SENATE

Tuesday, March 03, 1998

The Senate met at 1.30 p.m.

PRAYERS

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

PRESIDENT ARTHUR N. R. ROBINSON (RECOVERY OF)

Mr. Vice-President: Hon. Senators, it is a pleasure for me to advise you that with effect from today, His Excellency Arthur N. R. Robinson's condition has been found satisfactory enough to be discharged from the Mount Hope Medical facilities and he is now resting comfortably in convalescence at his official residence. [*Desk thumping*] In this connection, I have taken the liberty to send him a note from all of us here in the Senate, welcoming this news and wishing him a very speedy recovery and return to office.

VACANT SEAT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from the office of the Acting President, which reads as follows:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Ganace Ramdial
Acting President.

To: SENATOR PENNELOPE BECKLES

WHEREAS by the provisions of paragraph (e) of subsection (2) of section 43 of the Constitution of the Republic of Trinidad and Tobago, the President, acting in accordance with the advice of the Leader of Opposition, is empowered to declare the seat of a Senator to be vacant:

NOW, THEREFORE, I, GANACE RAMDIAL, Acting President as aforesaid, in exercise of the power vested in me by the said paragraph (e) of subsection (2)

of section 43 of the Constitution, do hereby declare the seat of you, Senator Pennelope Beckles, to be vacant.

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 19th day of February, 1998."

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, I have also received the following correspondence from the office of the Acting President, which reads as follows:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency GANACE RAMDIAL, Acting President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Ganace Ramdial

Acting President.

To: MR. MUHUMMAD SHABAZZ

In exercise of the power vested in me by paragraph (b) of subsection (2) of section 40 of the Constitution of the Republic of Trinidad and Tobago, I, GANACE RAMDIAL, Acting President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, do hereby appoint you, MUHUMMAD SHABAZZ, a Senator.

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 19th day of February, 1998."

OATH OF ALLEGIANCE

Sen. Muhummad Shabazz took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General on the accounts of the Legal Aid and Advisory Authority for the year ended December 31, 1996. [*The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung)*]

2. Report of the Auditor General on the accounts of the Agricultural Development Bank of Trinidad and Tobago for the year ended December 31, 1996. [*Hon. B. Kuei Tung*]
3. Report of the Auditor General on the accounts of the National Housing Authority for the year ended December 31, 1983. [*Hon. B. Kuei Tung*]
4. Report of the Auditor General on the accounts of the National Carnival Commission for the period August 01, 1991 to July 31, 1992. [*Hon. B. Kuei Tung*]
5. Report of the Auditor General on the accounts of the Interim National Carnival Commission for the period January 01, 1991 to July 31, 1991. [*Hon. B. Kuei Tung*]
6. The Petroleum Wholesale Marketing (Competitive Bidding) (Amendment) Regulations, 1998. [*The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar)*]

MASSAGE THERAPY ASSOCIATION OF TRINIDAD AND TOBAGO (INC'N.) BILL

Presentation

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. Vice-President, I beg to present the report of the Special Select Committee appointed to consider and report on a Private Bill for the incorporation of the Massage Therapy Association of Trinidad and Tobago and for matters incidental thereto".

ORAL ANSWERS TO QUESTIONS

International Treaties

5. **Sen. Prof. Julian Kenny** asked the hon. Minister of Foreign Affairs:

A. Could the hon. Minister inform the Senate of the international treaties, other than bilateral treaties, to which Trinidad and Tobago has acceded since 1976, the dates of accession or ratification and the subject matter of each treaty?

B. Could the hon. Minister also inform the Senate whether any of these treaties requires passage of special or new domestic legislation or amendment to existing legislation?

C. Could the hon. Minister also inform the Senate of the status of preparation of any legislation required under international treaty and of the timetable for tabling any such legislation?

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore*)*:** Mr. Vice-President, in answer to part A of the question, I have been advised that since 1976, Trinidad and Tobago has accepted, acceded to and ratified a wide range of international treaties, some being sponsored by United Nations conferences and others by the specialized agencies of the United Nations. A copy of the general compilation of international treaties registered with the Secretary General of the United Nations and provided by the Treaty Section of the United Nations Secretariat is tabled for the information of this honourable Senate. The master document is supplemented by a list which identifies the international treaties which require enabling legislation. This is attached under “Conventions”.

The second part of the question deals with whether any of these treaties require passage of special or new domestic legislation or amendment to existing legislation. Most of the international treaties do require the enactment of new domestic legislation. In this regard, it has also been necessary to amend existing legislation. Certain areas of law, for example, intellectual property, environment, disarmament and maritime affairs, require new legislation and such has been and is being drafted to fulfil Trinidad and Tobago's international obligations.

In part C the question is whether I can inform the Senate of any preparation of legislation required under international treaty. The Attorney General is in the process of reviewing a number of these international treaties, with the intention of preparing the necessary legislation or amendments wherever appropriate. The time-table for tabling such legislation would depend on the completion of the drafting exercise and can be submitted to this honourable Senate at a later date.

Thank you, Mr. Vice-President.

Sen. Prof. Spence: Could the hon. Minister be more specific? Quite frankly, I listened to the reply and it was quite vague whereas the questions were quite specific. Could we not have numbers?

Sen. Brig. The Hon. J. Theodore: Mr. Vice-President, the numbers are contained in the supplementary document which is being laid, unless, if you wish, I can read through this document.

Sen. Prof. Spence: We have not had copies of that as yet, so it is impossible for us to make sense of the question asked. Does the document also cover section B of the question?

Sen. Brig. The Hon. J. Theodore: Yes. Mr. Vice-President, under "Conventions", I will read it under the headings. For instance, the Universal Postal Convention, the T&T position is: accession; date of position, November 1978; legislation required, no. Postal Parcels Agreement accession, November 16, 1978; legislation required, yest. It gives the position of where we have reached with the necessary legislation.

Mr. Vice-President: My understanding of the response is that a fairly voluminous document is being tabled, giving a full detailed listing of all the various bilateral treaties. What I am going to suggest and allow is that, as the document is laid today, I will allow supplemental questions at the next sitting of the Senate and wish to give you an opportunity to study the document laid.

Vide end of Sitting for written part of question.

Counting Unremunerated Work Act, 1996

12. *The following question stood on the Order Paper in the name of Sen. Diana Mahabir-Wyatt:*

Could the hon. Prime Minister tell this Senate what measures have been put in place by the Central Statistical Office to implement the provisions of the Counting Unremunerated Work Act of 1996?

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I ask again for a two-week deferment on this particular question because the matter is being addressed at the level of the Ministry of Community Development, as you know, and we would be in a position to give an appropriate response then. [*Interruption*] In terms of the response, it is being prepared accordingly and we are seeking a deferment of two weeks again, Sir.

Question, by leave, deferred.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I beg to move that the House now deal with Motion No. 3 under "Private Business" followed by Motions and Bills Second Reading under "Government Business".

Agreed to.

1.45 p.m.

MASSAGE THERAPY ASSOCIATION (INC'N.) BILL

Adoption

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. Vice-President, I beg to move that this Senate adopt the report of the Special Select Committee of the Senate appointed to consider and report on a Private Bill for the incorporation of the Massage Therapy Association of Trinidad and Tobago and for matters incidental thereto."

Mr. Vice-President, the committee was appointed by the Senate on Tuesday, January 27, 1998 and comprised the following persons:

Mrs. Carol Cuffy-Dowlat	Chairperson,
Mr. Nizam Baksh	Member
Miss Cynthia Alfred	Member
Dr. Eastlyn Mc Kenzie	Member

The committee's terms of reference were to consider and report on a private Bill for the incorporation of the Massage Therapy Association of Trinidad and Tobago and matters incidental thereto.

The committee was satisfied that the requirements of Standing Order No. 76 3(b)(1) and (2) of the Senate were met, and that the public was given sufficient notice of the intended introduction in the Senate of the private bill referred to. This was achieved by notices appearing in the *Trinidad and Tobago Gazette* and the *Trinidad Guardian* newspaper on December 11 and 18, 1997 and January 8, 1998. No objections were received.

The committee held one meeting on Tuesday, February 10, 1998 and at that meeting, oral evidence was taken from the following persons representing the Massage Therapy Association of Trinidad and Tobago:

Mrs. Pearl Gopaul	President
Miss Rose Rajbansee	Secretary
Mrs. Myrna Robinson-Walters	Attorney-at-law

During the course of its deliberations, the committee examined the association's rules and regulations, register of membership, minutes of meetings,

audited financial statements for the years 1994, 1995, 1996 and 1997 and several letters of commendation from various sporting organizations and individuals, and some of the voluntary work which was performed by members of the Association at special events.

The committee made a careful examination of the preamble and clauses of the Bill and found it necessary to make certain amendments. The promoters had no objections to the amendments which were made by the committee. Having regard to all the evidence, the committee is satisfied that the facts and allegations presented in the Bill are true and correct.

The committee wishes to report that it has completed its deliberations and has found sufficient proof in support of the incorporation of this organization by an Act of Parliament. It therefore recommends that the Bill be accepted by the Senate subject to the amendments listed in the Appendix.

Seconded by Sen. Nizam Baksh.

Question proposed.

Question put and agreed to.

Report adopted.

Resolved:

That the Senate adopt the Report of the Special Select Committee appointed to consider and report on a Private Bill entitled "An Act for the incorporation of the Massage Therapy Association of Trinidad and Tobago and for matters incidental thereto."

MATERNITY PROTECTION BILL

House of Representatives Amendment

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, I beg to move,

That the House of Representatives amendment to the Maternity Protection Bill 1998 listed in the appendix be now considered.

Question proposed.

Question put and agreed to.

Clause 7.

House of Representatives amendment read as follows:

A. In subclause 2 delete the words "one month of the date of delivery" and substitute the words "the period of the maternity leave."

B. Delete subclause 3 and substitute as follows:

"(3) Where an employee has not proceeded on maternity leave and—

(a) a premature birth occurs and the child lives, the employee is entitled to the full period of maternity leave with pay; or

(b) a premature birth occurs and the child dies at birth or at any time within thirteen weeks thereafter, the employee is entitled to the full or remaining period of maternity leave with pay, as the case may be".

Sen. Kuei Tung: Mr. Vice-President, by way of explanation, I inform this honourable Senate that the amendments are listed in the Appendix on the Supplemental Order Paper which has been circulated. In essence, the House of Representatives felt that the period in clause 7(2) which I will read—so we would understand in case there are any Senators who may not have the original Bill — deals essentially with the period after the date of delivery.

The original Bill said in clause 7(2):

"Where an employee has proceeded on maternity leave and the child of the employee dies at birth or within one month of the date of delivery..."

The House of Representatives felt that the period of one month of the date of delivery was a little too narrow and has amended it to read: "the period of the maternity leave." It now reads:

"Where an employee has proceeded on maternity leave and the child of the employee dies at birth or within the period of the maternity leave, the employee shall be entitled to the remaining period of maternity leave with pay."

In other words it is widened from just one month to the remaining period that the employee had been on maternity leave. If, in essence , the employee had six weeks remaining, she is entitled to six weeks.

With respect to subclause (3) which deals with premature birth, originally the clause had said:

"(3) Where an employee has not proceeded on maternity leave and—

(a) a premature birth occurs and the child lives; or

(b) a premature birth occurs and the child dies at birth or within one month of the date of delivery, that employee shall be entitled to the full period of maternity leave with pay."

With these few words, Mr. Vice-President, I beg to move that the Senate doth agree with the House in the said amendments.

Question proposed.

Sen. Mahabir-Wyatt: Mr. Vice-President, I wish to ask a couple of questions because I am not quite sure that Sen. Kuei Tung explained the thinking behind this particular amendment. We had considered the Bill very carefully in this Senate when it was going through. I can certainly understand when it says in clause (3):

"Where an employee has not proceeded on maternity leave and—

(a) a premature birth occurs and the child lives;...the employee is entitled to the full period of maternity leave with pay."

Because the purpose of maternity leave—let us not forget—is not just to recover from the act of giving birth which is natural, and it does not take an unnaturally long time from which to recover, but for the mother and child to bond, to care for the newborn child, and to start nursing the child which makes sense whether the child is premature or not.

When it comes to the premature birth occurring and the child dying at birth or any time thereafter, I am wondering when you say a "premature birth" does it mean after six weeks of pregnancy, or eight weeks of pregnancy, or 11 weeks of pregnancy? How long does one have? A spontaneous miscarriage can happen at any time after the beginning of pregnancy and there is no definition, no reason stated. There is no child to nurse and to bond with. The mother will take a couple weeks to recover from a miscarriage, but I am not quite sure that I understand the reasoning behind the full 13 weeks, because there are no other conceptual reasons behind granting maternity leave that go into it.

I am wondering if you can get some advice as to whether this is medically advisable, and if this is why the House of Representatives decided that it was medically necessary for this. I have only had four children myself, and it never took me 13 weeks to recover from any of those, but it could be that my experience is

not typical. It could be with a premature birth, perhaps, one needs more time. I would like to get some guidance on this.

Thank you.

Sen. Kuei Tung: Mr. Vice-President, I am somewhat embarrassed, having myself neither experienced nor have intimate knowledge of matters of maternity. I do understand that it was felt at the time that if a birth should occur—and I do not know how to define birth either—and there is a delivery, the assumption was that because it was premature the mother was being subjected to some medical trauma and, therefore, would need some period to recover from the trauma.

