our decisions we are as objective as possible and we do not regret some of the decisions we have made.

When we look at the Andrew Moses case in relation to the Privy Council and some of the statements that were made, one of the things clearly pointed out was that alterations were made to reflect the local conditions and terminology. The Privy Council is the highest court in the land and, therefore, those decisions are binding, but it pointed out that it recognized that alterations were made to reflect local conditions. Therefore, when it was said that this mistake was inadvertent, Mr. President, I am not totally convinceed that is so at all—I think that what was important is yes, one can go to the mother country as I said, for the purpose of precedent; for the purpose of getting certain pieces of legislation; for the purpose of guidance, but at the end of the day when we are incorporating pieces of legislation into our laws, we always want to ensure that those pieces of legislation reflect our local culture, our society and our unique situation.

Therefore, I want to maintain that my two major concerns are: The whole issue of "all persons engaged" and the fact that "involving violence shall be liable

for murder, even if the killing was done without the intention to cause death or do grievous bodily harm".

Thank you, Mr. President.

Sen. Rev. Daniel Teelucksingh: Mr. President, I rise because the hon. Attorney General did make mention of the simplicity of this Bill to non-lawyers. Nevertheless, I am grateful for the technical analyses of the experts and those of our colleagues who have been giving us the kind of analysis, that we, the simple non-lawyers need to understand and, possibly, to vote in a meaningful and informed way on this very significant piece of legislation.

In the course of the presentation by the hon. Attorney General, I began to appreciate the difficulties of, maybe, all those who hold in their hands the scales of justice to distinguish in their minds, at least, the differences and the shades of meaning among implied malice, constructive malice or expressed malice. It must be very difficult indeed for all those who sit in our law courts and must come to very important decisions affecting the lives of people. As I see it, any bill which deals with crime in Trinidad and Tobago deserves careful and serious consideration. I see this Bill to amend the Criminal Law Act as focussing on, at least, three significant issues.

Firstly, I see its fundamental thrust regarding offences leading to murder as emphasizing individual responsibility, personal accountability for one's actions, rather than blaming what has happened on other people or other circumstances. I am a firm supporter of the doctrine of responsibility for one's life and action. Therefore, as a layman, the Bill seems reasonable in its insistence that all persons involved in a killing are guilty of murder. I hope this is the thrust of it. This is how I am seeing it. I have always had a problem though with the practice in law of that special privilege of immunity granted to a murderer or a willing accessory to murder who turns state witness and is assured of instant pardon. I have always had a problem with that. I wonder to what extent the state, by being so generous, has washed human blood from the murderer's hands and his conscience. I wonder to what extent something like that should be encouraged in the search for information.

Secondly, as I see this Bill, in dealing with violence, I am reminded that today in our community we live under the tyranny of the violent-minded. West Indian society is becoming increasingly violent. Leading the way are Jamaica and Trinidad

and Tobago. There is a wave of violence sweeping across the West Indian community which is destabilizing our social unit. Even the smaller islands, which were once crime-free, are now being violated by criminal elements. Crime in the West Indian society certainly deserves the cooperative efforts of Caricom, since crime is fast becoming too massive a problem for individual governments.

3.20 p.m.

Certainly, Mr. President, this Bill is dealing with man's greatest sin and his most outrageous crime towards his own kind. That of murder. In our community, the unabated spate of murders has baffled both sinner and saint: the list of brutal, senseless, heartless, callous, bloody, uncontrolled spate of murders—and we add to these all the numerous lesser violent crimes. Many references have been made to the killing of the 30-year-old woman in Curepe during the last weekend. The weekend before that, we had another murder; and the weekend prior to that we had murders.

When will it stop, Mr. President—this loss of respect for life and the irresponsible use of guns and weapons of pain and death? What we are witnessing are the broken cords of communal love. We are worried about this. They need to be mended. We must find ways and means of creating a community of love. Government must do its part well, to address problems of poverty and unemployment, and all the other social ills.

In closing, I just want to talk about the upcoming weekend. In fact, this week Father's Day is being observed everywhere. Should there not be a challenge when one bears in mind that this Bill is also going to affect so many boys and young men? What are we in Trinidad and Tobago going to say about Father's Day? It is very easy to talk about Mother's Day, but we are going to have very serious problems talking about Father's Day, and yet, we are grieved that a Bill like this is going to fall very hard on the boys and men in our society.

Fathers! I think there is need for us as a nation to redeem and save the boys and men of this community; particularly those who have been involved in a life of crime. Certainly, this is the time for our nation to rediscover the significance of family values as the cornerstone to community life. We are all very saddened when we must look at legislation like this. It is necessary, I know. We have a very serious problem. I know we are not discussing the question of capital punishment.

We are looking at the whole question of who is involved when someone dies, particularly in the case of murder.

I hope and pray that we will not see this as just a piece of dry legislation to amend the law, but one that is certainly going to affect the way in which we live, and the way in which we relate to one another. Together, we are going to pool our resources, very prayerfully and seriously, so that our people can be delivered from the evil that stalks the land.

I thank you very much, Sir.

Sen. Diana Mahabir-Wyatt: Mr. President, I do not seem to be as bloodthirsty as everybody else around me. I am an abolitionist. I have always been an abolitionist. While I accept that people have to be held responsible for the outcome of their own actions, I question why we must include all persons who are engaged in the course of the commission of a crime, rather than those who just pull the trigger.

I much prefer the first amendment to the second one. While I am not insensitive to the level of crime that is existing in the country, and the tendencies that it is taking, I think that very often, where it comes to somebody who is driving the get-away car, young people are being coerced into taking part. This automatically means that those young people—or in some cases, very obviously, women who are subject to domestic violence—have been coerced into doing things at the behest of the person who is the perpetrator of the violence.