I understand the question of bonding and all that, but I have to also assume that a mother is normally traumatized with a premature birth, and the fact that she no longer has a child. So it was just to give her the benefit of the doubt—if that is the word—to give her a bigger benefit by lengthening the period somewhat. I am not in a position to explain it medically, but I do hope that the Senate would understand that it is really meant to help a traumatized mother who has just lost her newborn.

I hope I have been able to explain it as best as I can.

Question put and agreed to.

DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [February 17, 1998].

That the Bill be now read a second time.

Question again proposed.

Sen. Danny Montano: Mr. Vice-President, we on this side welcome the move of the Government towards the more scientific analysis of crime and its detection. We do, however, have certain reservations in the particular piece of legislation. This piece of legislation was of interest to me specifically because I remember back in my school days when I was around 15 or 16 years old studying RNA and DNA and looking at its composition.

2.00 p.m.

In those days we were just learning about RNA and DNA and how they could be used and so forth. Certainly, at that time, I remember clearly, there never was even a thought about them being used as tools for solving crime and—I am almost afraid to admit—some thirty years later, here we are looking at DNA in this context. It is of interest, Mr. Vice-President, and I certainly think we are on the right road. We have some reservations about what we are looking at here but I think the fundamental point is that what we are trying to achieve is good. There are a couple of concerns, however, which I would go into as I get further into my contribution.

I would like to outline, if I may, Sir, exactly what is Deoxyribonucleic Acid. It is a very complex molecule. It is extremely large and for the last 30 years scientists have been breaking it down and are beginning to understand how it works. In a simple statement a scientist said, "The DNA is a building block of all human or animal tissue". That is the fundamental. Every week, every month, further research is done and the DNA molecule is further identified and they are beginning to break it down so that they could identify many things in it.

For instance, one of the things which scientists have recently been able to identify is that by looking at a person's DNA they could identify the race of the person. They could also identify the colour of the person's hair and eyes; other things are beginning to come out of the analysis of DNA testing. This is important relative to what I am going to talk about later in terms of the banking of tissue samples of DNA. Some of the other things which are also coming out of the DNA research is that scientists are able to identify certain genes which would give one the propensity to have, let us say, something like breast cancer or, in fact, some kind of a pathological mental instability or something of the sort. Eventually scientists would be able to come up with a complete blue print of a human being by the analysis of the DNA testing. At this point we are still very much in the early stages of this analysis.

The DNA which is used in crime detection is referred to as junk DNA. No part of the DNA is really junk. The junk DNA to which they refer is really the DNA which they have not specifically identified as being relative to any specific trait of a human being. They are saying that this part of the DNA—we really do not know what it is, but at least it is an identifiable part of the gene which is going to exist in this form in every sample of that individual's DNA—is extracted by a process called restriction fragment-length polymorphism. At this time that test takes about four to six weeks to be actually completed. It is a fairly long examination.

They actually take five separate samples of the DNA. In a crime situation five samples of tissue from the crime scene would be selected and matched against five samples of the person who has been arrested. Every one of the five samples must match. If one does not match, one does not have a DNA match in the legal sense.

There is a new method of DNA testing called polymerase chain reaction which, in fact, has shortened the period of the testing down to two to three days. It is that far advanced. As I said, this is fairly new and it is not in widespread use. I do not know which method is used or can be used in Trinidad and Tobago. What I am trying to sensitize hon. Senators to, is that the retention of DNA tissue samples is a very important issue. It appears in the latter clauses of the Bill with which I would deal later.

There are many articles and debates in Australia, Canada, New Zealand, United States of America and the United Kingdom about the retention of the samples and use of the information from the samples. As the analysis becomes more sophisticated, genetic traits can be determined from the DNA samples. One of the things we do not want to happen and what we have to be very careful about is the use of the tissue samples and the DNA traits identified in the samples for a purpose other than for which it was taken.

In the United States of America every member of the military has to provide a DNA sample. The reason that is being done is, obviously, if a soldier is killed or virtually destroyed in the field of battle and his body is unidentifiable he can then be identified by DNA tissue sampling. However, what has happened is that certain minority groups within the military of the United States of America have said, "hold on a minute, we do not want this at all because we are being identified as being black, white, red, Chinese." In fact there have been legal cases on it.

The other thing that is happening is that insurance companies are looking to extract information out of the DNA testing so that when they are assessing an insurance risk, they could make some kind of scientific assessment as to the likelihood that a particular individual might get cancer and so forth. Therefore, the use of the tissue samples and the retention is becoming a very serious issue. It has not reached here as yet but it is coming and we have to be very aware of what we are doing.

The DNA itself has no particular value to anybody. What happens is that the DNA is analyzed in the two methods which I indicated and a print is made; an autoradiograph is printed. One now has, literally, a photograph of the print of the

DNA and it has its specific character. That is like a fingerprint and it is referred to as the DNA print. Later on when I get to the relevant clause of the Bill one would see the difference between retention of the print and retention of the actual DNA sample itself; what we should actually be holding, bearing in mind the uses to which the samples could be put.

In terms of DNA being used as a statistical tool, while the scientists are saying that every individual has a unique DNA print, there are still certain problems surrounding the analysis of DNA.

2.10 p.m.

Everybody here has heard of the O.J. Simpson case. I do not want to get too deeply involved in the case, but it is relevant. I would like to read, with your permission, Sir, part of an extract of an article from the *Research News, vol. 8, no. 5, April 1996.*

> "**DNA Evidence and Probability**
>
> In **People of California vs. O.J. Simpson**, probabilities on the order of one in many millions, billions, and trillions were offered to describe the significance of recovered blood stains that matched Mr. Simpson's DNA profile. **Dr. Jay Koehler** (MSIS) was a consultant for the Simpson defense team on the meaning and psychology of the probabilities that accompany reported DNA matches.
>
> The defense relied on Dr. Koehler's research to make two points. One, laboratory error rates, which appear to be on the order of 1 percent, constrain the diagnostic value of reported DNA matches."

That is very important. In other words, it was recognized and accepted that the laboratories themselves make errors and that was estimated to be at least 1 percent. It goes on:

> "Regardless of how unlikely a DNA match is between two unrelated individuals, the error rate limits the certainty that the suspect is the source of matching genetic evidence. If DNA laboratories make errors 1 percent of the time, then the chance that someone is the source of a particular bloodstain cannot be greater than 99 percent. This is true even when the frequency of the DNA profile is one in billions.

> The second point is that people have a hard time understanding this fact. Specifically, Dr. Koehler's studies indicate that most people mistakenly believe that extremely small DNA frequencies overwhelm and eliminate error rate considerations. These studies, in conjunction with a body of literature on the difficulties people have processing conditional probabilities, were used in the Simpson case,..."

Now, I hope Senators have been able to stay with me through that, but the point that author is making is that, while it is an extremely useful tool, it is not an absolute tool. There can be errors and, in fact, the errors can be made on two sides. It can be made by the lab and it can be made by the technician who is extracting the sample.

I was able to pick up another article from a Professor Radin at the University of Washington. He was talking specifically about the O.J. Simpson case. Again, if you would allow me, Sir. It is relevant because it really sets out the nature of the evidence and how it is used. He writes:

> "This was the leading DNA evidence that Judge Lance Ito allowed:
>
> - Bloodstains from 13 different locations, including some they said were OJ's.
> - A sock found at the foot of OJ's bed, stained with Nicole's blood according to DNA reports.
> - A pair of blood-splashed leather gloves, one found at the murder scene and the other at OJ's home.
> - Blood underneath Nicole's fingernails. A preliminary lab report indicated it was blood type B, which matched neither her own blood nor that of OJ or Goldman, indicating that someone else was involved in the crime. However, DNA analysis showed it was her own blood.
> - Bloodstains from both victims found in OJ's Bronco, along with hairs from both victims.
>
> Prosecution arguments:
>
> - Everyone's DNA is unique, so a DNA match in this case pins the crime on OJ.
> - DNA evidence has been used in more than 24,000 criminal cases in the U.S., so it is a reliable technology.

- A fleck of blood the size of a pinhead is enough to yield a reliable DNA sample.

Defense arguments:

- DNA evidence has only been in use for eight years. We're still learning.
- Mistakes in analysis and interpretation are not uncommon. The readout is not as clear-cut as police would have you believe.
- The samples may be contaminated. Since all living things have DNA, the presence of bacteria, one person's blood mixed with another's, or any other mixture of different DNAs may confound the analysis.
- A person's entire DNA readout is not analyzed—only a tiny sample, focusing on portions that are likeliest to be different from one person to the next. Some people actually have identical readouts, although this is very uncommon.
- Maybe the prosecution framed OJ. The principal investigator, Mark Fuhrman, was a rampant racist. After OJ was jailed, police took a vial of blood from him for a matching sample. What happened to that blood, and to the evidence,..."

Now, that point is very relevant, because in this particular Bill, I believe it is clause 14, provides for the police extracting a sample of tissue and walking around with it for 10 days before he has to present it to the forensic lab. So this point is directly relevant to the famous O.J. case.

Now, the other thing that I wanted to mention, and I mentioned a bit earlier, the condition of the crime scene is of vital importance. I cut this out of the *Newsday* of Thursday, February 26, 1998, "Prison Officer Burnt To Death." There is a photograph of a car that has been completely destroyed. It was reminiscent of what happened to my cousin Albert 'Monty' Montano on February 17, 1997. An issue which I raised in this Senate in August, 1997. One would recall I indicated that the police had information. After that debate, I discussed the matter with the Minister, who confirmed that the police had a report, but they had no forensic proof. That was the problem, no forensic proof.

One would recall also—and I do not have the articles here in front of me—the Clint Huggins matter. When Clint Huggins was murdered, executed, or whatever, one would recall that the government of the day brought down some FBI experts to

analyze the crime scene and everything else and nothing came out of it, we imported foreign experts to no avail. A senior official from a foreign embassy confirmed to me that the difficulty there was that the police had botched up the crime scene. They had walked all over the place, they had touched everything and there was nothing. It became then a completely contaminated crime scene.

So the point and issue is this, we have a Bill on the one part saying, yes, we want to do certain things, but what we are not hearing, and what we have not heard from the Minister when he presented the Bill, are the steps and measures that are being taken within the police service to ensure that the crime scenes are properly preserved. Because if he does not do that, he has nothing. There would be no reliable evidence at all. I have given the support for that.

Mr. Vice-President, I go on. The Government has brought a Bill here which requires a special three-fifths majority, and to the best of my knowledge, this Bill has not been put out for public review and comment. It has merely been brought here, so that the issues really have not been ventilated in the public at all, and yet it requires a special majority. They are saying, "We are strong on crime." In fact, I had mentioned it before, some trite statement of the administration in the elections about, "If you cannot do the time, do not do the crime" or some trite statement of the sort. My point is this, they are saying, "We are looking to get after crime", and they bring this Bill, ostensibly, to deal with the crime situation.

I would like to quote a couple things from a book I found, *Cocaine and the Economy of Crime in Trinidad and Tobago* by Daurius Figueira, copyrighted 1997. Now, on page 50 he cites something that I had spoken about on at least three prior occasions, and this is now the fourth occasion, and that is the Scotland Yard report. He quotes:

> "9.3.2. Corruption in the Police Service can be described as endemic. It permeates all ranks.
>
> ... the spectre of corruption is quite dominant and the result is a Police Service that is tarnished as a whole."

This is now the fourth time I have mentioned that. Nobody! Not one individual from the Government Bench has stood up to say anything about the Scotland Yard Drug Report and what they are doing about it!

Now, Mr. Vice-President, understand this, as I have said before, 99.9 per cent of officers; the men and women in the service, I am sure, are loyal, dedicated,

hard-working servants of Trinidad and Tobago. My hat's off to them, because without them we would be in hell, but you know the old saying, "one bad apple can spoil the whole barrel". Yet, in terms of the detection of crime, and the solving of the crime, one would remember the situation of the disappearing cocaine and how the explanation was that the rats ate it. Well, we have heard of all sorts of situations. I understand that the Attorney General has been involved in matters where the evidence has simply disappeared, evaporated, been executed or whatever. What we are dealing with is crime, the solving of crime and the protection of the citizens. The Government well knows what the situation is.

Again, quoting from page 66 of the book, he quotes:

> "The Express of the 24th June, 1996 reports the present Attorney General, Mr. Ramesh Lawrence Maharaj as follows:
>
> 'The impact of this illicit trade is reflected in the fact that some 80% of crimes locally is in some way linked to drugs.'."

Now, I am happy if DNA testing done properly and with the right checks and balances can help stem the tide of that, but we are talking about crime and not necessarily cocaine. There are many other sorts of crimes and I think we should be looking at those.

I referred earlier to the trite statement of the Government about doing the time and the crime and all this nonsense. This is what Mr. Figueira says on page 75:

> **"(a)** The punishment for crime is no longer a viable deterrent for the following reasons:
>
> (i) The nearly all pervading mood of despair and hopelessness amongst the youths of especially the urban working class and urban underclass. Persons who perceive a lifestyle of perpetual financial crises, hopelessness and despair don't consider the nature of the punishment as a deterrent to the criminal act.
>
> In fact jail time sees to the needs of the individual more efficiently than a life lived within the constraints of the law..."