The very fact of them being involved would mean that they are automatically liable for murder according to the second amendment. That bothers me. It is just not something which I think we really intend to have happen. While I accept the distinction between first degree and second degree murder—I am sure the Attorney General will have that legislation for us in due course—I hope that there is some way in which this particular concern I have can be dealt with in a court.

The only other comment I have to make on this amendment is a question for the Attorney General. When he was making his comments while introducing the Bill, he used the example of what would happen if when somebody was committing rape, a hand was placed on the victim's throat and the victim died as a result. He made the distinction between that kind of crime and a crime which

involved grievous bodily harm. Does the law not recognize rape as grievous bodily harm? I would have thought that this was grievous bodily harm. I just hope that he can clarify that for me.

Thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, my contribution is brief. This is a very problematic Bill. I am in sympathy with the spirit which says that if one carries a lethal weapon while committing an arrestable offence, one is declaring one's intention, or one's willingness, to kill. One cannot be grandcharging. If one is going to a bank with guns, one has declared an intention to kill, so I am quite happy that fellows like that are liable to be charged with murder if somebody gets killed during the course of a robbery.

I am also sympathetic to the feeling that if one uses violence of any sort towards another person in the course of committing an arrestable offence, one is expressing the will to kill. Therefore, if one kills the person—even with one's bare hands—in such a case, I feel that one should be liable to be charged with murder. There are many other instances under the present Bill where one would feel that the person should not be charged with murder. That is the problem. Everybody can think of instances under the present Bill where somebody could be charged for murder, but we wish it would not be so.

3.30 p.m.

Mr. President, I am grateful to Sen. Daly for answering one of the questions I wanted to raise and for opening up this whole debate in the way he has. Have we as yet got to the stage of having degrees of murder? I know that we are on the way towards that. I would agree with Sen. Daly in the first instance that if we do not have in the law books, degrees of murder, such as murder one, murder two, murder three, then this present Bill should take its place in the queue and come afterwards.

The second question came from the original amendment but it spills over into the second one and has to do with the phrase, "where a person kills another." I think that is preferable to "where a killing occurs", but when I read, "where a person kills another", I did wonder, do we mean his accomplice? Supposing in the course of a robbery, I kill a member of my gang—it could happen—or as Sen. Daly asked, a passerby or the object of the arrestable offence? Normally you would think it is the person against whom the arrestable offence is being committed who would be killed, but at present we do not have a clear sense of what would happen

if I kill my fellow gang-man or an innocent passerby. So instead of saying "where a person kills another", I thought what about "where a person is killed," but that does not work.

Then, I thought, what about "where a person dies", because you cannot prejudge the matter and say it is murder. A persons dies in the course of this thing and you have to decide it is murder. If, for instance, you are robbing me and I die of a heart attack during the course of the robbery, my family would say you have killed me. The doctors and your clever lawyers might say I died of a heart attack while this robbery was being committed and you did not kill me. What do we do with cases where a person dies of a heart attack during the course of the commission of such an offence?

What about if I told you, "Open the cash box or I will cuff you," and I give you one cuff and you hit your head against something and die, is that murder as well? If during the course of a rape I am choking and stifling you to stop you from making noise and you die, is that murder too? If one hour after a gang rape or a beating by a gang somebody expires, is that murder too? If there is a man who beats his wife every Friday night and one night she dies as a result of the beating, is that murder too?

When you think of examples that have to be covered, you realize that this matter is a mine field. I have brought all these examples and difficulties to lend my support to Sen. Daly's suggestion that this matter be put on the back burner until the Government properly establishes degrees of murder.

Thank you.

Sen. Danny Montano: I rise to make a very short contribution. The debate began with contributions from the lawyers in this Chamber and led on to the lay persons. I thank Sen. Daly for his very clear and articulate contribution because it caused me to rise to say what I am about to say. He was able to clarify in my mind what appears to be really happening here.

What I heard the Attorney General doing was explaining the rationale behind this little piece of legislation. But, Mr. President, standing here as a layman, I did not get any real understanding of the need for the legislation. He explained how it has come about but he has not really explained, to my satisfaction, the need for the legislation. Let me elaborate on what I mean. Sen. Daly indicated that what we had

reached was the crossroads at which a policy decision has to be made about the effect of this legislation and whether, in fact, it was a desirable thing or not. He is absolutely right. That statement on his part really strikes at the core of the matter. Is this a piece of legislation that is necessary? We have not heard from the Attorney General how it really impacts on society as a whole. After all, one would assume that the laws that we pass in the Chamber must redound to the benefit of the society of Trinidad and Tobago. I do not see how we, as a people, benefit from this piece of legislation.

What I understand is that consequences of certain actions would be treated as murder. I understand what he has said and the legal consequences of that. I do not understand, Sir, the social consequences of it which are of paramount importance to us as citizens of the country. No case has been made. Much has been said about legislation that is likely to be brought dealing with different classes of murder. One would assume that the reason for that legislation would be that the penalties are going to be slightly different. Why then, Sir, is this area of action being brought in as murder with the penalties which are attached to murder? This is what I have difficulty with.

It comes to the crux of the argument: "Why do we have laws at all?" We understand why we have laws and what must be done, but in terms of taking action like this, that has existed in the common law since at least 1979 and before; obviously, what is going to happen is that the penalties for these actions are going to be changed as a result of these actions now being described as murder as opposed to some lesser offence. If that is the case, how does society benefit? Is it that the harsher penalties are going to act as a deterrent? Is it that the harsher punishment—life imprisonment or whatever—is going to somehow modify the behaviour of the person convicted of murder, so that when he comes out he is a better citizen? Is that what we are saying? The psychologists and those better informed on the consequences and effects of these penalties would say that does not really happen.