2.25 p.m.

Mr. Vice-President, that says how trite the statement is. What we need is a fresh approach to the solving of crime at all levels. In that regard, the author continues on page 77, to say:

> **"(b) Members of the society perceive that in fact crime does pay.**

The perception is now widespread in our society that corrupt/illegal practices pervade all echelons of the society..."

We have a Bill that is requiring an intrusion; asking for an intrusion into your personal life to extract—of all things—pubic hair, semen and so forth, without a warrant, and yet we cannot seem to get a commission of enquiry into the National Flour Mills. There are serious indications of wrongdoing in a number of these situations! There is the Airport Project, NP, National Flour Mills and Petrotrin, and we cannot get a commission of enquiry.

Not only that, Sir, I would like to hear from the Members on the other side—using whatever tools are available to the Government, including the Government and the Opposition forming the Government as it is, whatever the organizations may be, whether it is the Public Accounts, or the Public Accounts (Enterprises) Committees—that they would support investigations into wrongdoing before you have my vote on this.

I am not going to give up anybody's right to be searched in this way without a warrant, when the administration does not appoint a commission of enquiry, and when a prominent former judge is appointed and the Leader of the Opposition, rightly or wrongly, does his job to make certain caveats about the arrangement with him, he resigns and nobody else is appointed. With the greatest of respect, we have a learned gentleman here, Sen. Philip Marshall, who is an Independent Senator and public accountant and has the skills, competence and independence to head any of the commissions of enquiry. Not only him, but there are many other firms. There is Mr. William Lucie-Smith from Coopers & Lybrand and Mr. Ainsley Mark from Panell Kerr Foster—*[Interruption]* Which is why my first suggestion was an Independent Senator. Where is your commissioner? In "never-never land". [*Interruption*]

Mr. Vice-President, clause 5 deals with the request by the police for what they describe as an "intimate sample" and clause 10 deals with what is described as a "non-intimate sample". With all due respect to the hon. Minister of National Security, he made absolutely no case for the distinction between these two. Furthermore, he made absolutely no case for the demanding of a tissue sample without a warrant. I am informed that DNA is present in almost every single cell in the body. In any single cell it is the same DNA. It is nonsense, therefore, to suggest that you need to select a pubic hair as opposed to one from the top of your head. A hair is a hair. It makes absolutely no sense. It is a gross intrusion into your privacy.

This Bill was obviously not really considered by the Minister of National Security. In fact, I see his accomplice in the Chamber this afternoon, who is obviously the architect of this piece of legislation. [*Laughter*]. The issue is one of privacy. Article 12 of the United Nations General Assembly Universal Declaration of Human Rights says that "no one shall be subjected to arbitrary interfence with his privacy, family, home."

Section 4 of our Constitution guarantees and foresees "the right of the individual to respect for his private and family life". Privacy. I am building my case.

I did some research. I went to Canada, a place that I am reasonably familiar with and found section 8 of the Canadian Charter of Rights and Freedoms which protects persons from unreasonable search and seizure has been interpreted to provide constitutional protection for privacy. In interpreting section 8 the courts must make an assessment whether, in the particular situation, the public's interest must give way to the state's interest in intruding on the individual's privacy, in order to advance its cause, notably law enforcement.

What we are talking about here, is the need for a warrant when a person's privacy is invaded. In British Columbia, Supreme Court Judge, Thomas Melnick was quoted to have said in the case of the *Crown v Williams 1992* that in his view, the need for a warrant procedure for such searches is clearly not only desirable but necessary, given the present state of investigative techniques with respect to DNA analysis. The police should have the availability and the detainees the protection of the warrant procedure for such searches.

Canada is a Commonwealth country. That is the precedent that I humbly submit to this court. In *Hunter v. Southern Inc. 1984*, the Supreme Court of Canada ruled that the purpose of section 8, that is of the Canadian Charter of Rights, requires a means of preventing unreasonable searches before they happen, not simply of determining after the fact that they ought not to have occurred. This can only be accomplished by a system of prior authorization. Where the individual has a reasonable expectation of privacy, prior authorization is a precondition for a valid search or seizure. That is the point. What we are talking about here is an invasion of privacy.

There are three factors in looking at the privacy issue. The first is whether the person has a reasonable expectation that the information is private. The second is, how sensitive is that information, does it come from someone's diary, or is it from your TTEC bill? Thirdly, how invasive is the method of obtaining the information?

In other words, is it coming from a rectal search, or a mere pat frisk? Those are the issues with which we have to deal.

In dealing with it, the proponents of legislation like this would suggest to you that DNA sampling is no more intrusive than a breathalyser test. There is a fundamental difference. First of all, a breathalyser test is not intrusive; secondly, it must be done on the spot or else it is of no value. As your system deals with the alchohol it must be dealt with on the spot or it is of no value; and thirdly, there is probable cause. Not only that, but the individual is on the crime scene so you have clearly identified the perpetrator with that possible crime. He is right there.

With the DNA testing it is not so. It is not as though the individual is standing on the crime scene. You are trying to link him up with the crime scene. There may be some external evidence that he may have been at the crime scene, but he is not standing there. Thus, in the case of the breathalyser, there is reasonable cause, probable cause to say, "Yes, you were drinking and weaving all over the road," and you are right there at the crime scene. The DNA situation is different. It requires a different approach.

2.35 p.m.

Therefore, we on this side support, in principle, the sampling of DNA or the requirement or requisitioning for DNA. It is only a question of how it is done and the type of sample that is obtained.

What we are suggesting is that a DNA sample be obtained only on the production of a warrant by a high court judge who will authorize the type of sample that can be taken. In other words, the police must say the type of sample that they need, bearing in mind that a pinprick on one’s thumb, a swab from one’s mouth or a hair will do the trick. If, by some strange quirk of circumstances, the police need some better form of evidence or different sample—which I cannot imagine—they must justify it to a high court judge who in the end is the ultimate arbiter of our rights and freedoms. That is what we are prepared to live with. We are not prepared to accept that policeman merely has the right to take a sample. That, Sir, is what we will not accept.

I mentioned earlier the storing of the samples. Clauses 19 to 20 deal with how long the samples can be retained and when and how they should be destroyed and so forth.

What I want to do here this afternoon is alert Members of this Senate to the fact that we must recognize that DNA sampling is taking us into the twilight zone. We really do not know where we are heading with it. This is science beyond our wildest imagination. We have within the last 12 months seen effective cloning of a sheep and people are talking about cloning human beings. In fact, one of the doctors involved said that within 18 months he will be able to clone human beings.

We want to make absolutely certain that every person's DNA is protected and sheltered from intrusion or invasion from any source, bearing in mind that, like the fingerprint, if one is arrested or charged one's fingerprint is taken and that print is matched up against something that might be found at the crime scene and you are prosecuted with that. They do not need to cut the finger off and keep it as the tissue sample. I am suggesting here that there is absolutely no real need for the retention of tissue sampling at all; once the print is made there is no need for it to hang around and it should not be stored anywhere.

I have no objection to the banking of the prints. In fact, it is extremely worthwhile that the prints be banked permanently. There are situations where individuals are charged with sexual offences. Usually we know from reading in the media that the fellow seems to have a tendency to repeat the same offences over and over again. Once that fellow's prints have been taken he cannot walk away undetected. Therefore, I have no objection to the banking of the DNA prints but I have every objection to the banking, for however long, of the tissue sample. Once the individual is convicted, at least in the first court, you do not need that sample again.

I am no expert in evidentiary law but I cannot see that the sample is needed and I hope the Senators will join with me to say to the Government, no, this is not what we want. Bear in mind that in every country in the world—I am not necessarily accusing the Government of this—authorities tend to abuse their authority and one's rights and freedoms have to be protected. There was an article in the press just a few weeks ago of an incident on the East/West Corridor of some unscrupulous officers who were allegedly making some of the residents kneel down on the ground. That is just an abuse of authority, it has nothing to do with the Government but the fact of the matter is, it is an abuse of authority. We have to be very careful that we make sure that the retention of our safeguards stays in our hands. We must be the guardians of our own freedoms and we must not let it go lightly.

Mr. Vice-President, in closing, I reiterate the fact that we on this side support the move of the Government towards DNA testing but we do not agree with the manner in which they are going about it. No case has been made for distinguishing the difference between a non-intimate and an intimate sample. My research has indicated that it does not matter. A pinprick on one's finger is going to do it all. A blood sample is all that is needed.

I was concerned also about clause 4 which I may deal with maybe at the committee stage. I ask Senators to have a look at that clause because it seems to give the authorities the right to demand a sample from the victim. If that is the case, then I will not support clause 4 but we can deal with that at the committee stage.

Mr. Vice-President, with those words, I thank you.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, after that highly technical lecture from Sen. Montano, I hesitate to get into any of the details of this Bill dealing with the deoxyribonucleic acid. However, there are a few questions I would like to ask.

The three concerns I have that arise out of this Bill are, of course, the issue that surrounds it which, I presume, was one of the precipitating issues of the Bill which is the crime issue. Secondly, the technical issue which I share with Sen. Montano which is preserving the integrity of samples which, I think, has to be a serious concern. The third issue has to do with the establishment of paternity which is one of the reasons this Bill has been brought before us, which, of course, leads to things like the establishment of child support and so forth.

Not wishing to go over the points that have already been uttered, I do have a couple of general questions. I am not quite sure why it is the Government has decided to do away with the existing conventional serology tests. We do not need legislation to take blood tests now, from what I gather, and this legislation has removed the taking of blood tests. This will be seen not only from the clauses at the beginning, but also from the two schedules. In particular, I think, Schedule B wherever it says blood tests or samples they have replaced it by DNA samples.

While I do entirely accept the scientific claim that DNA is far more exact in terms of testing than blood testing is, I am only too conscious of the fact that things can go wrong from time to time. It is like putting all your accounting systems on to a computer and discontinuing the manual systems and the computer crashes. In the unlikely event, and I hope it is an unlikely event, that the system

fails and we cannot use DNA testing, we have, for example, effectively removed from the Status of Children Act, any chance of our doing blood testing. We can now only do DNA testing. Is it necessary to remove the conventional serology testing which establishes blood group markers? Although I know it is not nearly as effective or accurate, just in case, is it not sensible to have at least the possibility of the two systems running parallel?

My second query has to do with clause 4 which was mentioned by Sen. Montano and has to do with information that is required to take a DNA sample where a police officer has reasonable grounds to believe that an offence has been committed. It does make it quite clear that if a minor is involved—and in many such cases, I gather, minors are involved—that the minor has a right to consult with his lawyer, an adult or parent before a DNA sample can be taken. Although the minor can waive his rights he has to do it in the presence of a justice of the peace. I am not quite sure about the technical scientific point which Sen. Montano was making, but I have a faint suspicion that it is true that any piece of hair has the same DNA as blood and everything else. If this is true, what this is saying is that if the minor is going to have a piece of hair taken from his head, one would need to have a justice of the peace to sign that or to record that this was done, or that he waived his rights or otherwise.

I do not know how many police stations have justices of the peace around and I was wondering if there is going to be built-in any safeguards to protect—what I am worried about—the tampering of evidence, to make sure that it is this person who is having the sample taken. We have had some rather unfortunate instances of charges made against justices of the peace recently and also various strange activities which have been going on at various police stations throughout the country, particularly during stressful periods like carnival and holidays. One wonders about the safeguards and I am just wondering if the Minister will address this in his winding up.

The second question that is related to that has to do with the training of the people who are taking samples. In the case of non-intimate samples, I think it is the inspector of police or a police officer of the rank of inspector who is the only one authorized to do it in a situation like that. I do understand that periodically these people have received training but there is a certain technical element, I would imagine, to the taking of such samples and doing it properly and since the training has been intermittent in the meantime some of the trained people move on or are transferred elsewhere. If we are going to pass this legislation and this is going to be

a regular feature of the work that is done, I am wondering if the Minister will assure us that such training is going to be included on a regular basis, not only for those of rank of inspector or above but for lower ranks who are also going to have to be on the spot to take samples when crimes have been committed.

The other question that worries me—I suppose it is a financial question or else it is a management question—concerns the moneys allocated to the sampling and to the provision of resources and equipment for the sampling; the demand for proper containers and evidence seals or evidence tapes and proper seals to make sure that any evidence taken will not be tampered with. While it is very laudably reflected here, I believe it has been the experience of various members of the police force trying to take evidence, that they do not always have the proper equipment or the proper containers with which to take evidence and to keep it. Therefore, it is not much point having this in the legislation, unless the money is budgeted and the equipment and materials are available.

2.50 p.m.

Just a few specific remarks—you know I was going to get to drafting sooner or later, but before I do that, there is a point which has to do with the integrity of samples. I was struck by Sen. Montano's reference to the O. J. Simpson case of which I think everybody is aware, involved a lot of DNA testing. I notice that, I think it is clause 16—it is a general point—in dealing with the integrity of the sampling itself, they talk about samples taken from the scene of the crime. Now, the Bill has been very careful to try to ensure the integrity of the sampling for intimate and non-intimate samples, but there does not seem to be any provision in this Bill to establish an equivalent care in integrity for other samples taken from the scene of the crime. In other words, if blood samples are taken off walls, or semen samples are taken off carpets, this is not an intimate or non-intimate sampling, it is not being taken off the human being, or from the human being, and the provisions that apply for keeping those samples untampered, where it is a DNA sample from an individual, do not seem to be translated into the DNA samples which can be taken from walls, floors and the scene of the crime generally.