Therefore, the real reason for the need for this legislation has completely escaped me. I do not see exactly what is being done. From a legal point of view I understand it, but from a social point of view I see that nothing has been said and I do not understand it. I would like to reiterate the fact that Sen. Daly came to the crux of the matter, that it is a policy decision. How harsh do you want your laws to be? If you want them to be very harsh, at least articulate the reason and say what

the consequences to society are and how you are going to do this, so that society is a better place for all. I have not seen that at all, Sir!

I see a very little piece of legislation with harsh, onerous consequences. In many of the examples that have been cited it is very clear that the legislation as we have it in its original form and even as modified, is going to make a mockery out of, apparently, what are the legal intentions.

I would add only one example to what has been said. What happens to the perpetrators of the violent robberies who are escaping in their motor car and knock down a bystander as they are running away from the police? That is a killing that is as a consequence of the original act. Is that now murder as well? What is the purpose of treating that kind of thing as murder? How do we as a society benefit from that, Sir? I would very much like to hear the response of the Attorney General.

Thank you, Sir.

3.40 p.m.

Sen. Dr. Eric St. Cyr: Mr. President, it was not my intention to join this debate but as discussions unfold, I think I should make a very simple contribution.

My understanding is that when the British were changing the law in the 1950s, they were concerned with protecting their law officers. In fact, it used to be a practice in those days that not even criminals carried guns in that when the great train robbery took place and £1 million was taken, all that was used was batons. To me murder has to be with malice aforethought. Anything which is not that, then constitutes manslaughter. It seems to me that perhaps what we should say is that the category of killing here should constitute manslaughter.

Mr. President, I thank you.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I am indebted to the hon. Senators who have made their contributions in this matter. I think that it gives us a clear idea of what one considers to be a simple piece of legislation in which not only lawyers can understand, but lay people as well, how much jurisprudence can be generated from the discussions. I sincerely want to say that the contributions which have been made have been very useful and we welcome those criticisms.

Mr. President, I would like to say that Sen. Daly probably did not hear all of my contribution and that probably accounted for some of the misunderstanding. We did state the position that the policy of this Government was that persons who embarked upon enterprises such as these, should be liable to be convicted for murder. What we did say was that we were of the view that the Parliament did not expressly abolish the constructive malice rule but that the Privy Council found that that was so.

When one looks at the *Hansard* for the debate on the Law Revision Act of 1979, one would see that nowhere was it mentioned about the constructive malice rule. We agree that the Privy Council found that the rule was abolished but we have taken the position that if the Parliament and the people of Trinidad and Tobago in abolishing that rule had to have a say in its abolition, that would be a point which would have to be articulated to the people of Trinidad and Tobago.

Be that as it may, the Government of Trinidad and Tobago made a policy decision that we were going to go with this principle of the common law which we are now going to put in statutory form. Mr. President, therefore, I want to give the Senator the assurance, through you, that it is not a remedying of the defect in the sense that, yes, we recognize that this is what has been found; we also recognize as a government that this is what is needed and we have taken that policy decision.

Mr. President, why should there be this rule? We consider that the criminal justice system is an important tool for dealing with crime. Having regard to our circumstances, this common law rule has been applied over the years, affirmed by the Judiciary and the legal profession, recognized even by the Privy Council and it is an important tool with which to punish people for committing serious offences.

With the greatest respect to Sen. Daly, "embark" is the word used in relation to joint enterprises but I am not saying that we cannot use another word. If I may say again, if Mr. A and Mr. B embark upon a joint enterprise to rape a particular woman and in the process of doing so the woman is resisting, if in her resistance they have placed their hands, a stick or whatever they have done, on the woman's mouth or throat or any other part of her body resulting in her death, if there is no such rule the person is then prosecuted. Assuming the persons are prosecuted for rape and murder—now there is the principle that one cannot have rape and murder being tried together so one would have to decide whether one should go with murder or rape—without this rule one would have to try to convince a jury that it was murder, in that there was the inference of the intention to kill.

It would be very difficult for a prosecution to secure a conviction of murder in those circumstances. One does not want to go through the cases but there have been several killings which occur every day where this tool is needed if one is serious about getting persons convicted for murder. That is why I agree with what Sen. Daly has said; it is a policy decision. Do we want to put in the net, persons who agree to commit serious arrestable offences involving violence and in furtherance of that offence the killing occurs—whether it is accidental or not—whether they would not be liable to be convicted? It is not that they would be automatically convicted; the jury would consider all the facts and circumstances.

Mr. President, the point that Sen. Daly made and the instances he gave, I want to make it quite clear that this rule does not abolish the defences which apply. There is still defence of self-defence and provocation. If the person is killed in circumstances which can amount to self-defence, the person who does the killing is entitled to have that defence considered by the jury. If in some of the instances mentioned by Sen. Daly and Sen. Prof. Ramchand the killing is accidental—circumstances can amount to accidental death—the person is entitled to have those facts put forward to the jury to consider whether it is accidental death.

The point is that these defences are still open to them and the judge will have to put it. If he does not, it would be a misdirection of the trial and there would have to be a new trial. Therefore, it is not a situation where people are not going to be given a fair chance in putting whatever defences they have. As a matter of fact, self-defence is a defence in law which one is entitled to, to defend oneself and does not have to wait to use reasonable force to defend oneself. As it says, one does not weigh the nicety of the situation in defending oneself.

If there was a case where even if there was an embarking on an enterprise and an act was done but the person who killed did so in self-defence, the person would be entitled, as far as the murder is concerned, to raise the defence of self-defence. Similarly, if the jury is satisfied that the person either acted in self-defence or is unsure whether the person acted in self-defence, the person would be entitled to an acquittal. If the person is drunk, for example, to the extent that he could not form the intention or did not have the intention—malice aforethought—drunkenness can even reduce it to manslaughter. If the person is provoked to such an the extent—and one knows if one raises a knife or words are spoken which amount to a provocation, the charge of murder can be reduced to manslaughter. There are the

verdicts of insanity and diminished responsibility and the way the law has developed you can raise a defence of duress depending on the circumstances.

3.50 p.m.

Mr. President, the safeguards and defences which are available to persons charged for murder have not been touched by this amendment. As a matter of fact, they are there and exist for the protection of the accused person to ensure that he gets a fair determination of his case.

With regard to the point raised with respect to accessory before the fact and accessory after the fact, that is a different concept to aiding and abetting. Accessories are dealt with under separate concepts of law, while aiding and abetting is a principal in the first or second degree. It has always been the law where one who aids and abets in the commission of an offence, even if one is present but does not actually commit the offence but he aids and abets; he even acts as a watchman, the aider and abetter is just as guilty as the person who commits the offence.

So, the aiding and abetting principle is well-known in the criminal jurisprudence. What we have decided in this matter is that the principles of the common law are still considered as part and parcel principles which are applicable to the criminal justice system in Trinidad and Tobago and all we are doing is putting them in a statutory form. We have taken a policy decision that is what we would like for the administration of justice in Trinidad and Tobago.

Mr. President, the point has been raised about the categories of murder. Hon. Senators are aware that this debate is not an issue on whether there should be capital punishment or not. This is not a debate on that, it does not embrace that. The Government of Trinidad and Tobago indicated that it was considering having the categorization of murder and, as a matter of fact, it has gone to the public with that. There is a lot of opposition to that and the majority of the written comments we received from the consultations we held in Tobago, Port of Spain and San Fernando request that we do not expressly categorize because they envisage confusion in the law as a result of categorization.

The majority of comments stated that the law already exists for categories, in that if you commit murder with an intention to do grievous bodily harm whether as a principal in the first degree or a principal in the second degree, that is as an aider

or an abettor, you are guilty of murder. If the killing is done in that you were motivated to kill because you acted in self-defence, because of provocation or you were attacked with a gun and you took a cutlass and chopped the assailant in self-defence, then you are entitled to be acquitted. If, on the other hand, you were provoked—and the law in Trinidad and Tobago has been changed because at one time spoken words could not have amounted to acts of provocation but now it is recognized that you can so taunt a person with words.

One can imagine situations where a husband is taunting a wife continuously day after day, night after night, morning after morning. After a time it builds up and if this wife kills under the stress of provocation, she is entitled to have a jury determine that it is not murder but manslaughter.

There are categories at this stage. As a matter of fact, the laws in Trinidad and Tobago with respect to 'guilty but insane' are very generous. We are looking at that now. A person who is charged for murder, if he can show that at the time he committed this murder, having regard to the history of his mental condition, he did not understand what he was doing, would be entitled to have a jury consider whether he was guilty but insane. In this circcumstance, he would have to be committed to the St. Ann's Mental Institution until he has recovered. He would not be executed or sentenced to death.

Mr. President, in this debate, the Opposition in their policy statement—Sen. Nafeesa Mohammed stated that she supported the policy of the Bill. The Opposition supported the policy of the Bill in the Lower House. I would accept what Sen. Danny Montano said in that he was, in effect, trying to deal with the social aspects of the indirect effects of capital punishment. If he needs further explanation I can assure him that it has proven to be a very effective tool in the prosecution of matters like these and it has to do with the question of who you consider, in criminal law, to be liable for an act. Do you exonerate a person from liability for criminal conduct if the person decides to commit a serious offence involving violence and in the course of committing that violence, he kills the individual?, As a policy decision, are you as a government going to say that person cannot be liable for murder?

We weighed it and considered what other societies have done. Other countries had to look at it and we decided what our particular problems are in our society and what our criminal justice system is akin to; what the criminal justice system in England is akin to; what changes they have made; what social conditions they

operate under and on what philosophies they operate in relation to the criminal justice system.

I would not go into the argument as to whether capital punishment matters have to deal with this matter. I have made that statement and Sen. Daly has joined issue with me on that and, probably, we could leave that for another occasion. However, may I say that in the history of the abolition of capital punishment in the United Kingdom, eight to ten years is not a very long time in relation to changes in the law on an incremental basis in order to deal with intention. The English criminal justice system changed its laws with respect to intention, recklessness, constructive malice, all aspects of it, and the question of capital punishment.

Mr. President, I do recognize the comments which have been made. I think the comments are a bit unfair with respect to the drafting and I hope Sen. Daly would not really regard it as—I cannot really remember the word used, but when one looks at the word "embarks", where a person embarks upon the commission of an arrestable offence, "embarks" is the expression used in the English cases, in our cases, in Archbold's and in any case dealing with aiding and abetting.

4.00 p.m.

I know that Sen. Daly has not practised very much in the criminal law, but I would ask him to take it from me that "embarks" is the word which is used and there is nothing difficult about it: "embarks upon the commission of an arrestable offence involving violence". They have done this kind of amendment in certain other countries and these are some of the words that have been used, but I am prepared to look at it again. With respect to "and a killing occurs", to be on the safe side, although I do not think it is absolutely necessary, we would consider "a killing occurs of another person".

The other point that he made, "any other arrestable offence involving violence", it clearly says "all persons engaged in the course of the commission of the arrestable offence". We can probably improve it and put "commission" or "in furtherance of the arrestable offence".