I worry about this because in the instance to which Sen. Montano referred, such evidence can be planted. It was charged that evidence was, in fact, planted, gloves or whatever it was, at the scene of the crime and we would like to feel that the evidence, if it is taken from the scene of the crime, rather than the person, will still have DNA, because you can take DNA blood from clothing and rugs.

[*Interruption*] Well, in fact the taking of the sample, the integrity of the keeping, packaging and sealing of the sample does not seem to appear in the Bill in the same way as it does when you are taking an intimate or non-intimate sample from the human being, which is my point.

I cannot really comment on the length of time between the taking of the samples and giving them to the Forensic Science laboratory, whether 10 days is adequate or not. I notice that the Bill does say that it must be properly secured, which I am presuming means refrigerated and I think most police stations do have refrigerators of some sort. I do not know. Perhaps the Minister could comment on this, or if the Minister of Finance is going to assure us that no money is going to be cut from the budget of the Forensic Science laboratory, or the equipment of police stations, perhaps that will set our minds at ease a bit.

Insofar as DNA, the time—10 days or how long it is kept—I gather that DNA readings have been made from Egyptian tombs which are several thousand years old and we had one last year where "Bogman", who was about 5,000 years old dried, but there were still DNA samples. So I am not quite sure what difference 10 days will make, but I am not a scientist; I am not trying to make technical points.

There are simple drafting points which I would just like to make, because I am getting tired of having to comment on these things, in order to make sure that the Bill is not misunderstood. Could I just refer to clause 13(2)? It says:

> "Where the DNA sample is that of the person arrested or detained the identifying marks on the label shall include the initials of both the police officer and the person arrested or detained."

Normally, when somebody initials something, you will expect them to initial it themselves. Suppose the person being detained refused to initial it, does this mean that it is not acceptable? It is not made clear. If you look at subclause (3) it says:

> "Where the DNA sample is that of the victim of the offence...shall include the initials of both the police officer and the victim."

Suppose the victim is dead. The grammar does not make it clear whether one must initial for oneself or if somebody else can put the initials on, and I am wondering if that will make a difference down the line in terms of the drafting.

My only worry with clause 15 has to do with—I really hope in light of the disappearance of cocaine samples and so forth, that nothing is going to be cut from the security's part of the Forensic Science laboratory's budget.

In clause 15(3), there is a list.

> "A tester shall provide a report in writing to the court stating the following information—"

This is again just a drafting point and I wonder if the drafters could take a look at it. It does seem that the (a), (b), (c), (d), and (e) are a bit illogical. It starts off with the period of time the analysis took to be completed and goes on to the information on the label affixed, *et cetera*, the statement that the seal of the container or the packaging is not broken, and the results of the DNA forensic analysis. How can you do a forensic analysis if you have not broken the seal? It would seem that logically, you would start with (c) which means that the seal has not been broken when you get the sample, then go on to (b) which is the information that was affixed to the container, then go on to (a) which is the period of time it took to do the analysis and then finally (d) which is the result of the analysis. It just seems to be a little more logical and I was wondering why it was not put into sequence at the time.

The only other point that I have to make, which is again a question and I hope the Minister will be able to answer it for me, has to do with clause 22. Perhaps the Attorney General can help on this because it is a bit of a technical question. This has to do with the post-conviction DNA forensic analysis. Here you are talking about where somebody has already been convicted of the offence and has filed an appeal against that conviction, and presuming that the evidence is still available, say at the police station, where I gather it would probably be, this Bill is saying that such a person can retroactively ask for DNA testing to be done on whatever is left of the evidence.

I was just wondering, how you can prove the integrity of the sample if it is retroactive. The sample has been there for some time. Say it is a rape case and the person has said "No, I was not the person who raped this individual", but they say "Yes, we have a piece of clothing with semen on it which can match your semen." If this case is now on appeal and we have had such lax security and things like this, can somebody not now take the piece of clothing and place somebody else's semen on it, so that when it is tested and they say obviously the DNAs do not match and, therefore, the evidence shows that you are not guilty? I am worried about the retroactivity of the legislation with respect to the integrity of the samples and I am wondering if you could just comment on that. Not that I am saying it would be tampered with, but if the possibility exists, there must be a problem in terms of the retroactivity.

Of course, the last point which I want to make, has to do with the regulations. You will notice that section 2 of the Status of Children Act has been repealed and there has been a substitution made. This, of course, is in order to protect children where there is an attempt to establish paternity, usually for child support, and I would once again, Mr. Vice-President, make an appeal for a more serious concern to be made about the treatment of children and the establishing of paternity for child support. And not just for child support.

We have had some very, very tragic and serious instances recently of the treatment of children by *de facto* or real paternal caregivers. Children have been killed; children are maimed and wounded; children badly sacrificed in some sort of *quasi* magical, mystical rite. We do not seem to have an adequate system in this country set up to protect the status of children. I do not know what has happened to the Child Welfare League; I do not know what has happened to the social workers who used to visit mothers after they had left hospitals when they had children, in order to monitor the progress of the children over a period of time. In those instances, at least there was a regular social worker visiting homes who could tell if those children or older children were being mistreated. We just seem to have let the social responsibility for the treatment of children in this country lapse, because it just does not seem to have the budgetary, social or political priority.

I am appealing once again, while I agree entirely, that DNA may help in establishing paternity and perhaps insisting that child support go ahead—although it has not done much via blood testing—what we need is the enforcement of the child support provisions that already exist and we need to change those provisions so that women do not have to go to court month after month, year after year, in order to get child support, but that the child support can be deducted directly at source from where the father works. We need to do far more in terms of dealing with child support and dealing with the issues involved with establishing paternity of children, than just what is set out in the DNA Identification Bill.

Having said that, I would like to say that I do support the Bill.

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. Vice-President, I rise to make a short contribution in support of this Bill and to say that in today's world of science and technology, the presentation of this Bill could not have come at a more opportune time and congratulations are definitely in order to the Minister of National Security for piloting the Deoxyribonucleic Acid (DNA) Identification Bill, 1998.

Speaking as an attorney who would have had the privilege of practising some law in Trinidad and Tobago, I know I can speak on behalf of my many colleagues who have in one way or the other, expressed their support for this piece of legislation. Moreso, in our Government's ongoing initiatives to deal with crime and the criminal elements in our society, this legislation is but a welcoming and refreshing breath of air.

I would like to concentrate my contribution to the law of evidence as it stands today and the impact this DNA legislation is going to have on the Evidence Act, Chap. 7:02 of the laws of Trinidad and Tobago. Apart from the common law, the law of evidence in the courts of Trinidad and Tobago is contained largely in the said Evidence Act. This Act is very broad in scope, addressing both criminal and civil cases and including provisions dealing with evidence in family and matrimonial matters. However, in the entire Act, there are only three sections which specifically address the admissibility of evidence in criminal cases.

3.05 p.m.

These sections cover the competence of a spouse to give evidence against the other in criminal proceedings; the admissibility of trade and business records and situations in which the only witness called by the defence in criminal proceedings is the person accused of the crime, the defendant himself.

Section 19 of the Evidence Act addresses the admissibility of certain documents into evidence in various types of proceedings. Section 19(2) specifically addresses the position in criminal proceedings. It makes documents purporting to be certificates or reports made under the hand of a government expert on a matter or thing submitted to him for examination, analysis or report, admissible as evidence of the facts stated in it, without further proof.

What this means in real terms is that, for example, if a person is charged with possession of a narcotic, the exhibit is sent by the police to the Government Forensic Laboratory for analysis and report. A report is then compiled by the government expert and given to the police, which is then admitted as evidence in the courts of law without asking for any further proof. Whatever is stated on that document is treated as a fact. So it can either report that the exhibit submitted is that of a legal or illegal substance.

However, subsection (4), in defining “report” goes only so far to say that it includes a post mortem report. The other items it refers to as reports are nowhere stated. So there is no list as to what are the other reports. What we see is that the

development of science and technology in today's world has exacerbated this lacuna in the law and unless specific legislation is introduced, it would soon become virtually impossible to have admitted, reports which are not clearly defined as being within the scope of the Act.

That is not all. Precedent to the admissibility hurdle, is that of obtaining samples for testing where an accused person is in control of the source. The development of DNA technology now makes it possible to analyze materials and substances, for example, blood, semen and hair. Again, on a practical note, if a person is charged for rape, the accused spermatozoa would be found inside the victim. The DNA profiling, or as it is sometimes called, DNA fingerprinting, or genetic fingerprinting, makes it possible, both to eliminate suspects if their DNA samples do not match the accused and to detect the actual offender. The DNA evidence can do what other evidence cannot do in criminal cases, that is, it can prove innocence. It allows an innocent person to be proven innocent rather than rely on the prosecution not proving guilt. The DNA sampling allows one to conclusively link an individual to a particular act or an occasion, as the case may be.

What then would be the effect of the passage of this Bill? The proposed provisions of the DNA Identification Bill, 1998, would almost immediately promote benefits with regard to the administration of criminal justice. Once samples can be obtained and analyzed in the circumstances provided for by the Bill, the number of warrants for arrest to be issued, information to be laid and so forth, could be significantly decreased where investigations proceed on a less speculative basis and more scientific grounds are being used.

Another significant benefit would be that of the protection of state witnesses. At present the state resources are almost taxed to the limit to cope with this. The need for protection has arisen because criminals seek to eliminate givers of *viva voce* evidence that could connect them to crime. This method is effected with a view to evading conviction through the unavailability of the evidence.

Introduction of DNA analysis and its admissibility into evidence would reduce the necessity for human witnesses as well as the utility of silencing them. So it is hoped that in such circumstances the burden on the state's ability to provide witness protection prior to, and after conviction, can be reduced.

Another benefit is that of achieving the standard of proof. The standard of proof from which evidence must arise in criminal proceedings is "beyond a reasonable doubt", which is determined by reasonable men and many variables tilt

the scale on which evidence is weighed. Though strenuous efforts to do otherwise are made, the use of the standard is not always consistent. This brings me to the point about reasonable men.

In recent times, some reasonable men have seen it fit to denigrate and belittle the role of women who are devoted wives, dedicated mothers and excellent homemakers. Many of these same reasonable men have forgotten that we are where we are today because our mothers were homemakers and housewives dedicated to the task of home-making, child-bearing, child-raising, cooking, cleaning and mopping the brows, not only of our children, but of our fathers and their husbands.

We see how this reasonable man test works. I am certain that if Sen. Pennelope Beckles, my friend and legal colleague, were here today, she would surely have bowed her head in shame and risen at the appropriate time to denounce the reasonable men who have condemned the women of our society who are homemakers and supporters of their husbands.

At this point, I must publicly express my thanks to the former Senator for her very useful, insightful contributions made in this Senate and for her technical and legal competence. *[Desk thumping]* She has given to this Senate the benefit of sound technical, legal competence and her dismissal was that of a reasonable man. Moreso, the immediate response by Mr. Valley was also that of a reasonable man, again demonstrating how this reasonable man test works. I am also certain that my other friend and legal colleague who comes from a family background rich in cultural tradition which honours the mother and housewife of the family as symbolic of womanhood, would no doubt speak out against the injustices being perpetrated against our women.

Many reasonable men in today's society will tell you about the role of their wives, mothers, sisters, and daughters in nurturing a better society, and the sense of devotion, love, loyalty and emotional satisfaction they would feel if only their wives could mop their eyebrows in public and express support for them.

This piece of legislation is most important. It is time we start dealing with scientific methods of doing things. I can give you another hypothetical situation where the reasonable man test can be applied. We can take a hypothetical island and say there is this gentleman who lives on this island and who decides that he can describe one of the subjects of that island and her behaviour as that of a "wajank". This hypothetical person in this hypothetical island can continue to say that sitting

in this Parliament of Trinidad and Tobago are men who are wife beaters and abusers. The same hypothetical situation goes on to state that women are accustomed in this society to being abused, and rather than this gentleman in this hypothetical island proceeding to take to task all persons who abuse women in the society, he seems to take wife abusing or woman abusing as being the norm in this society. This person can also be deemed a reasonable person.

So you see, scientific methods of evaluation will assist—

Sen. Prof. Spence: Mr. Vice-President, I am afraid the last few sentences were completely lost to me and their relevance to anything that we are discussing I find extremely obscure. I wonder if I could ask the hon. Senator to be a little more explicit in her explanations. I just do not know what she is talking about. It certainly has nothing to do with this Bill.

3.15 p.m.

Sen. C. Cuffy-Dowlat: Mr. Vice-President, scientific methods of evaluation will assist in making the standard more universal and predictable and, therefore, augurs well for the all-round benefit of the administration of justice in Trinidad and Tobago. Presently, we strictly rely on reasonable men giving their verdict after listening to the evidence and coming to a reasonable conclusion and a person is convicted beyond a reasonable doubt based on the evidence.

If there are more scientific methods which this DNA legislation is going to provide, we will have to rely less on reasonable men and their inconsistencies in arriving at certain conclusions.

Sen. Daly: I wonder whether the Senator would give way. Do I understand that the introductory to this Bill by the Government is a precursor to taking away the rights to jury trial?

Sen. C. Cuffy-Dowlat: For clarification I have not stated that. I emphasize that it will assist in allowing us to come to decisions based on more scientific methods of investigations rather than relying solely on reasonable men listening and arriving at a decision.

Having realized some of the major benefits that can be derived from this Bill, and having looked at the benefits to the society generally and to our ongoing drive to deal with crime and the criminal elements of this society, I have no doubt that all my colleagues in this honourable Senate will most definitely support this piece of legislation.

I thank you.

Sen. Martin Daly: Mr. Vice-President, this is a very very important piece of legislation and our task as legislators, in my view, is not really to dispute the introduction of DNA but to take a very long and careful look at the conditions under which we are going to introduce it. A rather high tone to this debate was set by Sen. Montano and I certainly hope the depth of his contribution is brought to the attention of his Leader sooner rather than later, for reasons which would be obvious. Indeed, if I should digress at this point, perhaps I was particularly struck by the fact that in the course of the very valuable information which he imparted to us—that one needed five DNA samples to make a match—I wonder whether the Senator whose departure was recently referred to had had the benefit of five DNA samples before her Leader decided that they were incompatible. But that is another matter and we must get on with the most serious matters of the day.

The reason this Bill and this debate is so important, and the differing backgrounds of the Senators are so important is, as I have said, I think this debate is really about under what conditions we should introduce DNA.

I assume the multilateral lending agencies have no interest in this so this is, at least, one debate in which we will be free to fashion something that suits our particular circumstances and I am certainly proceeding on that basis. Why it is so important to examine the conditions under which we introduce DNA is because there are very real fears at different ends of the spectrum when one views crime. On the one hand there is tremendous impatience on the part of the public to lock up the criminal by any means necessary, and so almost any measure which the public is told will assist in locking up the criminals will receive blind, sometimes, hysterical support.

The difficulty is that in the same way that criminals can use sophisticated weapons to the disadvantage of the society, the persons charged with administering law and order in any society are also less perfect and the more powerful the tools which you put in the hands of the person administering law and order the more opportunity one creates for abuse of citizens' rights. So it is very important to balance these two things. There must be a long and very careful debate—and let us not talk about calypso in the disguise of DNA—that is not going to help us. We need to have a long and careful debate and everyone must search their conscience carefully to fashion safeguards for this legislation, based on their own individual experience, that once the DNA tool is put in the hands of the authorities, one perverted member or one misguided member of those who have to enforce law and order cannot destroy lives and families by the inappropriate use of

these powerful tools that we are putting in their hands and that is why the safeguard becomes so very important.

Before I get to particular clauses in the Bill, I believe everyone will appreciate that for far too long—and sometimes this Government has a terrible urge to scratch itself in giving self-praise before it hears what anybody else had to say. There is no need for the Government to be self-congratulatory. Everyone who speaks objectively in this debate will recognize it is a wonderful thing that the Government is introducing DNA legislation and presumably, they will keep their heads and not try to score political points and will engage in a long and careful debate about the conditions under which it is introduced.

It is astounding to me that one reason that the public is so turned off and sometimes almost hysterical about convicting criminals, is for years and years we have watched apparently good cases break down in the court either through eye witnesses or unreliability of confessions and so, naturally, bringing this Bill forward as Sen. Cuffy-Dowlat made the point, is going to have tremendous cost-savings for the administration of justice.

In many cases the need for a *voir dire,* that is, a trial within a trial about whether a confession was validly obtained, will be eliminated. Trials will become shorter and results are likely to become more just. Full praise must go to the Government for introducing this into this legislature for a proper examination. There can be no question that this should have come a long time ago to avoid trying to have discussion about whether confessions are reasonable and to rely on eye witnesses, whether they are in danger of liquidation or not. Here is a very powerful tool that I think everyone is going to agree, that we must have as part of the armoury of law and order but, at the risk of repetition, there is need to examine the conditions under which it comes very carefully.

Before I get to particular clauses in the Bill, I will say there is something in this Bill for everyone. There is even a clause to help the Minister of Energy and Energy Industries because there is a clause that talks about refusal to consent to taking an intimate sample. I do not know if he is finished with his report but I dare say that if one is going to draw certain inferences from the refusal to give an intimate sample, perhaps, when National Petroleum asked the First Citizens Bank for a certain intimate sample, and FCB refused to give it or at any rate they gave two unsatisfactory lines, certain inferences should have been drawn. Perhaps, the Minister could look at clause 9 to see whether it would help him in his report.

I am very clear with the intimate sample which was requested from the FCB and was never forthcoming. There is something in the Bill for everyone. There is something in the Bill for the hon. Opposition Leader in relation to political DNA and making matches and there is something in the Bill for the Government and we must note these things as we pass on.

3.25 p.m.

Apart from certain drafting matters, administrative matters trouble me. The putting of this powerful tool in the hands of the authorities assumes a very high degree of integrity on the part of the authorities. I will only pose the question rhetorically: Are we satisfied that our law enforcement authorities have a very high degree of integrity? That is the first question I venture to suggest that everyone must ask and make their assessment about it. I have my view about it and it troubles me.

Secondly, it assumes a high degree of efficiency. I am sure in this case that my colleague, Sen. Prof. Kenny, would help us with this. It does not only assume a high degree of efficiency, but also a very high degree of physical and scientific efficiency. I am not sure that we have such a tradition. We need only to refer to the state of the environment and other issues for that question to be answered.

There is another technical question which I raised, that I hope Sen. Chamely and others would help us with. I would come to that. It is very important to view this Bill against our assessment of the integrity of the law enforcement authorities and their efficiency. Most Members of the Government are used to me by now—no longer do they flee from the table at which I am sitting during the tea break.

I think it is very important to understand certain realities about Trinidad and Tobago. I like to strike realistic notes. The Government is introducing this Bill and talking about the crime scene and all this sophistication, and yet there is a situation where a district medical officer cannot view a body. Sometimes I think that governments with a capital "G" from the time they get into power not only berate the media, but also turn off their television sets. I am fond of making the point that much of what we discuss here in jacket and tie bears no relation to the reality out there. I am not blaming any particular doctor or district medical officer, but our system is so inefficient, that dead bodies lie in public places for hours before they can be removed. We cannot even move a corpse and we are talking about DNA, crime scene and scientific integrity. We are at a retarded state of development in ordinary every day things, which, regrettably, show us the type of society in which we live.

I believe it is unparliamentary to make comparisons with other countries. What kind of country is this where a man has to watch his brother's dead body lie on hot concrete for six hours before it could be removed? Are we going to talk about being a world class and top quality nation and tell people we have DNA when we live in this kind of place? I do not raise this because I want the debate to stray. I have noticed that every time I raise issues about which I feel strongly, it is said that I was obviously passionate or angry. I wish that the whole country could get passionate and angry about a corpse lying on the road on hot concrete for six hours before a district medical officer could order its removal. We would have a better country.

In my respectful submission, we do not have an efficient public administration; whether it is inherited or who is responsible is not important. If that is the type of attitude which we carry as a country, be certain that some of the provisions in this Bill would be perverted and the course of justice would also be perverted, unless we put proper safeguards in place. We really do not care. We live in a society where none of us cares. I include myself. Our lack of care just arises in different ways.

It is directly relevant to this because the Government is introducing a highly sophisticated measure which requires great sensitivity of application, into a relatively backward and heartless society. If people are insensitive to bodies lying on the road, how on earth would they take a swab from a part of a person's body other than a body orifice, as referred to in clause 3(d)? I take it that in the medical or scientific world, the word "orifice" probably has a precise meaning. We will know by a process of elimination from what parts of the body the police can take a swab.

I want to see the authorities who leave dead bodies lying on the road and insult women who make reports of domestic violence. In one case, I am told by my colleague that the person to whom the report was made, offered her a bed for the night, in her moment of great distress. Would these persons take swabs from parts of other persons' bodies? In considering the conditions under which we must introduce DNA, we must not only consider the integrity of the law enforcement agencies and the efficiency of the country. I hope that the Attorney General is looking thoughtful and not depressed because he has much experience with what I am talking about.

We must consider a change in our culture. This Bill must be administered by persons with a certain degree of sensitivity. It would not require persons being put to scrub benches for long hours or "sooted" at while they are scrubbing benches. Come on! Let us forget the party politics for once. This is the country in which we live. I experienced something directly relevant to this. I maintain that before we can implement this Bill, or even after we have passed it, there must be a culture change.

Sometime ago I went to a show at the savannah. It was not well attended, although it was a wonderful idea. I think discerning as he is about these events, the Minister of Finance and Minister of Tourism was there. I do not relate things by hearsay. I was on my way to the gents' and a young woman was also on her way to the ladies' which was adjacent. A knot of private security guards were sitting opposite the toilets. I use the word "knot" advisedly. I do not think our policemen in Trinidad and Tobago are capable of this. From the moment that young woman came into sight of those security guards, two of them got up, began "sooting" and muttering to her and followed her to the doors of the toilet. That is the kind of country in which we live. Is that the type of person who would be taking a swab from a part of the human body? We must come to terms with a whole culture change if we are introducing this kind of legislation.

I am using this as my platform to beat my favourite hobby horse. The biggest task of a government in this country is to lead all of us back to common decent objectives. Without this, not only this Bill, but everything else we do would fail. I hope there would be some discussion about the types of persons who would administer this Bill. I would also like the Government to give us an undertaking or a timetable about the way in which it intends to introduce this Bill. I suggest that there should be a clear plan.

Over the first year it could be for murder and rape cases and over the second year grievous bodily harm. I do not know the details and I do not have the statistics, but I would hate to see this Bill introduced for universal application, from a dog bite to murder, all in one scoop. Even after it is passed and the conditions are decided, there must be a carefully laid out timetable as a general rule. I am not saying that we must tie anyone's hands as to how this Bill would be applied. I think it is very important because of the deficiencies and the lack of sensitivity in our culture, to which I have referred, that we pay careful attention to the taking of non-intimate samples.

At the moment, I am not persuaded that there is anything fundamentally wrong with this legislation about taking intimate samples, because to my mind, the Bill has taken a sensible course. As I understand it, one would be free to refuse it and such refusal would be subject to comment in the court. I am sure that the Attorney General would explain the consequences of such a refusal in better detail. He has more experience with this than I. There would be problems in the taking of intimate samples, but there are the usual police station problems such as whether people would be misled, brow beaten or brambled. It is seen on television all the time. There are those problems whether it is DNA, confessions or anything else. That problem exists and we have to look at it separately.

I am not persuaded that the greatest danger in this Bill lies in the taking of intimate samples. One can refuse. I take it that it would become generally known that it can be refused. Lawyers who are involved in criminal practice would know this and would be able to take the appropriate points. No doubt these points would arise. If this Bill is being abused or someone's constitutional rights have been infringed, that point would be taken before the trial judge in due course. There are built in safeguards in the system.

3.35 p.m.

I am really concerned about the taking of non-intimate samples because I believe that these samples, as beguiling as the word "non-intimate" appears, could have very devastating consequences. I share Sen. Montano's fear that the use of a hair from the human head, which is a non-intimate sample, could be severely abused.

I would like to examine clause 10 in some detail because it brings us to the heart of how this Bill is to be implemented. I have certain fundamental problems with clauses 10 and 11 which do not only go to drafting, but to policy.

First of all, at this stage, we may change it. I am not satisfied, at least when we first start, that anyone below the rank of superintendent should be the person authorizing a DNA. I really would like to see the rank raised quite high. Secondly—and this is more than a drafting matter—I dare say the Attorney General would take part in this debate and give us precedence from other countries, telling us which jurisdiction they relied on more than others in the preparation of this Bill.

I think it commendable in clause 11 that the police officer who gives the authorization "shall in the presence of the Justice of the Peace inform the person" of certain things. I also think it very commendable that the person gets a copy of

the authorization. There is a very grey area in the law now where a police officer can flash a piece of toilet paper before you and tell you it is a warrant and put it back in his pocket. The Attorney General is well aware of that problem.

I think it is very good that the person will actually get a copy of the authorization. The Government is to be commended for that. However, I would like the Government to consider, as a matter of policy, that the copy the person is given should contain all the things that are mentioned in clause 11(2)(i) to (vi). In other words, we need to get away from the verbal—the policeman or the Justice of the Peace saying that they told the person at the time the grounds for the giving of the authorization, and the person saying they were never told. It is the same as the police saying that they told the person of his rights and the person saying they did not. We need to get away from that verbal situation. I would, therefore, suggest that the Government consider redoing Part III of the Bill, so that the person is not only given a copy of the authorization, but that the copy given contains all the things in clause 11(2)(i) to (vi).

That will provide several safeguards. First of all, it will get rid of the verbal contest. Secondly, it will be recorded for all time, at the time when the matter is in "blood", so that there will be not much room for fabrication afterwards. If after that any attempt to pervert the course of justice takes place, it can be measured against what is contained in that document. That document, if you like, would be the objective for taking the DNA, and any departure from what is stated there can be readily measured to see if there has been any attempt to pervert the course of justice.

As far as policy and drafting are concerned, those are my concerns about Part III. However, overlaying it all, and at the risk of repetition, I think in the same way that Sen. Mahabir-Wyatt has gotten through to the Government the need to train people who handle rape cases and domestic violence, from what little I know about the subject, it does not seem that the training is being well received. That may be because of gender limitations—most police officers are men.