When this matter went to the House of Representatives, we knew that people would want to make sure that they were satisfied with the drafting of the Bill, so we considered it and allowed the amendments to be made. Here it is we have come to this Senate—this is a Government which listens; it is prepared to consider—and although Sen. Daly is in agreement with the policy, he has raised certain matters

with respect to the drafting. We have not had any advance notice of some of these drafting matters so I am proposing that I conclude my response and I would ask that the committee stage of the Bill be deferred until the next day. I would consider the drafting and come back in respect of those matters.

May I mention to hon. Senators that I have had discussion with our drafting persons and obviously they feel a certain way about the drafting matters, so I would like to have a longer time to look at the points which have been raised with respect to the drafting. Since we do not seem to have any difficulties with the policy of the Bill, I would conclude my address on that.

May I, in concluding, mention that points have been raised about persons on death row and matters like that. We have made statements on that matter and I do not want to go into individual cases. As a matter of fact, one of the cases which was referred to is now engaging the attention of the Privy Council.

As one knows, from the facts which came out, the individual expressly stated that he did not want to appeal further. When the death warrant was read, he indicated that he wanted to exercise his right of appeal. Government, committed to law, suspended the execution of the death sentence; facilitated the application to the Privy Council; provided legal aid; sent the records to the Privy Council; has been in touch with the lawyers in the United Kingdom; and has, in effect, asked the registrar of the Privy Council to have the matter expedited. I think if the matter is to go on, it would be expedited in accordance with the law.

Mr. President, I do not think that I should deal with all the cases on death row. That point was raised, I think, by Sen. Beckles. May I give her the assurance, however, that the Government's policy on the law as it stands now, is that capital punishment should be carried out. Until that is amended, that is the law of the land. The Government is acting under great constraints with respect to the principles enunciated in the matter of *Pratt and Morgan*. The Government of Trinidad and Tobago, through the office of the Attorney General and in collaboration with the Ministry of National Security and the Ministry of Foreign Affairs, has set up the necessary mechanisms in co-operation with the registrar, to see that the target dates set by *Pratt and Morgan* are fulfilled. It is like a specialized unit monitoring these cases, acting on a pro-active basis to ensure that records that have got judgments are obtained; records are sent to the registrar of the Privy Council. If applications are before the United Nations committee, there is action there as to the time-frame in which they will hear it. So that we are trying to use the administrative reforms to comply with the requirements of law.

Also on the agenda, there is a piece of proposed legislation which has been put out for public comment and the Government of Trinidad and Tobago would have to make a decision on that matter in the near future. In respect of that particular piece of legislation, we had put out for public comment the concept that, notwithstanding any delays in the system, after a person is convicted and sentenced to hang, the authorities should be able to carry out the death sentence. We have had three consultations so far on that matter.

I hope I would not get into trouble for saying this, but may I say that the population responded and many people felt we should put in the legislation the time-frame to ensure that the state institutions complied. There was a school of thought which said, leave the Bill as it is. So that is a decision the Government would have to weigh and consider.

As Senators would know, passing laws is not an easy matter, especially under constraints of a Constitution in which one has to be able to satisfy the rights as enshrined therein and also deal with matters of public policy. So one has to strike a balance to ensure that individual and public rights are protected.

Mr. President, I wish to give this honourable Senate the assurance that the Government of Trinidad and Tobago, in passing legislation, would respect those principles and when we come here and hear the comments, even though we may not agree with them at the time, or even though we may not agree with all of them, we would give them the consideration they rightly deserve. It is in that context I am asking the indulgence of this honourable Senate to consider the amendments at a later date and I would conclude my response in respect of this matter today.

Thank you very much, Mr. President.

Question put and agreed to.

TRADE MARKS (AMDT.) BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, I beg to move,

That a Bill to amend the Trade Marks Act, Chap. 82:81 be read a second time.

Mr. President, this honourable Chamber has been engaged all evening in very weighty and heavy matters dealing with murder and death. This amendment to the Trade Marks Act, in my respectful view, is equally important because it deals with

life and the functioning of life in the economy in Trinidad and Tobago, and I trust would not be as dark as the discussions on murder and the felony/murder rule.

This Bill is part of our package of intellectual property legislation which began under the former administration. Government is continuing the work begun by that administration to ensure that the intellectual property legislation which was introduced into Trinidad and Tobago and which forms a comprehensive package, is such that would be suitable for the citizens of our Republic and would be legislation that complies with international obligations.

4.10 p.m.

Mr. President, this is of special importance because of the expanding world trade and the new technological and information revolution—not just in the developed countries, but also being witnessed here in our own developing country—in moving towards the adoption of policies which relate to economic development and international trade, the transfer of technology and direct foreign investment that we are witnessing.

This continued growth and economic development in national and international trade—this transfer of technology, direct local and foreign investments into the manufacturing and business sectors—is a trend which we hope will continue to develop even further as Trinidad and Tobago, and the rest of the world, move towards the 21st Century.

Mr. President, the Bill itself is fairly simple and the provisions really are the result of a twofold purpose, that is to say, they are to deal with some housekeeping matters. There were some issues that were dealt with in a previous amendment which upon further advice we felt needed to be rectified; and to comply with our international obligations, we have been advised that we would need to make certain changes.

We have spoken about trade mark amendments in this honourable Senate very recently and we have talked about the rationale, and the importance, for protecting trade marks. If I may remind Senators, the use of such a mark is to protect the business reputation and the goodwill of the manufacturers of a product whilst, at the same time, protecting the consuming public from deception if and when a consumer purchases inferior goods that may have seemed to be the real item but, in fact, turn out to be impostors.

In these respects, trade mark protection is vital for both the consuming public as well as the manufacturing enterprises in Trinidad and Tobago. Trade mark services, which is one of the branches of industrial property law—and trade marks services as a whole—has become a key factor in all developing and modern countries, and in the international trade market. In Trinidad and Tobago one would recall that last year Angostura celebrated 100 years of its trade mark, at the same time it was the oldest registered local trade mark still existing in business. We know that Angostura is alive and doing very well, and its trade mark is well-known not only here in Trinidad and Tobago but internationally as well.

Mr. President, in terms of fees collected with respect to trade marks in Trinidad and Tobago, there has been quite an increase. In 1986 approximately $243,012 was collected in fees for trade mark registration and in 1987 the figure was $258,074. By 1995 this figure had risen to approximately $542,764. When we look at the applications for the previous decade, we see a similar pattern emerging: the number of applications for new trade marks in 1986 was only 715, by 1996 the number was almost doubled to just about 1,395 and figures for this year, up to May 31, show that there has been 659 applications for new trade marks at the Intellectual Property Office.

The relationship between trade mark application and trade mark registration, in my respectful view, shows a clear indication of an increase in business activity over the years in terms of the development of Trinidad and Tobago. There is no doubt that a well-selected trade mark provides the owner with a viable, low-cost advertising alternative as well as providing the consumer with information on the goods and services offered.

The trade mark system can influence our country's economic development in four significant respects:

(i) it can have a positive impact on the business activities of an enterprise thereby helping to improve its position on the domestic market;

(ii) it can help to improve the market situation in favour of the consumer in the domestic market;

(iii) it can improve export possibilities of enterprises, helping them to gain a reputation in both national and international market for locally manufactured goods and services;

(iv) it can increase the attractiveness of a country in terms of international trade and foreign investors.

For these reasons, Mr. President, trade mark protection plays an important role in our development. Therefore, we need to take more positive measures to ensure that the protection of trade marks and the regulation of the use of the trade marks are enforced and serve to cement our policy objective for the people of Trinidad and Tobago.

Our existing Trade Marks Act, Chap. 82:81 is based on Act 11 of 1955, and this Act, in turn, was based on the 1938 United Kingdom Trades Mark Act. Trinidad and Tobago's Act has been amended on a few occasions by Act 17 of 1994, by the previous administration, and by Act 25 of 1996 recently, by this Government.

The 1994 amendment was very important, in that it introduced protection for service marks and allowed for the publication of trade marks for the purpose of advertising in a daily newspaper. That 1994 amendment also repealed the old Schedule III of the British classification of marks and replaced it with an international classification of goods and services. It also allowed for the registration of shapes and packaging and provision was made for well-known trade marks to be protected as well for the duration of registration tenures and the procedures to be utilized for the renewal of trade marks in accordance with the Trade Mark Law Treaty.

Mr. President, more detailed provision with respect to the use and non-use of a trade mark has been drafted into this Trade Marks (Amdt.) Bill. The system of defensive trading has been abolished and new offences created in relation to the unauthorized use of trade marks, falsification of the register and the false representation of a mark as a registered mark. Provisions have been made for forfeiture, counterfeit goods, and the cancellation of a trade mark on the ground of non-use will not take place before three years of uninterrupted non-use has elapsed unless there are valid reasons based on the existence of obstacles to such use as are shown by the trade mark owner.

The use of a trade mark by persons other than the owner when the trade mark is subject to the control of its owner could be one such valid reason for use of maintaining registration. Additionally, the use of a trade mark in the course of trade shall not be unjustifiably encumbered by special requirement such as use of another trade mark using a special form.

The Trade Mark Law Treaty was signed by Trinidad and Tobago in 1994 and this Government continues to see the Trade Mark Law Treaty as being an effective

method to streamline national trade mark procedure and practices regarding the application and filing date requirements, notarization and legislation of documents, power of attorney, classification, renewals, protection of service marks and standardized forms and so forth. All of this would make the work of the Intellectual Property Office easier and would assist attorneys in private practice who, in many instances, file applications on behalf of clients all over the world and who have often complained that the various different procedures were burdensome, time-consuming and costly; for example, notarization or legislation requirements in Latin American countries.

The Trade Marks Act, Chap. 82:81 was amended in 1996 by Act 25 of 1996. Unfortunately, the 1996 amendment did not take into account certain provisions of the bilateral agreements and the TRIPS agreement, in particular, the provisions that related to border measures. The 1996 amendment entered into force on August 16, 1996, and we have since had that piece of legislation reviewed by the World Intellectual Property Organization and the ad hoc committee of persons directed to looking at intellectual property law in Trinidad and Tobago. Subsequent to the entry into force of that 1996 amendment, the amendment Act and the Trade Marks Act were reviewed and we were advised that we needed additional amendments in order for our country to fully comply with our international obligations. The Act was also reviewed for minor typographical errors and this Bill takes into account not only our treaty obligations but also those errors.

4.20 p.m.

It should be noted that the observation of the bilateral agreement was to provide protection for the shape of goods or their packaging. The 1996 amendment purported to provide such protection by inserting certain provisions for the protection of shape or packaging of goods in the wrong place. That was section 2(2) of the Trade Marks Act. This Bill currently before the Senate seeks to remedy the discrepancy by amending section 2(1), the definition of a mark.

If this amendment were now accepted, it would mean that a trade mark would now consist of a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof, or packaging of goods or its shape. Further, under the Patents Act 1996, the Controller of the Intellectual Property Office is given responsibility for all intellectual property matters.

Clause 3 of this Bill seeks to remove responsibility for trade marks from the Registrar General and place it under the Controller of the Intellectual Property

Office. This amendment also seeks to honour obligations under the agreements and at the same time to deal with trade in counterfeit goods. This is where the amendments with respect to customs would be found in the amending Bill.

This Bill introduces provisions whereby the customs administration is given the authority to intervene where goods are imported in this country and have applied with any mark, which in the opinion of the Comptroller of Customs and Excise is identical with or deceptively similar to a registered trade mark. The owner of a registered trade mark must give notice in the prescribed form to the Comptroller of Customs and Excise objecting to the importation of infringing goods after the date of the notice.

The provisions of this Bill also set out guidelines in the form of procedures, whereby the Controller has to give notice to the registered owner, the importer and consignee of the imported goods, that the goods have been detained. The owner of the registered trade mark who objects to the importation of such goods has 10 days in which to institute proceedings in court, so that the court can adjudicate upon the merits of the case. In my respectful view, the provisions seek to strike a balance between the rights of the importer to import his goods for trade in this country and on the other hand, the rights of the registered owner of a mark to protect the goodwill he may have acquired in his business through his registered mark.

When this Bill was in the other place certain questions were raised. Perhaps, these may be of interest to Senators. A question was raised with respect to the Intellectual Property Office, the Companies Registry and the condition of both offices and registries. I understand from the Minister of Public Administration and Information that very shortly the Companies Registry and the Intellectual Property Registry would be relocated to new quarters. It also means that the Minister of Legal Affairs would probably have accommodation.

We hope to address the difficulties which we have been experiencing with both registries in terms of space, staffing and equipment once that relocation is put into place. As the space expands there would be more equipment and staff. I know that all those who practise company law and intellectual property law would be very happy to know that this problem is being addressed at the moment by the Ministry of Legal Affairs and the Ministry of Public Administration and Information that is responsible for government’s properties.

There were also questions with respect to training of staff. I am very happy to say that we have had several international missions in Trinidad and Tobago. We have also made the expertise of those persons available to practising attorneys in the country. Another such mission would take place from June 23 in Tobago. Mr. Barford from the United Kingdom Patents Office would be with us to share his knowledge on trade marks and service marks. For the rest of the week he would be in Trinidad where he would share his knowledge with practising attorneys and the staff of the Registry.

That is one mission, but there have been several during the course of the year. Training, familiarization and exposure would continue not only for the staff of the Registry and the Intellectual Property Office, but it would also be for the benefit of attorneys in practice and any others who may be interested. It is a highly technical area. I feel that exposure can do a world of good for all of us in the country.

I look forward to the views and comments of Senators and at the end of it, hopefully, to their support. I beg to move.

Thank you.

Question proposed.

Mr. President: This Senate is now suspended for tea until 5.00 p.m.

4.27 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. Elizabeth Mannette: Mr. President, I am pleased to make a contribution in this debate on the Trade Marks (Amdt.) Bill.

I want to thank the Minister of Legal Affairs for giving us the history of the amendments to the Act up to this time, as well as for informing us about the upgrade and the improvements taking place at the office of the Companies Registrar. We are pleased to hear that things are moving along. If we had to depend on the Minister of Public Administration and Information, we would not know what the future holds.

I do not think it is necessary to again go into the need for and benefits of an upgrade of intellectual property legislation. We all understand that it is required. We all understand that it is necessary to attract foreign investors, and to protect the intellectual property of our local people, as well as those who do business in Trinidad and Tobago.

I have a few comments about the actual amendments. My first one is that this Bill gives a great deal of responsibility to the Comptroller of Customs and Excise. It authorizes the Comptroller to seize goods that are infringing, or appear to be infringing, the trade marks of other registered owners and users. I am concerned about the experience of the Customs and Excise Division in seizing imported goods.

My casual conversations with persons in that division regarding their work lead me to believe that there actually have been very, very few instances of the Customs and Excise Division having the opportunity to seize goods at the border and to impound them, pending some statement from the objectors. So it appears that they probably have no real experience in identifying trade marks and determining whether or not they infringe registered ones. I would like to know what are the plans of the Minister of Legal Affairs and, possibly, the Minister of Finance, with regard to training officers of the Customs and Excise Division. I do not know whether it will be possible for them to have some sort of database of all registered trade marks in the country to assist them in this exercise.

I am also concerned about, and would like to ask a question of the Minister: What happens when the Comptroller of Customs and Excise, based on his knowledge and on his own initiative, decides to seize certain goods? I am looking at section 71(b), which seems to authorize the Comptroller of Customs and Excise to seize goods where he is satisfied that they are deceptively similar to notified trade marks. I know he has to inform the designated owners of the seized goods, but what happens after that? I do not think any objector comes into this scenario.

Finally, the Minister, in her opening statement, referred to the increase in fees with respect to the registration of trade marks. We know that this is one good indication of the increase in new businesses entering Trinidad and Tobago. We can have all the intellectual property law we wish, but if businesses are not coming into Trinidad and Tobago, it is not as beneficial as we would hope.

The Minister indicated that there was an increase in registered trade marks from 1994—1995, but I am aware that there was a decrease from 1995—1996. It seems as though we are not attracting as many foreign investors as we had hoped. It may be that something else needs to be looked at. This is especially relevant because if the foreigners are not taking advantage of this opportunity, clearly it is the local business people that we must target.

This Bill requires a local trade mark owner to inform the Comptroller of Customs and Excise with respect to goods which are being imported. I wonder how a businessman would know that there is a container with goods which may infringe his trade mark. It really requires one to have some advance knowledge with respect to goods being imported, and it is unlikely that the ordinary businessman will be aware of this. It is usually when they are already out on the market, or if the importer of the goods seeks to register a trade mark himself, that the registered owner is aware of the infringement or the potential infringement. I am questioning whether this Bill would help the situation. It requires much knowledge beforehand for one to really benefit. When all is said and done, are we really accomplishing anything?

I would like finally, to urge the Government to continue on its track of upgrading the Intellectual Property Office and the intellectual property legislation in the country. Notwithstanding all that, there are other rights within the country that affect foreign investors who may be attracted to this country. Few foreign investors would be attracted to a country where they may be subjected to draconian and repressive laws; where the Prime Minister of the country says that anyone who attacks the Government will not escape unscathed. This will certainly frighten potential investors, as well as the locals. Keep that in mind!

I thank you.

5.10 p.m.

Sen. Pennelope Beckles: Mr. President, I want to touch briefly on the Copyright Bill on the issue of education. When we debated that bill, the Minister gave some assurances and indicated that she had actually benefited from discussions in several parts of Trinidad and Tobago in relation to the Copyright Bill. This area is a technical one and very often one finds that members of the public are sometimes not aware of the legislation or the intricacies involved as they relate to the different kinds of legislation and bills that are passed.

Bearing in mind that this is a specialist area, we are aware that with the increase in companies, and having regard to the fact that we have just had the Company Law Act passed, which is really encouraging liberalization and making it easier for the setting up of a company, we now have a situation where a person can be the sole owner of a company in law and there are other consequences in terms of the directors. I think it would be extremely helpful when the process of education is being embarked upon as it relates to the Copyright Bill and other

pieces of legislation dealing with intellectual property, that they be taken to all parts of the country.

It would also be helpful if the Minister takes the Trade Marks Bill which may then be the Trade Marks Act and incorporate all the different pieces of legislation that have been passed under intellectual property. The Government's station which normally highlights some of the bills that are passed, would also be an excellent medium to educate the people of Trinidad and Tobago as it relates to this particular type of intellectual property. I am sure that at times we will be quite happy to see the face of the Minister of Legal Affairs for a change on that station, rather than the frequency with which we see the Minister of Public Administration and Information.

Thank you.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, let me assure Sen. Beckles that any time she wishes to see my face she is very welcome. She is free to see me in person at any time. *[Laughter]*

I thank the hon. Senators for their kind comments, and I totally share the view of Sen. Beckles on the question of public information and education in the areas where we are dealing with so many technical pieces of legislation. I know that the Senator attended the very large seminar on the company's legislation. I saw many Members of the Senate there, Mr. President, you yourself, if I may say, so were there.

It was exceedingly successful and we were very surprised to see that thousands of persons attended, and there were persons outside who were clamouring to get in. So the interest of the public in the legislation that is being passed in respect of business activity in this country as the hon. Senator said, is tremendous. I do take the comments and I would consider public education programmes with respect to the intellectual property legislation.

Mr. President, you may recall that late last year we hosted a national seminar on intellectual property and all the new pieces of legislation which had been enacted were used to educate the public. One of the difficulties with taking intellectual property legislation across the land as has been suggested, is that the target areas are so small and the persons are so few in number, so that if it is decentralized one may end up with one or two persons attending. It may not seem feasible to decentralize it in that way. Certainly, after the response to the

Company's Bill, we have plans to have a similar seminar in Tobago and one in San Fernando and we anticipate a very large target audience. I am saying that with the intellectual property it is difficult to decentralize and it seems more feasible to have it in one location where most of the interested parties may come.

Sen. Mannette raised the point of the customs officers and this again is related to education in a sense. The query as to whether the customs officers will have the wherewithal to be able to identify marks and deal with them. I am very happy to say that we do have, as part of the project for the ministry, a training mission for customs officers specifically, on the new legislation. The difficulty identified is in fact there, and we hope to address it by having both local and international experts with us to do that training seminar for the customs officers. Not just with respect to trade marks, but all the other areas of intellectual property law.

There was also the question of what would be the process after the customs officers seize the goods and the designator/owner notified. I am advised that any objector would also be notified and each party will have an opportunity to prove or defend his case and the procedure would be laid out in regulations.

The question on how would the customs know which goods are infringing goods? Under the regulations, the registered owner for trade marks can give notice to the customs on prescribed forms contained in regulations, informing the customs of their particular trade mark. So there will be the registered trade mark and the training, and therefore, any marks that are not registered or in conformity with the registered marks will need to be identified. I trust that those concerns have been dealt with, and I thank hon. Senators for their comments on this Bill.

It would be very remiss of me if I did not deal with the final point raised by my friend, Sen. Mannette which has to do with draconian measures, and that we would not get foreign investors because of the Government's action.

It is very clear that this country, in my respectful view, remains very committed to democracy, and those of us who sit in this Chamber and the other Chamber will not, and will never allow for any breaches of our Constitution because of the assured numbers. Those who sit on the opposite side and are so concerned, are part of the democratic process and have a vote and a say. So there is no need for the concern that is being echoed. The reality is that we are governed by that Constitution and I know that we on this side are totally committed to the democratic constitutional system of this country.

Thank you.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

5.20 p.m.

Senate in committee.

Clauses 1 to 12 ordered to stand part of the Bill.

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, before moving the adjournment of the Senate, may I inform fellow Senators that next week Tuesday, June 17, 1997, we are going to conclude the committee stage of the Criminal Law (Amdt.) Bill.

On the completion of that Bill we will deal with Bill No. 3 on today's Order Paper: An act to provide for the preparation and promotion of standards in relation to goods, services, processes and practices by the establishment and operation of a Bureau of Standards, to define the powers and functions of the Bureau of Standards and for matters incidental thereto.

We shall then proceed to deal with the three Bills which were introduced today: The Registration of Clubs (Amdt.) Bill, The Theatres and Dance Halls (Amdt.) Bill and the Liquor Licences (Amdt.) Bill.

I beg to move that this Senate do now adjourn to Tuesday, June 17, 1997, at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.26 p.m.