It seems to me that the people who have to take DNA samples must be specially trained in sensitivity. I am Trinidadian born and bred—through and through. Everybody knows that. I think we have become so heartless and insensitive, it is unbelievable. We step over dead bodies in the road. Therefore, since this requires a certain kind of sensitivity, the persons who have to administer this Bill will have to be specially trained. I can only hope that the training will have a little more impact

than some of the training that was supposed to have been imparted on other issues. Bear in mind those six thugs sitting outside the female toilet at the Grand Stand. Do not ever lose sight of that picture! And one of them is going to take a swab. Come on! Let us acknowledge the kind of nasty place this is becoming and deal with it! Let us not give people who have that kind of attitude and outlook that kind of power. They need less, not more! That will colour my view of the form which this legislation takes.

Mr. Vice-President, I have grave misgivings about the sections which deal with the taking of DNA samples from persons already convicted of crime. I do not know enough about it and look forward to the unfolding of the debate. My worry is that somehow they are singling out someone who is the subject of a conviction for some kind of special treatment or logging. I do not want to be dramatic, but there is a kind of "we-have-ways-of-making-you-talk-department", that once someone is a convicted criminal, he goes on some special DNA log and anytime anything happens the police pull that log and see whether they can pin that crime on that particular person. It leaves me very uneasy. It is not a well formulated objection: it is just instinct. I do not particularly like it. I hope we would be offered some fairly articulate justification for the singling out of persons who have been convicted for, so to speak, genetic treatment.

Mr. Vice-President, this is far too serious a debate. When Sen. Montano was talking about predicting genetic disorder, it did bring certain recent political events to mind. However, since everyone has been so good giving me their attention on some of the more serious points, although it is very difficult and it is relevant to certain clauses in the Bill, I will lightly resist the temptation and simply say that I hope that the Hong Kong flu which seems to inflict people from time to time and cause them to fire, whether by fax or letter to the President, could be the subject of some kind of DNA analysis. I see my good friend, Sen. Chamely, laughing, no doubt, because he thinks there is much medical validity in what I am saying. He is from the South, so he would know.

Not to detract from the very grave nature of this debate, these are some of the matters which I think we need to look at very carefully for the reasons I have stated.

May I end as I began, by saying that I do not think there will be any need, in the course of this debate, for the Government to keep scratching its self-congratulatory itch. I think it can take it as read, that we are very pleased with the

introduction of this Bill. We would like not to have this self-congratulatory itch, but to get on with discussing the conditions under which this legislation should be passed.

I thank you.

Sen. Dr. Edmund Chamely: Mr. Vice-President, I rise to lend my full support to an excellent Bill. The potential for corruption, abuse and mistakes in a bill should really not stop us from moving forward and supporting a good bill that is progressive.

There are a few areas on which I would like to comment. On page 9, there is the comparison between intimate and non-intimate sample. There is a measure of confusion in what is written there, in that urine is listed as a non-intimate sample. Urine, in fact, comes from a very intimate part of the body and cannot be lumped as a non-intimate sample. When most samples are being taken, individuals have to be present. So for an individual who is giving a urine or semen sample, it is a private thing from a private area, and someone has to be there watching what is going on for the sample to be accurate.

3.45 p.m.

Secondly, at the bottom of "intimate sample" it is suggested that a swab taken from a person's body orifice and it is suggesting that the body's orifice has to be in the lower part of the body. The upper part of the body does have orifices—ears, nose, mouth—and those are not intimate areas, so that has to be corrected.

Moving on to page 10, under "qualified person", it reads:

"'qualified person' means a registered medical practitioner..."

I want that changed to "a medical practitioner registered with the Medical Board of Trinidad and Tobago". There are many doctors who are registered elsewhere but not here, so for clarity that should be inserted.

I am moving on to page 15. I want some clarification under "General". Clause 12 reads as follows:

> "Where a person, who is serving a term of imprisonment,—...a DNA sample shall be taken from him in accordance with the provisions of this Act."

I would like to propose a scenario where you would like to take a sample of semen, urine or blood from this individual who says no. What are you going to do?

Are you going to beat him into submission to give a sample of blood because you cannot take a sample of any large quantity of blood unless it is forced? Are you going to force him to give us a sample of urine or are you going to put a needle suprapubicly into his bladder to extract it against his will or, if you want a sample of semen are you going to force him? In medicine we cannot force an individual to do anything unless he is mentally incompetent—crazy—then we can force ourselves on him, examine him, inject him, *et cetera*. I do not know about the law aspect of this, if we can force an individual to give a sample if he says no. We want some clarification on that.

On page 16, clause14(1) closes with the words that the sample "is properly stored". This will have to be clarified. The Forensic Science Centre should be the authority to decide what is proper for the storage of the body's tissues and fluids and guidelines should be available for same. Just putting it down in writing is not good enough. Secondly, in clause 14(2) it mentions 10 days. Ten days lends itself to all kinds of problems. It lends itself to corruption and destruction of the sample itself. There is no place in Trinidad and Tobago where something cannot be sent to a particular lab under three days. No place is that far away. Let us assume the sample is collected on a Friday afternoon, assuming the centre is closed on Saturday and Sunday, there is no reason why it cannot be delivered on a Monday. There can be no reason for a 10-day delay. I could never agree to a 10-day delay on that level.

Except for one small typographical error in the middle of page 23 under C(b), "falls" really should be "fails". Those are my only contributions at this stage.

Mr. Vice-President, thank you very much.

Sen. Prof. Julian Kenny: Mr. Vice-President, I join with many of the Senators in supporting the spirit of this Bill. I do have some major concerns, which is the science end of it and which I will come to in a minute or two. I must say that I was most impressed with Sen. Montano's presentation. I really marvel that someone who is an accountant and a lawyer is so close to the subject of science. I think that there is hope for us yet when we have people who actually go more deeply into science.

One of the things that Sen. Montano mentioned—of course, I am not going to repeat what he had to say about DNA. There are a number of things we have to bear in mind about DNA evidence. The science is only probability; there is no absolute certainty. It may be a million to one, 10 million, a billion or whatever have

you, but we are really only dealing with probabilities. We want to bear that in mind, especially when we start looking at the samples that are taken and the way in which the samples are handled.

Another rather interesting feature of the DNA—of course it is quite unique to each of us—is that if you happen to be dealing with identical twins, one who has done something rather naughty, the DNA evidence is not of much use to you because the DNA of identical twins, triplets or quadruplets is exactly the same. Although their fingerprint could be different, the DNA comes originally from that one cell which is cleaved into two and which forms the twin. So the one cell is cleaved into two and three which has the same DNA as the original cell, so it is only a minor technicality. As we move into this world of science we want to recognize some of the limitations.

One of my major concerns is with Part IV and several of the clauses there. DNA or any sample can be contaminated in the most casual of ways. If, for example, a person taking a swab in Charloteville—forgive me, Senator—the policeman may have had very limited experience and is taking a swab—not an intimate sample—and he happens to be picking his ear or doing something like this, that sample he takes may be contaminated ever so easily. This you can multiply right across the board. I think that many of the Senators actually referred to the problem of the integrity of the samples and this is what gives me concern. For example, clause 13 says:

> "A person who takes a DNA sample shall seal the sample in a container and affix a label with an identifying mark to the container..."

In today's world of science, if you are taking a sample you have to use a container which is known to be chemically clean. If, in the back of Rio Claro someone goes into a cupboard, takes an old bottle and puts a sample in—it is not specified there; it says a container. Although, when you get down to page 25 of the Schedule, it says:

"regulate the taking, identification and transport of DNA samples;"

Clearly, the Minister should have power to make regulations but it does not say anything about his power to make regulations about the preservation of the sample or the storage of the sample. So while we give the Minister power to do these things, we have not given him all the power he needs to make sure that the sampling process is of integrity.

One of the things that I found rather strange and this, of course, relates to our way of doing things or the way we have been doing things over the past several years, is taking a sample and putting initials of somebody on it. There are more modern ways of doing things. If you take a sample, you give it a serial number. The Board of Inland Revenue gives me a number that is unique to me and to everyone else. The National Insurance does exactly the same thing, so why can we not, when developing or making new laws, devise something that is a little more contemporary? I am not going to suggest or I am not suggesting details but, for example, any sample taken in the year 1998 should start with 98. If it is a first sample, it is number one and if it is the second sample, it is number two, and there is a catalogue. As far as a container goes, why do you have people writing their initials? You can have two or three persons with the same initials.

If you go into storage, for example, the Minister does not have any power to make regulations about storage. You go into a bin and find 10 samples each with the initial MD. Now, there may be many persons with that initial. I view the protocol as being rather old fashioned and likely to produce inordinate confusion. One thing which surprises me, seeing that we tend to be following the Americans ever so closely—and we are going to get some help from them to "do-in" some killers—is that we draft legislation and we do not use the American system.

The American system employs a chain of custody protocol. Let me explain why you need a chain of custody protocol. You have to ensure that there is no risk anywhere along the line that a very sharp criminal lawyer would challenge you in a court of law: "How do you know that that sample actually moved through the path that you claimed that it moved?" Let me give you an example of the sort of problem in our society.

Not very long ago there was a commission of enquiry into Texaco and the pollution of the Guaracara River, which is a matter which concerned me and, in fact, a fire killed one person, damaged property, and so forth. One of our premier research institutions, the Institute of Marine Affairs, was asked to sample an area. They sampled the Guaracara River, for two days they gave evidence and the institute's evidence was completely torn to shreds by a senior counsel. It was so bad that the institute had to withdraw all its evidence from the commission of enquiry because it did not follow a proper protocol.

While I support the idea of the legislation, I have the same problem that Senators Montano and Daly have with the integrity of the process and I wonder

why we do not use protocols that are already well established. For example, if we leave the criminal—to go back to the environment—the Environmental Management Authority is moving towards taking action against people who pollute the environment. They are not really at the stage where they can bring an action because there is no environmental commission, but they already know and are familiar with the chain of custody protocol. So if a sample of an effluent is taken, it is taken in a certain way, it is sealed in a certain way and there is a protocol attached to it; not a police officer making a report. There is actually a form that goes along with the sample wherever it is. So when you do your determination and present your evidence before a court of law, there is no question at all of the integrity of the evidence.

I have problems with people taking samples, intimate or non-intimate. The problem relates to the nature of our society and I wonder whether we might not find the solution to this problem by placing the responsibility of taking the sample, not on the security service—the police—but on the Forensic Science Centre itself. There is one way you might do this—I think that the Minister of Finance will rearrange the finances slightly—once you introduce this legislation, you might have, perhaps, two dedicated members of staff who would have specialist training, not only in taking the samples, but in fulfilling the chain of custody protocol. The sample then remains within the Forensic Science Centre.

4.00 p.m.

I think this is one way to get more effective legislation. If it is left to the policemen down at Guayaguayare or Cedros, and to the local refrigerator in the police station, which may or may not be working at the time, there may be a problem. Biological material deteriorates with time and temperature. I am sure that when the Forensic Science Centre stores biological material it would store it in accordance with well-recognized protocols. One does not put samples in a refrigerator. It should be stored in either a liquid nitrogen storage or a special low-temperature refrigerator. When the samples are put there, one can be sure that they are going to last. If it is stuck in the top of the refrigerator in the Rio Claro Police Station and one waits 10 days for it, it is useless.

Hon. Senator: The current gone!

Sen. Prof. J. Kenny: Mr. Vice-President, again, I have serious problems with the wording of many of the clauses in particular, 13, 14, and 15. I cannot see how I can support the legislation in its present form and I cannot see how I can make

any contribution to drafting what I feel really ought to be done to make this legislation more useful to us.

With these comments, Mr. Vice-President, I cannot support the Bill in its existing form. I apologize for being unable to come with the necessary draft. However, I suggest that consideration might be given to a more detailed examination of the American system of chain of custody protocol and to having the Forensic Science Centre given the responsibility for sampling. We are not dealing with 10,000 blood samples per year, we are dealing with a comparatively small number. I suggest that we may use this brilliant tool—it is really a fantastic tool, except where one is an identical twin—which gives one almost absolute certainty. If we use this spectacular tool, but modify the way in which we approach it by some of the suggestions I have made here, I think, perhaps, we could adjust to our special circumstances.

Thank you, Mr. Vice-President.

Sen. Prof. John Spence: Mr. Vice-President, like previous speakers, I certainly support the idea and congratulate the Government for moving the idea forward of using new technologies for crime detection. I think we all agree this is what should be done and we are glad it is happening.

I am also in agreement with all the comments which were made previously with respect to, in effect, getting it right. The point may have been made and I would like to make it again, that if we do not get it right, then, in effect, it would not be an effective tool because, as Sen. Prof. Kenny has pointed out, it will be torn to pieces in the court by good lawyers. Indeed, those of us who may have watched a bit of OJ Simpson's trial would realize it is not just a simple matter at all. Therefore, I think it is important that we get it right the first time. Much of what is being said here indicates that we can, indeed, have good legislation, but not if we try to rush it through in a short time.

Deoxyribonucleic Acid testing has, in fact, been used in Trinidad and Tobago to identify plants. As far as I am aware the only laboratory in which it is being done is the Cocoa Research Unit which I headed quite recently. We introduced a method of testing for plant varieties using DNA techniques some six-odd years ago. I consulted with one of the scientists who, in fact, introduced this technique to the Cocoa Research Unit during my time in office and I will read some of his comments.

The first comment was on the use of the terminology "DNA sample". What has been pointed out here is that what one is taking is not a DNA sample but a tissue sample which contains some DNA. He said that:

> "The sample collected is, strictly speaking, not a DNA sample but a tissue specimen such as blood, semen swabs, or stains. The DNA must be extracted from the specimen at the forensic sciences laboratory and can then be referred to as a DNA sample."

Perhaps we should look at the terminology there.

The second comment:

> "10 days is much too long a time between sample collection and delivery to the Forensic Science Centre. DNA extraction should begin as soon as possible after the fresh sample has been collected. The quality and quantity of extractable DNA decreases with time and is greatly dependent on storage conditions. If the sample cannot be extracted within at least 48 hours it should be frozen at -20^0C to -80^0C. With dried stains, DNA suitable for analysis can be extracted from old samples provided that the material has been maintained under the correct storage conditions..."

While it is true that one can collect DNA from very old samples—presumably it is material which has been dried and the peculiar circumstances of its—preservation is what allows us to get the samples from it.

> "A long delay between sample collection and delivery to the laboratory increases the opportunities for contamination of the sample. In a small country as Trinidad,..."

I think Sen. Chamely made this point.

> "...there is no clear reason for delaying delivery of the sample for as much as 10 days."

The third point made here—I think this is something, perhaps, for the scientists to either confirm or deny—is that:

> "The 'non-intimate samples' of saliva, urine, hair (that is not pulled off from the root), nail etc. will not yield DNA."

Again, why are we taking these samples if they probably will not yield DNA?

The fourth comment:

> "The labeling of samples must include sample source, tissue type and a record made of possible contamination with other DNA sources as well as storage conditions."

These were the comments made by this particular scientist.

Mr. Vice-President, I have some other points, some of which have already been mentioned. The point was made about contamination. While the hon. Minister made his presentation on the last occasion I interrupted him to make the point about the containers which would be used. I certainly support Sen. Prof. Kenny's proposal that the collection should be done by the Forensic Science Centre and this, indeed, would overcome many of the difficulties which might otherwise arise. I think that is an admirable suggestion which might be looked into.

Then there is the question of the methodology which is being used. This may also affect the issue of contamination. Some methodologies would be affected by small contamination, others only if the contamination is rather gross. Again, we do not know what methodology may be used. It is stated in the legislation that the director of the laboratory may consult with persons to ensure that their methodologies are up to date. I would rather suggest that we insist that he does that. Something should be written into the legislation to ensure the director of the laboratory keeps up with changes in the methodologies which would be taking place at other centres.

4.10 p.m.

Mr. Vice-President, I support the idea of going in this direction. Indeed, I remember some months ago when there was a murder case in St. Vincent and blood samples were sent to Trinidad for analysis. I was rather disappointed to find that the only analysis we could give was blood type, and this was not sufficient evidence to link the suspects in that case conclusively with the crime. It seems to be a very great pity that in fact, St. Vincent did not send the samples to the United States or some other centre where they could have done DNA analysis and perhaps it would have been a quite different outcome in that particular case.

So, I certainly support the introduction of the new technologies, but I do believe that we have to look at this legislation much more carefully, and a number of aspects would have to be changed. Therefore, I do not belief that we should conclude this discussion this afternoon. We must find some mechanism for more

detailed examination, perhaps getting some other scientists together. I certainly am sure that I could persuade the scientists from the University of the West Indies who have been working on DNA techniques to meet with Forensic Science Laboratory personnel and with the legal people to work out a system and work on legislation that might be more useful to us.

Thank you very much.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, we are very grateful for the comments made on this Bill. We do agree that it is a most important piece of legislation. We also agree that every bit of care should be taken to ensure that the integrity of the process is protected, so that whatever evidence is obtained, is not only obtained fairly and in accordance with established principles according to law, but that the evidence and processes can stand up to the scrutiny of the courts. It is in this context that the Government is very open to whatever measures that may be suggested for its consideration, in order to make the legislation as effective as possible.

Mr. Vice-President, as one knows, the policy on this Bill comes from the ministry responsible, and the Law Commission under our system assists in trying to put that policy together. So that it is the Ministry of National Security's Bill, but to give the impression that this Bill just came like that would not be correct. As a matter of fact, the Law Commission has spent a lot of time on it. There have been draft Bills, discussions, consultations with the police service, with the Director of Public Prosecutions, with the Forensic Science Centre, the Ministry of National Security and it has been produced after considering several similar measures.

As a matter of fact, the Bill could be considered to be a merger of the Bills from really four main jurisdictions. There was a Bill in 1995 in the Canadian jurisdiction which permitted this kind of testing and this kind of evidence; we took that together with the Police Evidence Act of the United Kingdom; with similar legislation from New Zealand; with the American experience; and we have put together this Bill. I think that we all know that in the Caribbean there is no precedent for this kind of legislation. Trinidad and Tobago is the first country which is embarking upon this kind of measure. Some of the provisions which have been—I would not say criticized—questioned, are the provisions from the United Kingdom legislation. The fact that it comes from the United Kingdom does not necessarily mean that we have to accept it *ipso facto*.

Mr. Vice-President, I think that we are all agreed that the principle of the Bill, the main policy of the Bill is good and that it should be encouraged. I would think that we have to encourage that because of what this measure would do. I want to read some of the success that has been achieved in Britain, particularly—I can read from other jurisdictions too—in respect of measures like these. We all know that when the police are confronted with a situation that a crime has been committed, the police can get the evidence from direct sources, that is from witnesses who saw the incident. But in most cases, crimes are not committed for people to see and therefore, the police have to investigate in order to detect the crime without eyewitnesses. Therefore, what has happened is that more and more, it has become necessary for the police to depend on what is called circumstantial evidence. Not witnesses who directly saw what happened, but to get leads that one can put together like links in a chain, and lead to the conclusion that the person is guilty.

For example, if there is a murder, when the police go to the scene, they would look at the position of the body to see whether there is dirt, to see blood samples from the dead person's hair and what other objects can be picked up at the scene. Then the investigation would be conducted in such a way in order to get—whether it is hair, blood, or other—evidence which can be matched with the person who died. It is in this context it is said that circumstantial evidence is sometimes better than direct evidence. Why do they say that? If a witness says he or she sees, under the system that we have—we have not been able to find a better system—the person goes into the witness box; and would say what he or she saw, then one must have an adversary system where the person who is charged would have a lawyer, the lawyer would be entitled to cross-examine the person.

Sometimes a person may genuinely see an incident, but because of the cross-examination, because of the way the cross-examination was conducted, probably because of the content of the cross-examination, perhaps sometimes even because of the mere court atmosphere, the person cannot give evidence as he or she should, and the jury could disbelieve or would not place reliance upon the direct evidence from the witness. There have been many cases where people believe that accused persons have got off because the legal representation has been such as to demolish the testimony of the witnesses who may be speaking the truth. The fact of the matter is that one has to have a system, and have it in a way in which the guilt of persons can be determined and we have not been able to find a better system. Despite its failings, it has worked very well.

What governments and law enforcement agencies have to do is find ways and means whereby the investigation and its results can be so foolproof that it can stand up to the scrutiny of cross-examination or evidence called to rebut it. This kind of evidence is important, because it will permit greater latitude for the law enforcement agencies to be able to match evidence which cannot or does not lie. It is in this context that what we are doing here today in dealing with this Bill is an important exercise. We on this side agree with this 100 per cent, that we should ensure that it is properly done with all the necessary safeguards.

Mr. Vice-President, one of the objectives of this Bill is to create a data bank for DNA samples. One would see in clause 16 of the Bill, there would be a data bank established. Obviously, this would be established as a database and this would be the data bank from which information can then be used by the law enforcement agencies. For example, with this data bank, let us assume that a person who is convicted of rape, serves the sentence and he is released. A DNA sample is taken from him and it is in this data bank. Three months later, a rape is committed somewhere in Trinidad and Tobago, and assuming by the blood or what other aspect of the DNA system is found at the scene of the crime, that has to be matched, there will be something to match it against and, therefore, that can provide the link, even though nobody had seen who had committed this crime. Therefore, that is the starting point of the link in which the police can get a lead.

I say this, and I would like it to be understood in the context of which I am saying it. From the point of view of a defence lawyer, it must be his or her greatest relief, when he or she is doing a case on behalf of the defendant, if the only witnesses that the state has would be eyewitnesses. As a matter of fact, it is so easy, from a lawyer's point of view, to break down a case, to instil doubts into the case, from the basis of the instructions and cross-examination, that lawyers fear—if I use that word—any kind of forensic evidence, or circumstantial evidence. The reason for that is it is very difficult to convince a jury who has to be sure of the guilt of the person when there are these links in the chain which lead conclusively to the guilt of the person. Sometimes, the direct evidence can undermine the circumstantial evidence. I say that so that one can understand what a great relief other countries have found in having this kind of power and this kind of machinery in what we are trying to have passed today to deal with the criminal situation.

Mr. Vice-President, I am reading from the *Commonwealth Law Bulletin* of October 1995, page 1337. Talking about the United Kingdom, it states, under the heading:

"**First national computerised DNA database in operation**

The world's first national computerised DNA database has begun operating. The Home Secretary hailed it as the biggest breakthrough in the fight against crime since fingerprinting.

Police will be able to take samples such as hair and saliva from anyone charged with a recordable offence (one that carries possible imprisonment). About 135,000 samples from people accused of burglary, assault and sexual offences will be taken in the first year. Up to 5 million records are expected to be held on the system but DNA profiles will be retained only if the suspect is convicted or cautioned for an offence triable at Crown Court."

4.25 p.m.

It then goes on to say:

"Michael Howard, the Home Secretary, said that the Birmingham-based database would make a 'real difference' in helping police to detect crime but he insisted that he did not expect people to be convicted on DNA evidence alone."

It then stated that this was introduced in a particular piece of legislation. Under the heading "Marked for life by DNA", it quoted the article in *The Times* of May 12, 1995:

"In one of Britain's largest police raids recently, several thousand police officers arrested more than 900 suspects in the South of England and Wales. Stolen property from firearms to garden gnomes was retrieved. But while the owners of the recovered goods may be hard to trace, any culprits among those arrested will not be.

They have the dubious distinction of being the first group to undergo mass DNA testing in Britain, and of knowing that their DNA records will be stored indefinitely on Home Office computers for comparison with traces left at the scenes of future crimes.

The idea of the fingerprint as a unique identifier of an individual has been around for more than a century. Sir Arthur Conan Doyle was aware of it when he wrote *The Return of Sherlock Holmes* in 1905. But it was not until 1992 that Britain got its computerised fingerprint recognition system that could be used in solving of crimes.

> The use of DNA samples for the same purpose has made a rather swifter transition from radical new idea to standard police tool. First demonstrated in 1984, DNA fingerprinting is now a routine procedure. The United Kingdom is the first country in the world to introduce a national computerised DNA database."

Mr. Vice-President, just for the purposes of the record if one looks at the *Commonwealth Law Bulletin* of January and April 1996 under the heading, "Criminal Investigations Blood Samples Act 1995 of New Zealand", one would see the great strides which that country has also made. Having said that, one, therefore, sees that this concept is not only good but I think it is necessary, in order to deal with the modern-day crime.

Mr. Vice-President, I will quickly deal with some of the matters, then I am sure, in keeping with the commitment of the Government, the hon. Minister of National Security will make an announcement apart from his contribution. When one looks at the point that Sen. Daly made about clause 12, one sees that is in respect of a person who is convicted, the appeal processes are complete and that a DNA sample can be taken from him in accordance with the Bill. A non-intimate sample can be taken in accordance with the Bill but an intimate sample can only be taken with his written consent. One of the objectives is to have a data bank so that when people have been convicted there would be a data bank to use for comparison.

With respect to the points made about the non-intimate sample, I do not think we have any difficulty whatsoever in ensuring that those safeguards are put in as recommended. We would have no problem including the proposed amendments suggested, because it is recognized that power can be misused and abused, therefore, one has to ensure that as many safeguards as possible should be inserted. It should be remembered, however, that when we are dealing with an intimate sample this is taken by a qualified person who is a medical practitioner. When we are dealing with the non-intimate sample it does not have to be taken by a medical practitioner. A non-intimate sample is defined. If it has to be taken from a female, a female officer would be used.

Regarding the point made about privacy, the taking away of people's rights and having a warrant before a sample can be taken, I would ask the hon. Senator to reconsider his position on that because it is really not practical. It cannot happen in practice that someone would just be arrested or detained at a police station,

because there is the safeguard that he must be suspected of an offence for the police to get a warrant to arrest him in order for the sample to be taken. He is in custody already, there is reasonable and probable cause—because in order to get a warrant there must be reasonable and probable cause—and according to the Bill you cannot take the sample from him unless there is reasonable and probable cause. Therefore, it is not practical to go the route that the hon. Senator talks about.

Yes, the right to privacy is guaranteed in the Constitution of Trinidad and Tobago, but it also says that there are situations in which, in order to make laws for the peace, order and good government of Trinidad and Tobago, Parliament can pass laws which are inconsistent with any of those fundamental rights. But if one has to do that, there must be a specified majority. Thus, it gives the power of the Parliament to consider whether in any given situation, if you put on the scale of justice, you would want to have this measure; if you want to rely on the rights not being regulated in any way in the particular circumstances, or you want to look on the other side to see whether you should not introduce it. Yes, it is a judgment call, Members of the Senate would have to decide; yes, we are passing a Bill which is inconsistent with the rights to privacy, but if a Bill has to be passed to deal with getting samples in order to determine if people committed crimes, then there would have to be that kind of legislation. We would have to decide whether we want to go that route or not.

It is in that context the Government has put on the face of the Bill that this is what it is about. In any event, even, the Bill is passed here and it gets the majority, if it does not have the required safeguards or if people find it can be challenged, the court has the jurisdiction to declare the Bill unconstitutional if it considers it is not reasonable in a society that has the proper respect for the rights of individuals. There are safeguards. If after we look at the Bill, we put whatever safeguards we consider and in our consciences we think we should go with this Bill, the court—as the hon. Senator has said—still has the power to have it shot down, if it feels that it is not reasonable or justifiable in our society.

Although Sen. Daly said that he does not have much experience in criminal law, I wonder whether he does. He got it all right, in that, if a person refuses to consent for the sample to be taken, just as in the criminal law now, if a person refuses to give evidence the judge can make comments about the refusal and the jury can draw certain conclusions from that; similarly, a person can refuse. If the person refuses and it shows that the person did so because he or she had ulterior

motives, the jury can draw inferences from the person's refusal. There are protections in the Bill. The fact that I have not mentioned all the points, do not believe that I did not think they were important, but having regard to the course of action which the hon. Minister would be proposing, I think that there would be greater opportunity to go into those aspects of it.

Mr. Vice-President, I give the assurance to this honourable Chamber that the Government is committed to ensuring that there are many safeguards that can be put in the Bill to ensure that it protects individuals, but also to ensure that it would work and it would not be too bureaucratic.

Thank you.

Mr. Vice-President: It is just about 4.35 p.m. We will take the tea break now and afterwards invite the hon. Minister of National Security's response.

4.35 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed:*

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. Vice-President, I would like to start by thanking the hon. Senators for the contributions they made, their suggestions and criticisms, all of which are very valid and have certainly set me thinking that the Bill, as it stands, does require closer examination.

In the case of Sen. Montano, he went into great detail on his research into the DNA and I am very grateful to him for having taken the time to understand that in the field of science DNA testing is now an acceptable form of providing evidence in the courts of law. I fully appreciate his comments and that of other hon. Senators whereby our main concern deals with the safeguards—safeguards to the privacy of citizens and their constitutional rights; safeguards as far as the taking, handling, storage and transportation of the samples are concerned. These are matters that will have to be dealt with in greater detail under the regulations. A lot of them are administrative matters that will have to be handled by the Forensic Science Centre.

What struck me was the concern about the integrity of the samples—the integrity of the process. As we know, already, for a number of years law enforcement agents have been branded as people who are likely to take advantage of their position or become involved in corrupt practices. I think it is important that we put measures in place to avoid such an eventuality. Albeit a perception, be

it true or otherwise, we cannot allow it to appear as though we are giving the police service undue power which could be misused.

The matter came up as well, Mr. Vice-President, about whether or not a sample should be taken by giving the person details and asking the person to give the sample. The point was raised that the person may say no, he does not wish to give the sample. The hon. Attorney General mentioned that such a matter can be raised in a court of law that this person refused to give a sample. Another hon. Senator raised the point that should the person refuse what do you do? Can you hold that person and force him to give a sample? Again, this is a matter which is of concern and it was suggested by Sen. Montano that maybe what one needs is a warrant to ensure that the person complies with the request.

On the other hand, the person we are dealing with at this point is a suspect who may have been apprehended by the police and the matter of giving a sample would lead to evidence being collected which would lead to charges being laid. Therefore, again, as far as the law is concerned I would stand by the advice of the legal personnel on the Government Bench and indeed on the opposite side. I am not sure whether the warrant is the answer or whether the provisions that are laid down in the Bill are sufficient.

This leads me to training. Mr. Vice-President, the training of the police officers, if they are the ones to take the samples, is of paramount importance. The Forensic Science Centre representatives have assured me that no such training has started. Obviously one has to determine who will do the sample taking; which male and female police officers would be trained and earmarked; where they would be located; would they be available; and how does one go about taking the test and handling the samples. What I am advised about the matter of containers is that there are "securitainers" which are properly sealed plastic containers that are available, glass phials that are available and in use presently at the Forensic Science Centre.

One of the hon. Senators mentioned the chain of custody protocol. I wish to assure this honourable Senate that this is practised here in Trinidad and Tobago because it is incumbent upon the Forensic Science Centre to conform with these procedures in their work. So such a process is in place and the chain of custody is followed by our Forensic Science Centre. We recognize in the Ministry of National Security from the Clint Huggins matter as mentioned by Sen. Montano, that the crime scene had been trampled on by various people and when the FBI agents came down here we set about having our officers trained in crime scene investigative procedures. I am aware that it is being done.

We ask the question: Should somebody from the crime lab go to the scene of a crime? Again, it was said it depends on the nature of the crime and the evidence that is at the scene. The police service have, among their numbers, crime scene investigators who are able to take samples from the scene of a crime and take these samples to the Forensic Science Centre. I am not suggesting that it is perfect or everybody is highly trained or has done all the training that is available, but I want to assure this honourable Senate that efforts are being made to upgrade the skills of the policemen who investigate serious crimes in our country. The purpose of this Bill is to give them that needed assistance to provide testing for forensic evidence.

Sen. Mahabir-Wyatt mentioned that we seem to be doing away with blood testing by introducing this DNA sampling, but I think another look at the clause of the Bill would show that what is attempted in this Bill is to widen the scope and in fact a DNA sample actually means a sample of blood, semen or other tissue fluid, urine, saliva, hair, or any bodily substance taken from a person. Therefore, instead of saying blood and itemizing all the tissues or all the samples and then add the DNA, what we are attempting to do here, by saying a DNA sample we incorporate all the existing samples and extend it to include samples got for DNA testing.

My concern has a lot to do with the safeguards. I think it is important that people have the assurance, particularly people who may be charged and against whom this evidence is to be used, that everything is done above board. Again, this is a matter that would come through training, proper supervision and proper procedures being adopted.

Sen. Daly spoke about the integrity of the law enforcement agency. Yes, we know that Sen. Montano said one bad apple could spoil the whole barrel and this is accepted and one is aware that in our society we have good and bad. What I am hoping is that the good will far outweigh and, perhaps, assist us in getting rid of the bad. Again, I too am seeking a high degree of efficiency both physical and scientific.

The matter of intimate and non-intimate samples I think is useful because we seem to be mixing up the two. I should like to take one more look at the definition where it states quite clearly that a non-intimate sample means a sample of saliva or urine. Such samples are taken as a matter of course. If one goes for an insurance medical one is asked to give a urine sample. Sample of hair other than pubic hair or hair taken from an intimate part of a person's body—again, this is superficial. A sample taken from a finger-nail or toe-nail, a swab—I heard Minister Daly—I beg your pardon, Sen. Daly talk about—well he was so concerned *[Interruption]*

about the behaviour of the security guard I did think that his religious inclinations were coming to the fore. *[Laughter]* I beg your pardon, albeit well hidden.

Mr. Vice-President, Sen. Daly was concerned about the apparent behaviour of the security guards and did suggest that they would not be people to take intimate samples. Of course, such people are not considered as being suitably qualified. A qualified person is a registered medical practitioner. Dr. Chamely did mention medical practitioner registered with the Medical Board of Trinidad and Tobago to be more specific, or a person registered under Part II or III of the Nurses and Midwives Registration Act. Such a person is not empowered and is not entitled and it may be a matter of who is guarding the guards. Again, the matter of the definition of the various samples is important. We have to look at the role of the police, the rank of the officer who is responsible for taking these samples and the procedure to be followed.

We have to look at the regulations about the preservation or storage of a sample. This was raised by Sen. Prof. Kenny and again, from a scientific point of view I can well understand his concern about the container being contaminated, how it is being stored, and at what temperature. I wish to assure this honourable Senate that because we do have a properly functioning Forensic Scientific Centre, that all these are in place and there are procedures. What I need to say here is that the regulations will amplify and specify the manner in which these things are to be done. I have already started enquiring from the Forensic Scientific Centre on the procedures they follow with regard to containers and the manner in which they are taken to the lab and how they are identified. I take the point that, maybe, putting initials in this day and age may not be the answer, you may have difficulty determining which is which. This is a matter one has to look at. The point is well taken.

The question was raised about a more detailed examination of the US chain of protocol. As I said such procedure is already in place.

5.20 p.m.

I like Sen. John Spence's term that areas are to be addressed to ensure that we are getting it right. I think this is what it is all about. I get the impression that the majority of people are in agreement that this legislation is important, but we want to make sure that we get it right and do it properly, in the interest of the privacy of our citizens and to ensure that the terms and conditions of our Constitution are met.

The matter of getting it right is also important. This has to do with the evidence not being discredited in our courts of law, which I think is important. So,

again, the whole process is critical and I think we owe it to the country to make sure that the proper safeguards are put in place and that the proper procedures are adopted.

The issue of 10 days being a long time is something we definitely need to address, because it seems impractical to allow the sample to remain for 10 days, albeit it does not deteriorate to that extent over 10 days, but it was suggested that the DNA extraction, if possible, should start within 48 hours of the sample being taken. One must pay attention to these comments.

I am very pleased that we have been getting so much scientific advice and people have spoken with such great authority on matters of that nature. I think you are testing. These proposals are worth looking at and we certainly need to address them.

We must keep up with developments and we are doing that right now. I think the Bill, as most people agree, is well-meaning; it is important at this stage of our development. The hon. Attorney General pointed out that we are the first Caribbean nation to attempt DNA testing and I feel, like in other fields of policing and security, we are in the lead and we are looked to for leadership among the other Caribbean nations, as far as the manner in which we are going about dealing with matters of national security and, in fact, dealing with our citizens.

As far as the testing goes, I did speak with a representative of the Forensic Science Centre during tea-time about the consideration being given to the majority, if not all the tests, being done there, and the point was made that one has to ensure that staff is available to take the sample, not really do the test at that stage, but take the sample and make sure the sample is properly stored. Again, it is something I have asked him to look at and come back with an answer. We are open on these issues, the bottom line being to ensure that the best terms and conditions, as can be made applicable at this time, are put into this piece of legislation.

So, again, I am grateful for the comments made by hon. Senators and, as the Attorney General said, care must be taken to ensure the integrity of the process and I recognize the concerns expressed and accept that we need to look more closely at the procedure.

I beg to move that a bill entitled— [*Interruption*] I beg your pardon, Mr. Vice-President. Before I close, again the Attorney General did indicate that we had arrived at a course of action and it is out of concern—[*Laughter*] [*Interruption*] No, we will follow a course of action.

Sen. Mohammed: Determined by the Attorney General.

Hon. J. Theodore: No, we do not do it arbitrarily like some people and simply dismiss others out of hand. [*Laughter*] We do consult. A bit of grey matter is used over on these Benches.

It is in that very vein that we would certainly like to have this matter more thoroughly investigated and I would suggest at the appropriate time that the matter be put before a select committee.

At this stage, without further ado, I beg to move,

That the Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters, be read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Hon. J. Theodore: Mr. Vice-President, I beg to move that the Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters, be committed to a select committee of the Senate and that this select committee be allowed to discuss the general merits and principles of the Bill and report thereon.

Question put and agreed to.

Bill referred to a Select Committee of the Senate as follows:

Sen. Brig. The Hon. Joseph Theodore (Chairman)

Sen. Carol Cuffy-Dowlat (Member)

Sen. Agnes Williams (Member)

Sen. Danny Montano (Member)

Sen. Prof. John Spence (Member)

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, before moving that the Senate be adjourned, may I inform Senators that the following matters are going to be addressed at the next sitting of the Senate in the order that I would outline at this time.

We are going to deal with a Bill to amend the National Trust of Trinidad and Tobago. We are also going to be dealing with a Bill to amend the law relating to the civil proceedings against the state arising out of the exercise of powers and the performance of functions and duties by constitutional bodies and for other related purposes. We are also going to be dealing with a Bill to provide for the assistance of the International War Crimes Tribunals and, later, if we are able to conclude—

Sen. Mohammed: All of that?

Hon. W. Mark: I am just giving you an assessment so that you will prepare. A Bill to establish the National Library and Information System to provide for the development and co-ordination of all library and information services in Trinidad and Tobago and, finally, a Bill to reform the law relating to dishonoured cheques and similar negotiable instruments.

Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday, March 10, 1998 at 130 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.30 p.m.

WRITTEN ANSWER TO QUESTION

International Treaties

5. **Sen. Julian Kenny** asked the hon. Minister of Foreign Affairs:

A. Could the hon. Minister inform the Senate of the international treaties, other than bilateral treaties, to which Trinidad and Tobago has acceded since 1976, the dates of accession or ratification and the subject matter of each treaty?

B. Could the hon. Minister also inform the Senate whether any of these treaties requires passage of special or new domestic legislation or amendment to existing legislation?

C. Could the hon. Minister also inform the Senate of the status of preparation of any legislation required under international treaty and of the timetable for tabling any such legislation?

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. Vice-President, the other part of the answer to the question is as follows: