SENATE

Tuesday, June 29, 1999

The Senate met at 1.32 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Martin Daly. Leave of absence for the period June 28, 1999—July 2, 1999 has been granted to Sen. Selwyn John.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators**,** I have received the following communication from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

\s\ Arthur N. R. Robinson
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator Selwyn John is incapable of performing his functions as a Senator by reason of illness:

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

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 29th day of June, 1999**."**

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts and Financial Statements of the Sugar Industry Labour Welfare Fund Committee for the year ended December 31, 1991. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)]*
2. Financial Statements of Trinidad Nitrogen Company Limited for the year ended December 31, 1998. *[The Minister of Public Administration (Sen. The Hon. Wade Mark)]*
3. Annual Report of the Law Commission of Trinidad and Tobago for the year ended May 31, 1998. *[Hon. W. Mark]*
4. Rules and procedures for the invitation and consideration of Tenders for the award of Contracts for Articles, Works, and Services and Disposal of Assets for the Trinidad and Tobago Postal Corporation. *[Hon. W. Mark]*

SEXUAL OFFENCES (AMDT.) BILL

Bill to amend the Sexual Offences Act, 1986. [*The Attorney General*]; read the first time.

Motion made, That the next stage of the Sexual Offences (Amdt.) Bill be taken at the next sitting of the Senate. [*Hon. W. Mark*]

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I seek leave of this honourable Senate to proceed with "Bills Second Reading" at this stage of the proceedings, instead of Motions.

Agreed to.

CRIMINAL PROCEDURE (PLEA DISCUSSIONS AND PLEA AGREEMENTS) BILL

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

That a Bill to establish a system of plea discussions and plea agreements and for matters incidental thereto be now read a second time.

The main purpose of this Bill is to introduce to our nation an extended and regulated system of plea discussions and plea agreements in the criminal justice system. This system properly administered can produce great good to our criminal justice system. Mr. President, the United States Supreme Court has summed up the practice by saying that if properly administered they—referring to plea bargains—can benefit all concerned. The defendant avoids extended pre-trial incarceration and the anxieties and uncertainties of trial. He gains a speedy disposition of his case, the chance to acknowledge his guilt, and a prompt start in realizing whatever potential it may have for rehabilitation. Prosecutors and members of the Judiciary conserve vital and scarce resources.

The history of this matter would show that upon this administration taking office it was decided to look at this issue to see whether it should be introduced in Trinidad and Tobago. The Law Commission was instructed to prepare a paper to analyze this matter and to have the necessary discussions so that the country can have an idea of whether the concept of plea agreements and plea discussions, otherwise known as plea bargaining, should be introduced as part of the law of Trinidad and Tobago.

Mr. President, the paper which was presented by the Law Commission was studied and discussed with the main players in the administration of justice. Based on those discussions, a Bill was prepared and submitted to Cabinet which agreed, in principle, on the measures which are contained in the Bill. The Bill was also published for public comment. Comments were received and considered by the Law Commission and amendments were duly made.

Even while the Bill was in the other place, comments were received from the public and members of the legal profession, and necessary amendments were made. So that the Bill that we have before us is not the original Bill introduced or agreed upon. It is a Bill which has been amended in order to take into consideration all the views which have been expressed. Not all the views were agreed to, but certainly all the views were considered.

The main purpose of the Bill is to enable prosecutors and defence counsel to engage in plea discussions aimed at arriving at a plea agreement in respect of a course of action to be taken in respect of the prosecution of a summary or indictable offence.

Apart from the United States, plea bargaining is acknowledged and practised, to varying degrees, in several Commonwealth jurisdictions, such as Canada,

Scotland and Australia, but it` is in the United States where the practice is most developed and carried out. The Bill that we have before us, however, is not in accordance with the United States' practice, it has been modified in order to meet our needs.

One would see that according to the Bill, the courts of Trinidad and Tobago would have the overriding jurisdiction to determine whether a plea agreement should be accepted or rejected. In other words, it is not a system whereby prosecutors and defence counsel can bargain for justice without the court having a say in the matter. The court, at the present time, has the overall responsibility for the administration of justice, and it was decided in this Bill to leave the court with that overriding power and jurisdiction. That is why in clause 17 of the Bill it is expressly stated:

> "The Judge or Magistrate may reject a plea agreement entered into between the prosecution and the accused person if he considers that it is not in the interest of justice to do so."

1.45 p.m.

Mr. President, if for some reason, there is a case of, let us say, manslaughter, and it is agreed between defence counsel and prosecution that if the person pleads guilty the agreement would be seven years' imprisonment or that plea agreement is submitted to the court and the court pleas having regard—[*Interruption*].

Sen. Montano: I thank the Minister for giving way. He just referred to clause 17 as being the clause where a court has the right. Could you please explain?

Hon. R. L. Maharaj: Clause 17, I quote:

> "The Judge or Magistrate may reject a plea agreement entered into..."

I would like to apologize to the Hon. Senator if he is reading the old Bill. If the Hon. Senator would listen to me, I would advise him that he must spend a little more time—if he was listening on this side he would know that there was addition to this Bill when it was in the other place. The Bill was subjected to amendments and that the Bill which we have before us is: "as amended in the House of Representatives." [*Interruption*]. Why are you blaming the Minister of Works and Transport for this? He had nothing to do with this.

Mr. President, as I was saying, the Bill has certain safeguards and one of those safeguards is that the court has the overriding jurisdiction to reject a plea. Another safeguard that I may mention; one could see that under the definition of "prosecutor" at page 3, clause 2 of the Bill:

" 'prosecutor' means the Director of Public Prosecutions, an attorney in the office of the Director of Public Prosecutions, a police officer or an attorney to whom the Director of Public Prosecutions has granted a fiat;"

So one sees that not everyone can be—[*Interruption*]

Mr. President: Sen. Shabazz, I am overhearing you. Please tone down.

Sen. Shabazz: Yes, Mr. President, I will remember.

Hon. R. L. Maharaj: The prosecutor must be someone whom the Director of Public Prosecutions has given authorization in order to do that. One has that safeguard. It would also be seen from the Bill that there are safeguards in respect of coercing a defendant to plead guilty. As a matter of fact, the Bill stipulates that an accused person must not be coerced to plead guilty. There would be severe punishment for lawyers, police officers or anyone who is involved in that. The law provides also, that if there are misrepresentations which occur which cause an agreement there is punishment for that. There are also avenues to have those agreements set aside by the court.

It is also expressly stated that it would not prevent an accused person from pleading guilty even without an agreement. As the law exists today in Trinidad and Tobago, an accused person is presumed innocent and although he is entitled to have a trial, the court or a jury would determine his guilt beyond a reasonable doubt. He also has a right, if he wants, to plead guilty and that right is being taken away from him. Even without a plea agreement a person can plead guilty.

Sen. Mohammed: Can plead? There is presumption that you referred to—

Hon. R. L. Maharaj: I think the Hon. Sen. means on the presumption of innocence until proven guilty beyond a reasonable doubt.

What I am saying, Mr. President, is that it does not alter that constitutional principle, in that an accused person is still entitled to plead guilty even without a plea agreement. Plea negotiations and plea agreements can be justified on the basis that it is a sort of expediency measure which will enable states to cope with an overburdened criminal justice system.

With respect to the principle, may I say that there is nothing inherently wrong with plea negotiation, because if practised properly it could have beneficial effects on saving a lot of time and expediting the criminal justice system.

Presently in Trinidad and Tobago plea discussion takes place on a very informal basis. It takes place in a very restrictive way between defence lawyers

and prosecutors, but they cannot enter into agreements, as it is considered professionally improper for a lawyer to indicate to a judge or a magistrate that it is agreed between both parties that the sentence should be "X" or "Y" years. There was a traditional convention at the Bar that sentence is really for the court and lawyers cannot enter into an arrangement and should not tell a court what punishment to give. They tell the court to be lenient: it should not send a person to prison, but they cannot tell the court exactly five years, six years or ten years. As I said earlier, this concept is changing. Even in the United Kingdom there is a form of plea agreement.

Although we have this informal system—and I can give you an example possibly where this is done: in cases where a person is charged for wounding with intent and unlawful wounding, the prosecution may then decide that it would want to go for the unlawful wounding because the facts are such that a jury would have to find a person guilty of wounding with intent with a higher degree of criminal conduct. If the person is told: "if you plead guilty to unlawful wounding, we would recommend that the court be lenient." This means that we would take a lesser plea. If this does not take place there would be a trial which should last a few days. The prosecution would say: "we are prepared to take the plea of guilty to unlawful wounding with intent."

It is in respect of the same incident. That is one of the ways in which, sometimes, there is a plea arrangement with the court. But the court would determine whether to go ahead. It happens every day in the traffic courts with respect to dangerous and careless driving. Sometimes the prosecution decides to accept a plea of careless driving in light of circumstances that it is a higher degree of criminal negligence to prove in respect of dangerous driving. As I said, this system is not new to Trinidad and Tobago but it is new to the Caribbean. Trinidad and Tobago is the first country within the Caricom region which is going ahead with this concept.

I have tried to enumerate some of the many reasons which would have been advanced in defence of having a plea bargaining system. At the end of the day, if they are properly carried out, it ensures a greater measure of justice.

Two, it will allow for the swift determination of matters as an accused will not be kept in custody for many years whilst awaiting trial. Three, the defendant or the accused may have a feeling of participation and may not resent the final sentence. Four, by its plea agreement the defendant is ensuring a prompt and certain application of punishment.

1.55 p.m.

Acknowledgement of confession of guilt is a very first step towards rehabilitation. The process will create more scope for uniformity in sentencing. Plea bargaining may avoid the injury which a public trial may inflict on some witnesses, for example, rape victims or children who suffer sexual assault. The tool of plea bargaining may be instrumental in securing evidence relating to other defendants or to sophisticated criminal organizations. It saves the cost of a trial, court time and the resources of the state.

Mr. President, one of the areas in which plea bargaining has helped in other countries, something on which I have held discussions with the Director of Public Prosecutions and with which he has indicated he is in agreement, is that in most of the countries where the plea bargaining system is in force, it has proven to be very helpful in getting at the major players in the drug trafficking trade and in the areas of corruption and organized crime. By plea bargaining the actual players who are instructed can get an agreement which, if sanctioned by the court, would obviously be able to assist the prosecution in giving evidence in order to serve the public interest by getting at the organization itself. It has been shown to me in some of the countries this has worked in that area.

Mr. President, I should go through the Bill because I think that I would want to go through the Bill with hon. Senators. One sees in clause 2 the Director of Public Prosecutions is specifically mentioned in section 90 of the Constitution and the court means either the High Court or the Magistrate's Court. Improper inducement is defined and includes:

"(a) the coercion of an accused person to enter into a plea discussion; and

(b) the fraudulent misrepresentation of a material fact by the prosecutor either before a plea discussion is entered into or during the course of such discussion."

So that one sees the improper inducement is defined to cover cases where there is not only fraudulent misrepresentation of a material fact but also where a person is being coerced in one way or the other. Plea agreement, Mr. President—

Sen. Prof. Spence: Mr. President, I wonder if I could ask the Attorney General if that would include withholding of evidence which the prosecution may have at its disposal?

Hon. R. L. Maharaj: Well, withholding of evidence is dealt with later on in that if, for example, there is a plea agreement based on evidence which has been withheld, that can be dealt with. But if, for example, there is a fraudulent misrepresentation as to what the evidence is, then obviously it will also fall under the fact that he was coerced. So it is a double-edged sword which is also expressly dealt with later on.

"'Plea agreement…" means an agreement entered into—

(i) between the accused person and the prosecutor; or

(ii) between the attorney for the accused person and the prosecutor,

whereby the accused person agrees to plead guilty and the prosecutor agrees to take a particular course of action."

And we will see later on that "particular course of action" is defined.

"'plea discussion' or 'discussion' means a discussion held—

(i) between an accused person and a prosecutor; or

(ii) between an attorney for an accused person and a prosecutor,

either before the arraignment of the accused person, or at any time before (*sic*) the trial of the accused person commences, with a view towards arriving at an agreement;"

Now the particular course of action, that is what the agreement would lead to, would include the following:

"(i) a recommendation to the Court to dismiss other charges;

(ii) a recommendation to the Court as to a particular sentence;

(iii) an agreement not to oppose a request by the accused person, or his attorney, for a particular sentence;"

Sen. Mahabir-Wyatt: Before the hon. Attorney General finishes that section, I wonder if I can direct him to when he was reading through after subsection (ii) he said, "either before the arraignment of the accused person or any time before the trial of the accused person", but the text said "after". It is after—

Hon. R. L. Maharaj: I said "before"? Sorry. It should be "at any time after". I am much obliged. Thank you very much.

"…at any time after the trial of the accused person commences, with a view towards arriving at an agreement;

'particular course of action' includes the following:

(i) a recommendation to the Court to dismiss other charges;

(ii) a recommendation to the Court as to a particular sentence;

(iii) an agreement not to oppose a request by the accused person, or his attorney, for a particular sentence;

(iv) an agreement that a specific sentence is appropriate for the disposition of the case;"

So one sees that in the discussion which would flow, if there is an arrangement or an agreement, then these are the matters which can be the subject of that agreement. As I had mentioned, what the prosecutor has to show, it is limited to the authority of the Director of Public Prosecutions.

"'relative' means the spouse (including a common law spouse),

parent or step-parent, child or step-child of the victim."

This would become important as we would see that there is provision for the victims to have some sort of say in the process.

Clause 3 says:

"(1) This Act applies to a plea discussion and a plea agreement with respect to any indictable or summary offence.

(2) This Act does not affect the right of an accused person to plead guilty without entering into a plea discussion."

I mentioned that before.

"(3) Where this Act is at variance or in conflict with any other law the provisions of this Act shall prevail."

Under Part II of the Bill, Mr. President, it says:

"4.(1) Subject to subsection (2) a prosecutor and an accused person or where the accused person is represented by an attorney, a prosecutor and the attorney for the accused person, may engage in plea discussions.

(2) A prosecutor other than the Director of Public Prosecutions shall not enter into plea discussions with an accused person or his attorney, unless he first obtains the written permission of the Director of Public Prosecutions."

So they have made it expressly clear that the person, police officer, must have the fiat of the Director of Public Prosecutions.

Clause 5 says:

> "(1) a prosecutor who uses an improper inducement to encourage an accused person to participate in a plea discussion is liable on summary conviction to a fine of twenty-five dollars and to imprisonment…"

[*Interruption*]

Hon. Senators: Twenty-five thousand.

Hon. R. L. Maharaj: "…twenty-five thousand dollars and to imprisonment for five years."

I am forgetting I have the Minister of Finance next to me. I should not talk about cents and dollars. Sorry, Mr. President.

> "(2) A police officer or the attorney for an accused person is liable to a fine of twenty thousand dollars and to imprisonment for five years where he—
>
> (a) conspires with the prosecutor in the commission of an offence under subsection (1); or
>
> (b) attempts, incites, aids, abets, counsels or procures the commission of such an offence under subsection (1).
>
> (3) No prosecution under this section shall be instituted without the written consent of the Director of Public Prosecutions."

So we have taken everybody into the limb and it is not unusual for—as a matter of fact, it is common in the law, such as the law for corruption and many of the offences, in order to prevent prosecutions being laid without any basis for such prosecutions to have the fiat first, the consent of the Director of Public Prosecutions.

Mr. President, under clause 6 it says:

> "(1) Where an accused person has retained an attorney, the prosecutor shall not engage in a plea discussion directly with the accused person in the absence of his attorney.
>
> (2) A prosecutor shall inform an accused person of his right to representation, by an attorney, in the plea discussion.

(3) An accused person who cannot afford to retain an attorney may apply for legal aid under the Legal Aid and Advice Act."

We will see later on in the Bill where that Act is also amended by this Bill, in effect, to provide for legal aid in respect of plea discussions and plea arrangements.

"(4) Where an accused person is not eligible for legal aid, the prosecutor shall not have any discussion directly with the accused, unless the accused person informs the prosecutor, by way of the form set out as Form 1 in the Schedule that he does not wish to be represented by an attorney."

There is a particular form at the back which, if he does not wish to be represented by an attorney, must be signed by him in the presence of a Justice of the Peace.

"(5) Notwithstanding subsection (4), the Judge or Magistrate, in the exercise of his jurisdiction, may appoint an attorney for the accused person."

Clause 7, "Prohibition against plea discussions", says:

"A prosecutor shall not suggest, conclude or participate in any plea discussion that requires the accused person to plead guilty to an offence that—

(a) is not disclosed by the evidence;"

So in other words, Mr. President, if the evidence does not disclose an offence—if, let us say, for the offence of murder, there is no legal basis for murder to be disclosed, it would be improper for the prosecutor to discuss any such thing for the plea of guilty to murder. I probably used the wrong example because, in respect of murder, if there is no manslaughter there could be no other plea agreement because murder is a mandatory punishment.

Clause 7 says:

"A prosecutor shall not suggest, conclude or participate in any plea discussion that requires the accused person to plead guilty to an offence that—

(a) is not disclosed by the evidence;

(b) inadequately reflects the gravity of the provable conduct of the accused person unless, in exceptional circumstances, the charge is justifiable in terms of the benefits that will accrue to the administration of justice, the protection of society, or the protection of the accused."

I know many people will say, "Well what does that mean?" Let me try to explain that. It means that in some cases the state in the past, and I suppose will have to continue, in relation to prosecuting, has had testify, persons who were involved in criminal offences. Therefore, there will be situations where one of the accused persons would plead guilty or agree to plead guilty in exchange for information. In those circumstances there could be an agreement, subject to the court's discretion, that it is in the public interest and, therefore, in relation to that the term of imprisonment may not be the same term of imprisonment as if the person had not decided to assist the state in relation to evidence. That exists under the law at the present time.

It happens in the United Kingdom, it happens here, it happens all over the world in that persons are sometimes given immunity or reduced sentences in order to assist the prosecution and, in some cases, to give evidence on behalf of the prosecution.

2.10 p.m.

Clause 8 says:

"(1) A prosecutor shall, unless the circumstances make it impracticable to do so, obtain the views of the victim or a relative of the victim before concluding plea discussions.

(2) A prosecutor who arrives at a plea agreement with the accused person shall ensure that the victim is told the substance of, and reasons for, the agreement, unless compelling reasons, such as the likelihood of serious harm to the accused or to another person, require otherwise."

Mr. President, as happens so often—and it used to happen a lot when I was in private practice at the Bar—there are so many cases where there would be a possible agreement and the victim would not be consulted or told, and there is a trend now with respect to the criminal justice system for the victims to have greater access in the participation of the criminal justice system. This is an example where the Bill is trying to get the victim to have a say.

Bearing in mind, Mr. President, that the overall body or institution to sanction the particular agreement is the court, the court will determine whether the plea agreement would go ahead or not. Obviously, if the court disagrees with it, the accused person does not have to plead guilty because he would then have his constitutional right to be able to say he wants to go to trial and have his guilt determined by a jury. One would see later in the Bill that a safeguard is provided

so that whatever is set in those arrangements or agreements cannot be admissible in any court.

Under Part III of the Bill, Mr. President, clause 9 says:

"(1) A plea agreement which has been concluded between the prosecutor and the attorney for the accused person shall be set out as in Form 2 of the Schedule and where such agreement is concluded, the prosecutor shall file the agreement with the Registrar or the Clerk of the Peace, as the case may be.

(2) A plea agreement which has been concluded between the prosecutor and an unrepresented accused person shall be set out as in Form 3 of the Schedule and where such agreement is concluded it shall be signed by both parties in the presence of a Justice of the Peace and filed with the Registrar or Clerk of the Peace, as the case may be.

(3) The Registrar or the Clerk of the Peace shall, upon receipt and filing of the agreement, set the matter down for hearing before a Judge or Magistrate sitting in Chambers."

It has here "sitting in Chambers", but I would ask for those words to be deleted because the hearing would take place before a judge or a magistrate.

Sen. Mahabir-Wyatt: Mr. President, I wonder if the Attorney General would be kind enough to explain how—I really do not know—it is going to happen if every time one of these agreements comes up it still has to go before a judge. Will it not just add an extra step to the process?

Hon. R. L. Maharaj: Mr. President, according to the statistics we have from the criminal courts, in relation to pleas of guilty, a very small percentage of people plead guilty and, therefore, what there is at the present time—both in the Magistrates' Court and the High Court—is a situation where almost for every case there is a trial.

The system is on the basis that one has to have some safeguards and, therefore, if one has a plea agreement, one must have a situation where the court will have to sanction it, and the Bill is structured in such a way that when the matter is fixed, before the judge goes outside, he has a little pre-trial hearing in his chambers to determine whether there are any things that he wants to find out more about. As one will see later on in the Bill, there is that hearing.

He then goes outside in open court where he would obviously determine the matter; that is to say, he would announce his determination in open court and call upon the accused to ensure that he understands everything, so that it would be done in open court. The reason for that is that there is the feeling that in respect of these matters in respect of a trial, these matters must be done in open court in relation to the public and in relation to the press. One of the fundamentals of a system is that trials must be done in open court so that the public would know what the evidence is and what is happening.

Sen. Prof. Spence: Mr. President, I hope the Attorney General would forgive me for interrupting, but I think we want to get all the issues cleared up at the same time. I wonder if he could explain, with respect to the victim, why discussion with the victim is done in chambers or in open court, because it seems to me that one would have to have some confidentiality to the proceedings. Suppose the victim, after being involved in that discussion then sees that the plea bargaining was not accepted by the accused, the victim then comes out in public and says, so forth and so forth was said in the private discussions.

Hon. R. L. Maharaj: It is structured where it could be done both in chambers and in open court, but one has to understand that even if the victim disagrees, it does not necessarily mean that the court would not agree, but the way the Bill is structured, the court would have a discretion, depending on the circumstances, to do it in chambers, but if when he could go outside, there are other matters, he can adjourn and go back in chambers and consider the matter.

Sen. Prof. Spence: The chambers are confidential?

Hon. R. L. Maharaj: Yes, they are confidential. It is just the judge, the parties and the accused person. Not the press. It is not open court. The Bill is structured in such a way that the victim could be there, too, in chambers and also there may be occasions where if the victim raises anything in open court, the court can adjourn and go back in chambers.

Sen. Prof. Spence: Suppose the victim then discloses what went on in those discussions? Is there any penalty?

Hon. R. L. Maharaj: No, because the victim is entitled to express his or her view whether he or she agrees with the verdict of the court or not. The press is entitled also to criticize the court for the punishment it has given. One cannot take away the right of the victim to express his or her view as to whether the prosecution was right or wrong. Because of that right, it is a safeguard for courts

and prosecutors to act in a way in which they could justify their decisions to the public.

Sen. Prof. Ramchand: Mr. President, I just need some further clarification on that point. Are we saying that if I am the victim and I am deemed victim because a prosecution is taking place, the prosecutor and the defence can decide on a plea bargain without my agreement?

Hon. R. L. Maharaj: Mr. President, that is the law now. The court can decide what punishment it is going to give, even if the victim does not agree with the punishment.

Sen. Prof. Ramchand: Without a trial?

Hon. R. L. Maharaj: An accused person has a right to decide whether he wants to plead guilty or not. If the prosecution charges Mr. A for wounding Mr. B, nobody could force him to say he wants to go for a trial. He can decide whether he wants to plead guilty or go for a trial.

If he pleads guilty without any plea agreement—because he can plead guilty without entering any plea discussion—the court can get the views of the prosecution. It can also get the views of the victim as it does sometimes, and the victim will say, "I want this man to go to jail for 25 years." The court can consider all the matters and say "No. In my view, the justice of this matter, taking all the factors for punishment into consideration, I think the man should be jailed for 7 years." The victim will be dissatisfied obviously, but the rationale for that is that it is not the victim or victims who determine the punishment, in any particular case. The court's determinance is based on the law and principles they have formulated for fixing punishment.

If the victim is dissatisfied with that punishment, then he or she will communicate with the Director of Public Prosecutions (DPP) and the DPP will have the right to appeal that decision. Under our system, it can go right up to the Privy Council, even in relation to punishment. If there is a plea agreement and the accused agrees to plead guilty but the prosecution agrees that it should be three years imprisonment, the court, when it gets this agreement, would call in the victim who may disagree. If this happens, the court will have to consider the matter. If the court goes outside and the victim protests, the court will have the discretion to adjourn to come back into chambers to consider again if it wants what the victim is saying. But in the final analysis, the court determines the punishment, and if it determines that it should be three years, even if the victim is dissatisfied, that is the position.

Sen. Prof. Ramchand: I, as the victim, would like to have the right to say I want to see this thing go to trial. I do not agree with a plea agreement. I am not disputing the punishment or the penalty, but I, as victim, want a trial to take place.

Hon. R. L. Maharaj: Mr. President, the trial would only determine whether the person is guilty or not guilty. The trial does not determine the punishment. So, if there is a law which says "notwithstanding the right of the accused to plead guilty", all that does really is to have a process which is not necessary and there will be time, energy and money, and so forth, wasted.

That is why under the existing law, if an accused person is charged for manslaughter and he is arraigned before the judge and jury and asked what is his plea, as long as he says "guilty", there cannot be a trial, because the judge does not have any jurisdiction to conduct a trial if he says "guilty". He only has the jurisdiction if he says "not guilty". The jury only has jurisdiction if he says "not guilty". The jury is not involved in the punishment. This law does not attempt to change that constitutional principle that the accused is entitled to say that he is guilty, and for the court to determine what punishment it would give, notwithstanding the victim may want a trial. I hope I have given a sufficient explanation. The Senator may not agree with me, but that is the explanation.

Mr. President, with respect to clause 9(3), as I was saying, "sitting in chambers" would have to be deleted, and at committee stage, we would move that amendment; but clause 10 goes later on to say that:

"(1) The prosecutor shall disclose to the Court, in Chambers…"

I should explain what "in Chambers" means. Among lawyers, there is open court and chambers, and the chambers refer to the judges' chambers or the magistrates ' chambers.

Under the present system, there are many applications which are heard in chambers and the press is not entitled to be there. What transpires there cannot be reported. There is an argument about whether one can report a decision which is taken there, but what I am sure about is that one cannot report what has transpired in chambers.

Strictly speaking, under the High Court and the different matters, it can amount to contempt. What has happened in the past is that many things that happened in chambers were reported, but there is no action taken because in the law of contempt, it is recognized that sometimes the public interest determines that one should not take action for contempt of court when it does not really adversely affect the public interest.

Sen. Shabazz: Mr. President, I just want to rewind a little. In the normal situation, if a man pleads guilty he is due for sentencing, but under plea bargaining, if he pleads guilty it is the same thing we are saying. What will happen? Will he get a lesser sentence? Why are they going into plea bargaining? That is what I want to know. I am not clear on that.

Hon. R. L. Maharaj: Mr. President, as I said, under the present system, when a person has to appear in the criminal court, he decides on the advice of his lawyer whether he wants to plead guilty or not. With a structured system of plea bargaining or plea arrangement, there is a situation where there can be discussions for people to say, "Well, instead of going through a trial, I am really guilty, and if the prosecution would accept that I plead guilty in relation to this, a fine of so many dollars or imprisonment of so much time could be imposed".

2.25 p.m.

It has been found that in countries which had our system and which introduced the plea arrangement system, there was suddenly a higher rate of people pleading guilty. There were situations where a lot of court time and resources were saved. Under the present system, as I said, you have an informal system of plea arrangement, in which you can talk to the prosecutor, but the prosecutor and the defence counsel cannot go to the judge and say, "well, we have studied this matter and we believe that, taking all the facts into consideration and everything else, the imprisonment should be three years, five years, ten years or fifteen years". Because of that, the accused person does not know in advance that if he pleads guilty whether he would get life, 15 years, 20 years or 30 years.

Over the years, it has been worked out in countries where, if an accused person knows that if he pleads guilty, this could be the punishment. He may say instead of paying a lawyer; instead of wasting the court's time, I would plead guilty and save money and decide to take the fine or the imprisonment. So that is how the system really works.

Mr. President, in the other place I had given the statistics of the persons who plead guilty but because of the time constraints, I have it here, I would not be able to give it but I can make it available. The facts show that under our present system there is a small proportion of persons who plead guilty. There is also a large proportion of persons who do not plead guilty but are, ultimately, found guilty. So that there are situations where many persons who are guilty, plead not guilty and they have to go through the court process in order to determine whether they are guilty or not. It is really a form of encouraging people—in an equitable way—who

are guilty to consider pleading guilty in order to get the punishment as agreed and sanctioned by the court.

Mr. President, in clause 9(3) we would have to delete the words "sitting in Chambers."

Clause 10(1) says:

"The prosecutor shall disclose to the Court, in Chambers in the presence of the attorney for the accused or, where the accused is unrepresented, in the presence of the accused–

(a) the substance of, and reasons for, the agreement; and

(b) whether any previous agreement has been disclosed to another Judge or Magistrate in connection with the same matter and, if so, the substance of that agreement."

One would see we are not dealing with the victim, but I would come to the victim. The purpose of this is for the judge or the magistrate to discuss with both sides, the substance and the reasons for it, and if there was a previous agreement which was rejected, for him to know about it, so that he can ascertain the reason that it was rejected. He may decide he wants to know or he may decide he does not want to know, but this is in order to ensure that there is full disclosure.

Clause 10 continues:

"(2) The Judge or Magistrate shall, in open court, before accepting a plea agreement determine to his satisfaction that—

(a) no improper inducement was made to the accused person to enter into the agreement;"

The reason for this is that it is very important that an accused person who is presumed innocent in law, should not, in any way, be coerced to plead guilty in an improper manner, as defined under coercion. Therefore, the court must be satisfied that no improper inducement was made to the accused person. That is why it is done within the open court. Mr. President, I continue to quote:

(b) the accused person understands the nature, substance and consequences of the agreement;

(c) the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused, unless in exceptional circumstances the agreement is justifiable in terms of the benefits that will accrue to the administration of justice, the protection of society or the protection of the accused."

[Interruption] Mr. President, I thought I had just explained that higher up, when I said that in relation to a person pleading guilty, for example, a person charged for wounding, he may plead guilty and may get two years' imprisonment when the punishment may, in those circumstances, probably be four or five years, but because he has assisted the prosecution in proving the case and being a witness, it may be, but the court would have to look at those circumstances to determine whether it is justifiable.

Mr. President, I would like hon. Senators to bear in mind that with the philosophy of this Bill we could have removed the court from having that overriding discretion. As a matter of fact there was an attempt to do that, in order to remove some of the bureaucracy and the arrangements. There were comments and even when the Bill went in the other place there was a strong feeling that we should allow this Bill to have a trial run, with the court having that overriding discretion and one would see how it works and then decide whether to go further.

Clause 11 reads:

"(1) Subject to subsection (2) the Judge or Magistrate..."

Sen. Prof. Ramchand: Mr. President, I just want to get subsection (c) clear in my mind. Are we saying there that the prosecution is creating a new offence? It has indicated with a certain offence and now as a result of the plea bargaining, the offence is being changed.

Hon. R. L. Maharaj: Mr. President, that necessarily follows if you are creating a statutory framework for certain things to be done and for there not to be coercion and misrepresentation. It necessarily follows in all matters, that you are creating additional offences, because the existing offences may not be able to deal with some of the matters. For example, there is an offence of perverting the course of justice, but that may not be able to cover some of these matters. So if you are creating a machinery you would also want to create safeguards. One of the safeguards is to ensure that if people break the law they would be punished and there would be a way in which to punish them. *[Interruption]*

Sen. Prof. Ramchand: That is a general answer but the offence to which the agreement relates adequately reflects the gravity of the conduct of the accused *[Inaudible]* and as a result of the agreement, the charge goes from X minus 5 as a result of the plea bargaining.

Hon. R. L. Maharaj: Mr. President, for example, if an accused person has 10 charges and his evidence is important for the prosecution, this could bring home,

not only this case but other cases, because he knows of other activities, and if the state decides that instead of getting a plea of guilty on the ten you get a plea of guilty on the nine and his punishment would be for three years instead of 20 years. That is something which the court can consider. The court would also have to consider why he has been given this treatment. Therefore, this would have to be justified in chambers so the court would know about it and make its determination outside the open court and the court may say that this person has got this term of imprisonment because normally it would be so much but he has also assisted the prosecution in several areas so that the public would know what is happening.

Mr. President, Part IV says:

11. (1) "Subject to subsection (2) the Judge or Magistrate shall, in open court, seek the views of the victim or a relative of the victim, before recording the terms of the agreement and passing sentence.

(2) The Judge or Magistrate may, where he considers it prudent to do so, retire to Chambers to hear the views of the victim or relative, as the case may be, and such views shall be heard in the presence of the prosecutor and the attorney for the accused or, in event that the accused is unrepresented, in the presence of the accused.

12. (1) Where an accused person, charged for an offence offers, at the commencement of the trial or at any time thereafter before its conclusion, to plead guilty to an offence if other charges against him are dismissed, the Judge or Magistrate shall inquire of the prosecutor whether he agrees to accept the offer of the accused person."

Mr. President, this deals with the ordinary cases because a person may be on nine charges, he goes before the court and says that he is prepared to plead guilty on two charges, even without an arrangement, if the prosecution withdraws the other seven charges, the prosecution would then consider it and it can go ahead. So it does not change that process.

2.35 p.m.

Clause 13 reads:

"An accused person who enters into a plea agreement shall be entitled to withdraw from that agreement before sentence, or to appeal against a conviction based on the agreement if—

(a) it was entered into as a result of an improper inducement;

(b) it was entered into as a result of a significant misinterpretation..."

But we will ask for that to be deleted, that is obviously an error. It continues:

"(b) it was entered into as a result of a significant misinterpretation as to the substance or consequences of a plea agreement; or

(c) the prosecutor has breached the terms of the plea agreement."

So it gives to the accused that right to withdraw.

Clause 14 states:

"(1) Where an accused person pleads guilty to an offence and, upon his conviction, receives a sentence that accords with, or is within the range anticipated by, the plea agreement, the Director of Public Prosecutions shall not be permitted to appeal against the sentence imposed by the Judge or Magistrate unless it is shown that:

(a) the prosecutor, in the course of a plea discussion, was wilfully misled by the accused person in some material respect; or

(b) the Court, in passing sentence, was wilfully misled in some material respect.

(2) Where the Director of Public Prosecutions is of the opinion that the grounds described in subsection (1)(a) or (b) exist he may appeal against the sentence to the Court of Appeal or a judge thereof."

Subclause (3) mentions the notice.

Clause 15 reads:

"(1) Notwithstanding an accused person's conviction and sentence pursuant to a plea agreement, the Director of Public Prosecutions may seek the leave of the Court of Appeal to have the agreement, conviction or sentence set aside where the prosecutor—

(a) was, in the course of plea discussions, wilfully misled by the accused person or by his attorney in some material respect; or

(b) was induced to conclude the plea agreement by conduct amounting to an obstruction of justice."

This deals with the question that Sen. Prof. Spence had raised in relation to where there had been misleading of material matters.

Clause 17, which I have dealt with already, and clause 18, deal with the amendment to the Legal Aid and Advice Act to cover questions of plea discussions and plea agreements.

Mr. President, I have done the Bill this way. It was a short Bill. I went through the clauses. I have given explanations. I have responded to questions. In relation to this Bill, I wish to say that I know it is something new, and what was considered in the other place is that when it is something new, obviously, there would be fears about it, but it has worked well in other jurisdictions and I would expect that Members of this honourable Senate will give support to the Bill.

I beg to move.

Question proposed.

Sen. Danny Montano: Mr. President, it seems that following the presentation of the Attorney General there is considerable, either confusion or misunderstanding as to how this whole Bill is going to work, judging from the questions that had been asked. I can certainly understand why. The history of this administration as well as what this Bill is trying to do certainly appears to be in some conflict. But apart from all that, what we did not really get was the clear statement expressed as to exactly what the purpose and intention of this Bill is. As I understand it, I will walk Senators through the logical processes that I went through and explain what my understanding and thoughts are on the Bill.

I would begin by just quoting from Chief Justice Warren Burger, 1971, in the Supreme Court of the United States: He said:

> "The disposition of criminal charges by agreement between the prosecutor and the accused, sometimes loosely called 'plea-bargaining,' is an essential component of the administration of justice. Properly administered, it is to be encouraged."

In other words, what he is talking about is administration. He is not talking about justice, he is talking about administration of justice.

The historian David Rothman was quoted in his book, *Conscience and Convenience*, in 1980. He said that:

> "Plea-bargaining developed not to serve society nor to protect the rights of accused, but rather to make life easier for the administrators of the criminal justice system."

That is what this Bill is all about. So it is not about law, it is not about justice; it is about the administration of justice.

It would seem that based on some of the questions that came, even from this side, we already have forms of plea bargaining in this country, as I understand what the Attorney General said. What this Bill is seeking to do is to expand the instances in which plea bargaining is used. Basically, there are two things which can be bargained for. One is the charge that has been laid against the accused and, secondly, the sentence that will be levied upon him once he pleads guilty. So you have two independent bargains: one is the charge, and one is the sentence.

As I understand it, we are already in the process—albeit it is not widely practised—of bargaining on the basis of the charges against certain persons who are accused. Under the British system, in the UK as well as in the Caribbean, judges are unwilling to negotiate or bargain on the sentences and, apparently, if you are going to bring in both the sentencing and the charges levied against an accused, legislation becomes necessary.

So what we are doing is saying to a criminal who admits or who is prepared to admit that he is guilty of an offence, we are giving him two bites of the cherry: one, to reduce the charge against him and, secondly, to reduce the sentence—the number of months or years that he will spend in prison.

We can see that in terms of the administration that there are certain advantages to a plea bargaining system. One, of course, will be that matters will be dealt with fairly quickly rather than having to be set down for an extended trial which may run days or weeks, as the case might be; things can be dealt with relatively quickly. The process that the Attorney General described with regard to the meeting in the chambers might take half an hour or an hour, but it is certainly not going to take days, weeks or months. That is certainly something that is going to be beneficial.

I recall a case which was cited in the *Newsday* earlier this year. I think it was early in January. I do apologize, I do not have a copy of the article. But from my memory, what I can tell you is that the young man, when he was 17 or 18 years old, had been arrested for holding up a colleague of his and stealing one dollar from him. Eleven years later his case was finally called and the case was heard. The man, according to the report, had settled down, he had become a carpenter, he had a wife and three children and was making a measurable contribution to society. Eleven years after a childish prank he faces the court, there is a trial, he is convicted and he was given three years in prison. After 11 years of being outside.

I tried to get more information and I was not able to, but I cannot see that that is justice and, therefore, if something like this is going to speed up the administration of justice, then justice itself would be better served.

There is also the argument that it presents the opportunity to process more cases in a faster time. That would lead to the logical consequence that we are going to need fewer courts and fewer judges and, of course, the consequence of that is it is going to cost much less money.

There is also the advantage, it avoids the uncertainty of a trial in that the Government in the administration of its justice system is, of course, always facing a situation where you are trying to prosecute someone who the Government or state feels may be fairly obviously guilty, but depending on the vagaries of witnesses who disappear or distort or change their minds or whatever, or the disappearance of evidence and so forth, the verdict might be less than certain. So it tends to pin down the certainty of the conclusion of the event of the trial.

The Attorney General also mentioned something that is of significant interest and I will deal with it a little later. That is, bargaining on the charges and the sentencing can assist the state in the investigation and prosecution of other cases where, in exchange for a person's testimony he will give evidence against others. So that you might round up a whole bunch of drug lords or whatever and I know this is used extensively in the United States and in other places in dealing with drug matters. So those are the advantages, but it is not without problems.

Plea bargaining is not without problems. The first thing that occurred to me, Sir, is this. In the case of court-appointed attorneys—now we are dealing with persons at the lower end of the social strata, not the attorneys but the accused—is it not likely that when a court-appointed attorney, recognizing that he has a limited fee for which he is going to have to defend this person—and the attorney himself has a choice, he can either suggest to his client that he pleads guilty, in which case the court-appointed attorney has very little work to do for his fee; or he can suggest that he goes to trial and spends days, weeks or months preparing and fighting the trial all for the same fee?

Now, let us face it, as man is man, which way is the attorney likely to go? Quite frankly, it seems to me to be very straightforward that a court-appointed attorney is more likely, in facing that situation, to try to get his client to plead guilty to a lesser charge and reduced sentence rather than face a trial, even though he and his family feel that he has a pretty good case. When one’s attorney is

telling one those things, it is rather difficult to go against the advice of one's attorney. So, in reality we have a situation where those persons may be very hard done by this system, they may just have to take it and live with it and justice may not reach those persons.

Related to that matter, one has to consider that the right to due process and the privilege against self-incrimination can be violated. Because, that person is entitled and he may feel that he is entitled to the due process of law, that he is entitled to a fair and equitable trial. Now, what he is doing is that he is being pressured all around to "cop a plea", as the expression goes, and I wonder whether, really, if justice is going to be served here. This is going to impact on a tremendous number of cases.

Mr. President, we have a situation also where everybody knows that the criminal justice system is stacked against the poor and there are many arguments against plea bargaining because of the fact that the poor are underprivileged when it comes to the administration of justice. I would just like to quote from an article by Mr. Burt Saxon of the Yale-New Haven Teachers Institute. He says:

> "Radical critics of plea bargaining respond with arguments like these: 'The whole criminal justice system is stacked against the poor. The poor can't afford bail or expensive lawyers. In many cases poor people plead guilty to crimes they didn't commit simply to get out of jail sooner. "

2.50 p.m.

Mr. President, that is the reality and I would demonstrate the situation where we had the case of Brad Boyce and the chap that I referred to, who had to wait 11 years for stealing one dollar and got three years in jail. Those two cases should demonstrate, very clearly, how justice is administered to persons of different social standing and those who can afford really good legal representation and those who cannot.

If one is going to have a plea bargaining situation, there is no doubt in my mind that, whereas it may serve the administration of justice, it is not going to serve the poor people of our country. *[Desk thumping]*

There is another problem I have with plea bargaining and it is this: we are already faced with a situation where the police show definite weakness in the acquisition of forensic evidence. They are fairly good at prosecuting and it seems

to me from what I read—I am not a practising criminal lawyer—that there is an overwhelming dependency on eye witnesses, rather than on forensic evidence.

I will give an example of what I am talking about. My cousin "Monty" Albert Montano was killed some two years ago. According to the police statistics, his kidnapping was solved because they found his charred remains. I have already dealt with that in this Chamber and nobody has been brought to trial. Now the reality is, that the police had received a story, the same one that we got and the Minister of National Security knows of the story, we have talked about it. Mr. President, if the police had a story, it meant that they had no forensic proof, but did they go in search of the forensic proof? The answer is no, because I asked one of the policemen:

> "in talking about the person that you are talking about did you check his phone records? No! Did you ask him to corroborate his whereabouts on the days in question? No! The house in Westmoorings that he was supposedly held in, did you get a warrant to search the house? No! Did you find out who owns the house? No! Did you find out who was renting the house? No! Did you go in and examine anything to see if there were fibres or any shred of evidence there? And the answer was no.

Mr. President that would not happen in Canada, the United States or England but it has happened here. So there is an over-dependence on eye witness testimony, rather than on hard, cold forensic evidence. That was the problem with the Clint Huggins case. One would recall where the car was burnt and the police officers made a mess of the crime scene and when the FBI were brought down here, no forensic evidence could be salvaged out of the crime scene.

Mr. President, what we may very well face here is this. Is it that in the prosecution of these same drug matters which the Attorney General is talking about, that the police, again, are going to fall back on the testimony of persons, whom they may or may not have a strong case against? Of course, it is subject to the vagaries of a trial, but again, they are going to bargain for the testimony, rather than nail these "fellas" with hard, cold forensic facts.

I am completely in favour of jailing and prosecuting those who have done wrong in the community and, especially those who are involved in drugs, but I certainly share with all my heart and soul the broad objectives that were stated by the Attorney General, to assist in the prosecution of those persons who may be dealing in drugs and so forth. I am deeply concerned that the system would fail

because the police officers, who are the prime persons outside there and must be the vanguards of the security of the nation, do not have the forensic skill to really protect us and that skill that they once had is not as strong as it was.

We passed a Bill recently dealing with DNA analysis and the Forensic use of DNA. We went through lengthy discussions dealing with the training of the police and all that sort of thing, and that is very good. But I would like to see the police service more dependent on forensic tools like that, than negotiated evidence that would come out of the plea bargaining Bill. That is the point, Sir. *[Desk thumping].*

The other problem with the plea bargaining Bill is that there is the general view—and it is held almost universally—that the punishment of a crime ought to be proportionate to the type of crime. That is what we are talking about.

I heard the Attorney General—and I listened very closely—and I was surprised to hear him say that, in fact, all crimes are going to be subject to negotiations, including murder and rape. That is what they are talking about.

Mr. President, I would just like to read something from an article written by Delroy Chuck of the Faculty of Law of the University of the West Indies. He writes in 1976, it is published in the *Caribbean Journal of Criminology and Social Psychology* and it goes like this:

> "Criminal sanctions are imposed largely for two broad philosophical objectives, namely for retributive and utilitarian purposes...Retributive aims look to the past, to restore the right by punishing wrong conduct. Utilitarian aims look to the future, to encourage right and good conduct by reducing wrongs."

That is obviously by the threat of punishment.

Mr. President, we have to look very closely at what we are actually doing in this Chamber with this Bill. What are we trying to do? Are we trying to punish, or are we trying to reduce crime in the future? Which way are we really going?

It is very clear when one reads the *Newsday* of this morning, June 29, 1999, "RAPIST GETS LIFE". I would just like to read this:

> "JUSTICE ANTHONY LUCKY yesterday sentenced a man to life in jail, plus 10 strokes with the birch, after he was found guilty of rape and buggery of a 16 year-old girl...

In court yesterday, Justice Lucky described Elliott's offence as heinous and one that could destroy a person for the rest of their life.

He also stated that he wanted a message sent to society about this type of crime which was becoming prevalent.

For the offence of rape, he sentenced Elliott to life in jail with orders that he not be released for 30 years."

Mr. President what he is saying there—I would just like to repeat it—is that he wanted to send a message to society. In other words, he is trying to encourage the right and good conduct by reducing wrongs.

The question is what are we really trying to achieve by the criminal sanction system that we have? What is the point of punishment, jail and prosecution? Where are we really going with it? On the one hand, we have an eminent judge who says, "Listen well, because if you do this, you are going to get 30 years". On the other hand, the Government is saying, in order to make life easier for us, we will reduce it.

3.00 p.m.

Of course, if it goes before Justice Lucky according to what the Attorney General says, this Judge might very well say: "No deal in my court, not with this." And the 30 years stays and the defence says: "Then I would not plead." And the whole business goes back to trial. So I do not really know how this is going to be administered, whether guidelines are going to be set down or exactly how this is going to work out and quite frankly, the whole point tends to be a bit confusing.

I want to touch on the hanging matter, with your leave, Sir, not that I want to talk about hanging, it is the question of the penalty. I am reading from the *Trinidad Guardian* of February 1999. It says:

> "Maharaj said Manning and the Opposition refused to support the Constitution (Amendment) Bill last year and 'they must accept the blame why the murder rate has not been reduced. If Parliament had passed the Bill last year, the crime and murder rate would have been reduced.'"

In other words, the Attorney General is saying if you increase the penalty, if you have the death penalty there and it is working it is going to reduce crime. He went on to say:

> "...over the last 10 years, the murder rate in the United States had dropped by one-third.

> 'The death penalty has a profound deterrent effect when carried out swiftly,' Maharaj added.
>
> He said there were 38 states in the US which have retained the death penalty and, of the other 12, eight are considering reintroducing it because of its success."

So in other words in the matter of murder, and this Bill is going to include the charge of murder, the *Trinidad Express* of February 19, 1999 says:

> "Attorney General Ramesh Lawrence Maharaj cannot use the United States as a yardstick for determining the effectiveness of the death penalty in curbing crime."

That is the verdict of the Executive Director of the Death Penalty Information Centre in Washington D.C. who says there is no correlation between the death penalty and crime.

> "According to Richard Dieter, the 38 States in America which execute convicted killers have a higher crime rate than the 12 states and Washington, DC, which do not have the death penalty.
>
> 'The statistics are clear. Over the past 20 years, the states that have the death penalty have higher murder rates than those without the death penalty. You would think that if it were a deterrent then there would be some sort of equality or those that use it would come down to a lower level but it hasn't worked that way.'"

He went on to say:

> "'However, in the city of Dallas, Texas, where executions are carried out, the number of murders almost doubled from 81 in 1997 to 133 in 1998. In Phoenix, Arizona, the figures moved from 79 to 93."

Dieter says:

> "'The death penalty is largely a political entity in the sense that it has its value to those who want to get elected and it works well on the campaign trail.'"

Mr. President, it is a question of what objective you are really trying to accomplish. Are we really trying to stop crime, and is the penalty phase of the prosecution any kind of a deterrent?

I would like to read something else from Mr. Chuck's article where he says:

> "In a conference in Barbados (September 15, 1994)...The Police Commissioner of Barbados said: *'The evidence of the deterrent effects of*

> *prison is slight. Imprisonment as a response to drug offenses will definitely contribute to the overcrowding and despicable conditions of prisons. The real effect of prison is to make bad people worse and is very likely to cause a man's deterioration rather than his rehabilitation..."*

Mr. President, having heard what the Attorney General has said, and having read this, I am really not sure what the state's objective behind this Bill is, because there is an alarming situation in the country where crime is escalating and what we are doing is saying that we are going to make it easier for you if you commit a crime. That is the bottom line.

I am one in favour of the rapid administration of justice. There is an adage—I do not know who said it—that justice delayed is justice denied and that goes to the people and the person who is accused, so I am all in favour of the speedy application of the law, but the question is: What are we in this country really going to be accomplishing with this Bill? What I think is the most effective deterrent is being caught, and the knowledge that you will be caught, not the prosecution or the sentence, but being caught and being caught swiftly and effectively.

I read somewhere in 1998 there were some 38 murders that had not been solved. Nobody has been caught. It is the knowledge—when you have an effective police service with a high level of forensic skill and persons outside know that they are going to get caught, I think that is the deterrent. In a school yard, in a very simplistic sense, it is not so much the caning or being expelled that is the punishment, it is the idea that you might get caught. That is the biggest deterrent. The threat of it looms large in a person's mind, more than the actual action of being caught. That is the psychology of it.

Mr. President, I would suggest that while the general objectives of the Bill can be supported, I am sorry that in the hands of the existing Government and the criminal detection system that we now have it would fail.

There is one other matter with which I wanted to deal. There is an article in the *Caribbean Journal of Criminology and Social Psychology* written by Dana Seetahal of the Hugh Wooding Law School.

Sen. Brig. Theodore: What volume is that?

Sen. D. Montano: It is January 1996 Volume 1, No. 1. It is a very good article where she talks about the United States Federal Rules of Procedure and in

particular, Rule 11. For the most part the requirements of Rule 11 have been covered in the Bill and with your permission, I would like to read it.

"1. The right to counsel is a fundamental right to engaging in plea bargaining. This is meant to ensure fairness in the plea bargaining process.

Mr. President, we have that in clause 6(2) which states:

"A prosecutor shall inform an accused person of his right to representation, by an attorney, in the plea discussion."

The article by Dana Seetahal continues:

"2. Even so the judge must first ascertain that the defendant has voluntarily and intelligently waived his right to trial and to other constitutional rights. The accused must be shown to understand the consequences of his plea. Since the judge is outside the bargaining process this assurance is more than just a formality."

Again we have dealt with that because of the discussion in chambers.

"3. Having determined the basis of the accused plea the judge must record that in his opinion, the accused understands what he is about and that his plea is voluntary. The accuracy of the plea should be verified."

Then she says:

"This is all done in <u>open court</u> so there can be no suggestion of underhandedness."

Mr. President, I have to admit when she says, "This is all done..." I am not sure what she means by the words "all done", but the Attorney General did allude to what I am suggesting here, and much of this that can be done in open court should be.

What I was looking at specifically, and again, I may not have the right clauses because I do not seem to have the right Bill, but in clause 10(2) which says:

"The Judge or Magistrate shall, in open court, before accepting a plea agreement determine to his satisfaction that—

(a) no improper inducement was made...

(b) the accused person understands the nature, substance and consequences of the agreement;

(c) the offence to which the agreement relates adequately reflects the gravity...”

Mr. President, the point is, if that is so, if we could change that because that is part of clause 10(1) which deals with “Hearing in Chambers”. If we could put that to be done in open court, I think that would help.

Mr. Maharaj: When I explained the Bill, I said that “sitting in Chambers” would be deleted and there are certain matters which would be done in chambers and I referred to clause 11 which shows that it is done in open court and the Judge—

Sen. D. Montano: Thank you, Minister.

“4. The court is then informed of the bargain by the prosecution. A prepared document like a contract is submitted to the Court. It must be signed by the accused and both counsel.”

Mr. President, the equivalent to what we have is Form 2, but our Form 2 needs only to be signed by the two lawyers, that is the prosecutor and the attorney for the accused. These words which I think make good sense would suggest that it also be signed by the accused. So it is not only that we make sure that he understands what is taking place, but he in fact, has put his mark or his signature on to the plea agreement itself and I would suggest that.

Form 2 is where he has an attorney, this form applies where the accused is represented by an attorney. Form 2 requires that it only be signed by the attorney and the prosecutor. I suggest that it be signed by the accused also so there would be three signatories.

Mr. President, I will close with one recommendation and it is this. That someone, somewhere, should be designated to review what is taking place, or what happens with the plea bargaining situation once it is passed. I think it is important for us, the people, to know the extent to which it is being used and that we have a general description of the crimes that have actually been bargained, and how they were bargained so that we can assess what is actually taking place. Because we, the people are going to be subjected to these criminals coming back out into the streets much earlier than they might have done previously and, therefore, we have a right to know what, in fact, is being negotiated on our behalf. I am not going to suggest a particular form, I would leave that to the Members of this Senate.

With those words, Mr. President, I thank you.

Sen. Rev. Daniel Teelucksingh: Mr. President, I hope in the course of the afternoon that I would be persuaded concerning the necessity for the Bill, particularly since we have been informed that we have in practice in our system the business of plea bargaining described as informal or possibly limited.

The recent historic murder trial which concluded with nine persons being executed had as one of its principal features, state witnesses entering into a plea agreement and they benefited; immunity and so forth was granted.

3.15 p.m.

We have a most recent case, so significant and weighty in deliberation and consequences. Why is the Bill necessary, is the question I ask, since plea bargaining has been conducted all along? Mr. President, I have been extremely disturbed, continuing the whole business of this case in which plea bargaining was such an important matter. I looked at last weekend's headline in the press, the *Sunday Express* of June 27, which read, "Wrong Man Hanged", and the *Sunday Guardian* of that same day, which read, "They Will Pay"—but it is the same subject with a political slant—and then on Monday, the next day, the Director of Public Prosecutions speaks out, "Guilty", in bold, red headlines. We must be troubled and disturbed. Something has to be wrong, somewhere.

I have to ask myself, and we are asking ourselves, is it possible that testimony given in plea bargaining could be flawed? Is that possible? It is so crucial. We consider that kind of testimony to be vital. Is it possible that the evidence might be flawed and not be sufficient evidence? Look at the consequences! Anyhow, Mr. President, this is a season for bargains, and Trinidadians love a good bargain.

I appreciate the objectives of the Bill. I have been looking at the objectives: saving time, cutting public spending on court procedures, clearing a backlog of cases—I think that is one of the purposes and objectives—sparing witnesses. Is it possible that in this kind of agreement and bargain that witnesses in sexual offences might not have to testify in public? That is one of the virtues of the plea discussions, it might possibly be good.

Although the objective of the Bill is laudable, and this is my concern about this piece of legislation, there must not be any semblance—although I am seeing this in the legislation—to short-circuit the course of justice, particularly with some of these heinous crimes, notwithstanding the use of the words "discussion" and "agreement" rather than "bargaining". I do not like the perception that comes from the Bill that justice can be bartered for, the perception that justice is something

that we can deal with at a bargaining table. I have a problem with that. I hesitate to support the Bill because of those perceptions and vibrations that you are bargaining and bartering with justice, for then only some people would benefit.

We have seen and we know where justice can be bargained and bartered, where there can be discussions over the outcome of justice; then in a society as Trinidad and Tobago, the wealthy would have their way. [*Interruption*]

Mr. Maharaj: I am thankful for the hon. Senator giving way. I am sure he would like to represent what is the truth. The truth in this matter is, as explained, that justice is not going to be bartered, because under the present system, the system we opted for, is that the court will have the final say. Under the existing system the court has the final say, so it is not an arrangement where prosecutor and accused agree, and that is it. So if it is the hon. Senator is against that, then I would be able to respond. I just wanted to know if he is against that also?

Sen. Rev. D. Teelucksingh: Since I have an opportunity to ask a question—do you not think that those kinds of—I was about to say bartering and bargaining again—discussions would influence the outcome of the matter itself?

Mr. Maharaj: Under our system we have put the judge and the court as the final arbiter for those matters, so it may be we want to change that. Because in the criminal justice system, the judge determines that. In other words, the same matter you referred to as well-known, the judge can determine it. It is not only happening now, it happened under the PNM and NAR administration as well; the judge determines that. It may be that we should change it, and I would like to respond. I thought I should bring it to your attention.

Sen. Rev. D. Teelucksingh: I am much obliged, Attorney General.

I see a problem, coming back to this business of those who can hire the best to represent them, because this whole piece of legislation is based on—shall I use the word, "compromise". It has to be compromise. There is the element of compromise. I am afraid that those who have connections in high places might benefit from this kind of legislation, that is possible! Those who have money and the right connections are the ones who will benefit from this. This is one of my problems, one of my misgivings. What about the disadvantaged in our society?

We are speaking about legal aid. I am very happy we have our attorneys who give so much of their time in legal aid. Is there something in our society that can be—for want of a better term—described as "secondary defence"? Not the best. Justice in our country, somehow or the other I believe, favours one group and not

the other. The poor and the disadvantaged, those who almost have to beg for legal aid—I know that the Government cannot source possibly the best, as far as defence counsel are concerned, and this is where I come with my term of secondary counsel, cheaper counsel.

I am worried, Mr. President, that this kind of informal justice resembles secret justice—I am getting that from the Bill—informal justice that has a semblance of secret justice, the kind that we do behind the chair; a kind of buy-out and a deal, as it were, at the plea bargaining table. It makes me very uncomfortable. Somehow or the other, I get the feeling that the Bill legitimizes secret justice. It is a shortcut to justice. It is bartered justice, that is my problem. Are we also giving the wrong signals too, by softening up the legal system in this piece of legislation, compromising and possibly undermining, as it were, law and order in a society that has been terrorized so much by crime? I know there are very laudable parts of the Bill, like the objectives and so forth, but I really hesitate to support this piece of legislation.

Thank you, Sir.

Sen. Prof. Kenneth Ramchand: Mr. President, I do not have a lot to say, but there are some things I would like to ask and get clarified.

The first thing is, I understand that at the centre of this Bill is the determination that there should be a negotiation concerning punishment or penalty. A plea bargain is really a negotiation concerning punishment or penalty. It is not a refinement of procedures for determining guilt or innocence, or a means of ensuring, strictly, that justice is served. To repeat, it seems to be a negotiation concerning punishment or penalty. In that negotiation, as I understand it, the accused is given some reasonable assurance that if he pleads guilty something would happen that would be in his favour, either his case would be over faster or his punishment would be reduced to some extent. The prosecution also has to give some kind of credible promise to him that if he pleads guilty, it is possible that such and such would happen of which he would be glad.

One of the questions I have is, by what authority does the prosecution make its promise? Does the prosecution go to the judge in the particular matter and say, "We would like to promise this man so and so, in return for getting him to plead guilty? Or can they go to the judge and say, "Please tell us what is the minimum or maximum sentence for this offence. If we get him to plead guilty would you agree, Sir, to consider giving him the minimum sentence?"

[SEN. PROF. RAMCHAND]

I would like to know that there is a list of "possibles" guiding the judge, so that the lawyer cannot come to the judge and say, "I am recommending five years." He can say to the judge, "I know according to precedent that for this kind of offence people have got between five and ten years and we are now doing a plea bargain; could you confirm that I can tell the accused that the plea bargain would get him some kind of reduction, we think it is at the discretion of the judge, but the possible reduction is somewhere between ten and five years; from ten it can go down anywhere in the direction of five years."

Mr. President, I would like to know that there is some such fixed negotiating band, so that when the prosecution tells the accused, "This is the band," that is the band that has been regarded as justice in the past. There have been extenuating circumstances where, for an offence that looks nearly the same, somebody has got five and somebody else got seven years, but it was not through the aberration of the judge, but because the judge has taken certain circumstances into account that allow for a variation of the penalty as between five and 10 years. I feel that a safety element in plea bargaining would be the existence of well-known bands of punishment based upon precedent, all of which punishment would be regarded as having been just in their time.

I take Sen. Montano's point that this is indeed mainly about the administration of justice. I understand from the Bill and from common knowledge that there is a principle which operates most of the time that an offence for which a person is charged should adequately reflect the gravity of the provable conduct of the accused. I understand that is at the centre of the justice system. We know that this principle is waived in the case of state witnesses. We make certain promises to state witnesses, they are let off certain charges or there are certain reductions, and that is done in the interest of justice in the sense that the state witness helps us to fulfil justice in other instances.

So I think it is not a purely philosophical argument. It is impossible to have a purely philosophical argument that the courts must administer justice strictly. There are occasions where the court in a particular instance barters justice and says, "Okay, this man who is turning state witness is going to get off in some ways but he is going to help us to achieve justice for 10 or 11 other causes and, therefore, although we lose something here and we seem to be making a dent in the principle that justice must be served, we have got gains on the other side." It is the kind of compromise, I suppose, that a purist would not like, but it is the kind that exists in the real world, and has to exist where people are interacting, and

justice has to be done quickly. So I accept that it is possible to waive that principle in certain exceptional circumstances.

3.30 p.m.

One of the "uneasiness" I have about the Bill is that it seems to suggest that one can waive that principle for many cases. I would have liked to see as a kind of trial basis—please excuse the accidental pun—a list of the kinds of cases where this "thing" can be tried out. I would not like to give a blank cheque to say that all cases are now subject to plea bargaining. I would like to see, on a trial basis, a reduced list of kinds of cases where plea bargaining can be tried. If that works maybe later on we can extend the list. That, I think, would be one of the safeguards that I would like to see in this system. Safeguards, for what would be said is that these are the kinds of cases where there are known offences and penalties and so forth and where plea bargaining is possible.

Mr. President, I also have some concerns with respect to clause 10(2). Not that clause 10(2) is wrong, maybe the Attorney General would tell me that I need not have any concern. Clause 10(2) states:

> "The Judge or Magistrate shall, in open court, before accepting a plea agreement determine to his satisfaction that—
>
> (a) no improper inducement was made to the accused person to enter into the agreement;
>
> (b) the accused person understands the nature, substance and consequences of the agreement;
>
> (c) the offence to which the agreement relates adequately reflects the gravity of the provable conduct of the accused..."

Clause 10(2) also states that there are certain exceptional circumstances. A minor question which I have on this is: I hope the Attorney General would explain how the plea bargain will lead to the protection of society or the protection of the accused any more than not having a plea bargaining. How does a plea bargain lead to the protection of the accused? That is a minor point. The main point I am getting at is: if the judge is doing this, I would like to see that there is a form that the judge has to fill out then and there when he says: "I am satisfied about A. I am satisfied about B and I verify that the charge that has come before me which does not adequately reflect the gravity of the provable conduct, has been accepted by me and I am going to adjudicate on this charge for the special reasons that *et*

cetera." I would like to have a certificate from the judge—maybe a Form 3 or Form 4—in each case indicating why he has decided to accept the plea agreement: a form which will illustrate to everybody that he is not participating as a rubber stamp to a deal devised by the prosecution and the defence lawyer, that he has looked at this issue and he feels that there are justifications for a waiver of the fundamental principle that the charge should adequately reflect the provable conduct of the accused.

Mr. President, those are the questions and concerns which I have on the Bill. I thank you.

Sen. Prof. Julian Kenny: Mr. President, I have just a few very brief observations to make. Firstly, I support legislation which formalizes what has been informal. I think that society needs to have things on the table where we can see them, so that we understand what goes on behind the doors, and I support the Bill in general.

I have a couple questions/queries. One relates to clause 4: the plea discussion. The Bill is drafted in such a way suggesting that people would try to subvert it. Therefore, I wonder whether, in today's world with the technology available to us, a plea discussion might be recorded. Once there is a record, and the agreement is reached then the case can be destroyed. There is no need to keep an archive. This is only a suggestion which I am throwing out regarding the mechanism of doing the thing.

The other concern is with clause 11. I am still very much confused over the involvement of the victim. I cannot see what a victim does or might say in open court or indeed in chambers. I have had—years ago when it was not fashionable that people were robbed in their houses—in 1976, a gang came and robbed us of a few things. I remember my views at the time. As a victim at the time, within 24 hours one could make me an extremely violent person who would have broken the law just seeing people. A few days later, when I calmed down, I had taken a slightly different view. In my 20 years later, I have entirely different views. Internally in my own family, having been victims, we have major differences between my wife and I as to how one might try to get vengeance. I wonder how does a victim get involved in this process. How can a victim influence the course of justice?

The third comment I wish to make is regarding murder or manslaughter, for that matter. If two or more persons are involved in a horrible crime resulting in the death: premeditated killing of somebody, there may be a situation where the state

may want to get conviction therefore they come to an arrangement with one of the persons—this apparently has happened and will happen. Where there is a crime: a murder where there is one person, there is no plea bargain. It seems to me that this cannot really be justice. I am concerned with those two things: firstly, the victims—I still need to be persuaded that the victim has some influence on the outcome of things. Secondly, in cases of murder where one individual is involved as opposed to a number of individuals.

Thank you, Mr. President.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, just three or four questions. I want to know whether there is any thought of plea discussions/bargaining with repeat offenders, whether one can plea or bargain several times.

Secondly, I am as concerned as Sen. Prof. Ramchand about the types of offences: whether there are plea discussions for certain types of offences.

Thirdly, whether the plea bargaining/discussion would centre on individuals as a lone person, or where there is collective crime: people acting in concert with each other.

Mr. President, my next question, where there are persons acting together to commit a crime or an offence—whatever it is—and one person talks on the other, I do not want to confine it to murder and that kind of thing, I have had the experience of sitting in a court and a young lady was charged as "a drug mule". When she was brought to the court the prosecutor said to the magistrate that the person had co-operated with the police and as a consequence they were asking the magistrate to be lenient. I consider that also plea bargaining and plea discussion because she had given information to the police about who were the people behind the drugs, who had given her the drugs, who she was carrying the drugs to, *et cetera, et cetera*. The police got so much information about the people with whom she was working that she pleaded guilty and was given a lenient sentence or not so harsh a sentence.

3.40 p.m.

This brings me to my final question, whether people like her would be protected by the state, because if the people know she has "screeled" on them as we say, how safe is she when she is out? That brings probably into focus the question of protective custody. So, Mr. President, these are just the thoughts that ran through my mind as I sat and listened to the whole debate. Thank you very much.

Sen. Cynthia Alfred: Mr. President, after that very well-prepared and presented contribution by Sen. Montano, I had cause to ask him if law was his second choice knowing that he is an accountant. He handled himself so very well, obviously law is something that he loves because he was able to give a very good account of himself. I do not have any pretensions of being an attorney-at-law but I do have one or two points I would like to raise for whatever benefit there may be.

First of all, Mr. President, just last night looking at the news on television—I believe others may have seen the same thing—I saw where a 70-year-old woman had 10 children who died in mysterious circumstances over a period of 30-odd years. Apparently the whole state—it was in America I think—was in sympathy with this woman over how these children, none of whom survived 14 months, just died mysteriously. She kept saying that she would find them dead in their crib the next day.

At the age of 70 years some person or persons were not totally satisfied with what she was saying and apparently the case was being followed up and 36 years later it was proven, Mr. President, that she killed all those children, her own children; she suffocated them all. However, it was done in such a way that they could not lay a charge because nothing was proven at the time. Subsequent to that somebody kept following up and she admitted that she actually killed those children. Obviously she was more than mad.

The point I want to make is that they mentioned the words "plea bargaining". Some plea bargaining went on between her attorneys-at-law and the prosecution and it was agreed that she would be given 20 years, part of which was community service and I think for five years she would be confined to her home. So on this whole question of plea bargaining I know they would have taken her age into consideration and the fact that she had to be silently mad over quite a period. But the thing that really concerns me in this legislation—I understand what the Attorney General wants to do but my fear is that somehow this country is not quite ready for this particular piece of legislation.

Now, I understand the various things that have been said and the arguments that have been put forward and given the present state of our country—when I say that I mean the police in some instances, perhaps in very many cases, are trying to do a good job but I feel now is the time that they are trying to come to grips with the laws of this country and I think to bring this particular piece of legislation in now would perhaps only confuse the issue.

I am very concerned about the poor man or woman, the person who cannot afford to pay an attorney. Yes, it was mentioned that legal aid would be given to persons who cannot afford but I have seen so many cases where the persons are poor and they just get the bad end of the stick all the time because they cannot pay somebody who, in normal circumstances, would have been able perhaps to get them out of a particular difficulty. So I worry about that because in nine out of ten cases it is the underprivileged who suffer more of the disadvantages that occur.

There is a particular point here—well I have the old Bill but I believe it is more or less the same thing. This is in clause 2(ii), under the definition of "improper inducement", the question of the laying of a charge or the threat to lay a charge:

> "the laying of a charge or the threat to lay a charge, not supported by facts or which cannot be proved, by the prosecutor;"

There was an incident just a few days ago where a young man was accused of committing a particular crime, breaking and entering into a building. Now he did not do it but the action of the police—it did not reach the stage where a case went to court but they threatened him that they were going to lay charges, *et cetera, et cetera* and that they were going to follow up what they were telling him by going to his home and so forth.

The thing is the young man was on a perfectly legitimate business. He went to meet his girlfriend. She worked at one of the fast-food places and they finished about half past twelve so he went to meet her in the night in order to accompany her home. And the police in this case threatened, that is the threat to lay a charge not supported by any facts, but the young man was so shaken that he came to me and told me about it and asked what I could do. I called and asked some questions and explained to him saying, "Now the police are within their rights, of course, to ask you something if you look suspicious", because he had a bag in which he used to take a coat for her to put on when she came from work. So I said they are within their rights but what they did not do right was not to identify themselves.

Now, I do not think this has anything to do with plea bargaining but I am looking at the part, "threat to lay a charge not supported by sufficient evidence". Now they were in plain clothes and even though he asked them to identify themselves they said they would not identify themselves because how did they know he would not seize the identification and run away, which I thought was very childish. He also spoke, of course, about the language, so I was very concerned. I called and asked some questions and the supervisor I spoke to

admitted that they should have proffered their identification because anybody can come up to anyone and say, "I am the police". They can rough you up, they can grab you, take you somewhere, maim you or kill you so police must show their identification.

The other case I want to mention, Mr. President, is Clause 2(iv) with respect to:

"'improper inducement' means—

(iv) a threat that, if the accused person does not plead guilty to the charge, the Court will impose a sentence more severe than that which is ordinarily imposed in similar cases;"

I know of instances, and I am sure everybody does, Mr. President, where somebody is threatened, "Listen, if you do not plead guilty to this particular charge the court is going to charge you such and such. They will put you in jail for so many years", and so forth and the person, in terror, not being able to get an attorney to advise him or her, "Listen, do not plead guilty", will say, "Well yes, yes, yes, I did so and so". It has happened in too many cases and I think this is one instance where the individual, everybody in this country, must know his or her rights and that he or she must not allow himself or herself to be intimidated by a prosecutor or someone who wants a conviction at any cost and so the person becomes convicted.

The other case I want to mention is in respect of what someone else mentioned about persons in high places as against persons who cannot afford an attorney. There is this case in point, and it is a factual one—I know of it—where a charge was laid 15 years ago against a particular person and the morning that the case was supposed to go to court the victim's, that is not the defendant, the other person—call the person the victim—the victim's attorneys called to say that they wanted the case to be washed out, put out of court for want of a better expression. That happened.

Similar to the case that Sen. Montano mentioned, 15 years later this person received verbal communication that the case was going to be called again. So the person asked the question, "How come? The other side asked that the case be thrown out." You see, the whole thing about it, Mr. President, is that the other side, the person who had brought the charge, was and still is in a position where it would not have been in that person's best interest to go to court.

So the accused went to court and the attorneys of the accused, who promised that they would go to court with the accused, did not turn up but the accused went to court and was told what his or her rights would be, that it does not matter what position the other person was in, the law is the law and right is right and if the other side did not come up and substantiate the accusations then the other side could pay costs. Anyway, the long and short of it is, Mr. President, that the accused was told that the case did come up and it was attended to in the absence of the accused and that was told to the accused by the accused's attorneys.

So the question was, in whose interest were the accused's attorneys working? But it seemed that the main purpose of all parties was to get this case off the books, settled as fast as possible. When I looked at that particular instance I realized that that could not be right. If someone is accused of something and that person has attorneys then the attorneys must at least appear to be acting in the interest of the accused. However, because of persons in high places, the case was laid to rest. It was brought to an end. The excuse was that the judge came in a hurry. I never knew a judge yet to appear in any court in a hurry. But the judge went in a hurry and they could not get the accused and therefore they went through this whole thing which was quite a sham.

So, Mr. President, these are some of the things that in this piece of legislation—now as I said, I understand the intent but as a people we are still trying to find our way in certain areas in the law, in respect of justice and so on and, to me, to heap another piece of legislation on the heads of all persons, persons in the community as well as attorneys and so forth, the police in particular, I think that this country needs breathing space to come to grips with all the different pieces of legislation that have been passed in recent times, especially with respect to justice.

Perhaps the main purpose in bringing this piece of legislation, in my estimation, is to bring forward cases and have them attended to expeditiously.

3.55 p.m.

The point is that the person, I believe, who would suffer the most is the person who cannot afford to get an attorney to represent him properly. There is nothing which says really, that in plea bargaining the accused will get a lighter sentence than if, perhaps, the case had gone on for some time. If the administration wants to save time—and we know about backlog of cases—I think it could be done another way.

Take, for instance, somebody is accused of a particular crime. Sometimes the case takes 10 years before it reaches the court properly for proceedings to begin. At the end of the 10 years, the person might be acquitted. In the plea bargaining, the person might say, "Yes. I am guilty" and the person might be given five years. So really, Mr. President, in whose interest is this piece of legislation? It has its advantages, but I see a distinct disadvantage, especially—and I keep making the point—to persons who may not be in a position to afford an attorney-at-law.

If I may mention one other point, I looked at the news on television a few nights ago and I saw where some people, somewhere about in Port of Spain were complaining about the lack of water; so many days passed without water and so forth, and when they approached the authorities they were told that there was nothing they could do. When I looked at those persons, I asked myself why is it that right on the outskirts of Port of Spain there are people who, for six days, are not getting water, and on the other side of Port of Spain, there are people who are being flooded with water, in the good sense of the word? They turn on their taps and they get water every minute of the day.

It is always the underprivileged who suffer more and more. In this piece of legislation, I believe again, the underprivileged will be the ones who will be disadvantaged. This Government claims to be a caring Government, so let it address some of the other ills. I am not only talking about this particular piece of legislation, but it is very heart-rending to see people in the deep South and right here in Port of Spain always complaining. They shut down schools, bar off the road, do all sorts of things, and when we look at them, it is the same type of people—the underprivileged; the poor people who already have things bad. These are the people who always get the worst.

Mr. President, I have no doubt that the legislation will be passed, but I would like the Attorney General to take into consideration the fact that I believe this country is still in a state of getting there and I am not so sure that this piece of legislation would help in the way that, perhaps, it could help, because any piece of legislation, to be effective, must be directed to the good and welfare of the majority of people. In fact, from what I could see, this piece of legislation is not really geared to assist the disadvantaged and the underprivileged, but again, it might be legislation that, like so many other things, might only be to the benefit of those who can already afford to have themselves properly defended.

I thank you, Mr. President.

Sen. Muhummad Shabazz: Mr. President, this Bill, to start with, is called a "Plea Discussion Bill". I do not know why the words "plea bargaining" were changed, because in any event, it seems to me that we are going to be bargaining when dealing with this Bill. I guess the Attorney General calls it plea discussion, which makes it sound nice, and we will go along with that.

I am starting by saying that there are a number of things about which I am not clear, from the Attorney General's explanation. There is one thing which is still boggling my mind to a large extent. We have a system where there is some limited plea bargaining, but before we deal with that, we have a system—well just take the case where a man is charged for wounding. Let us say that the maximum time for wounding is 20 years. The man goes to court and pleads not guilty, because everybody wants to win his or her case at the end of the day. Let us say that he was guilty, but he pleads not guilty. He is found guilty by the court and he sits in front of a lenient judge or magistrate and is given one year's sentence.

A man goes to the court again and pleads guilty. The magistrate says "guilty" and under the situation he gets two years' jail. Now, the maximum time is 20 years. A man goes to the court and pleads guilty under this plea discussion arrangement, but this judge now feels to give him five years. What is the real benefit for going into plea bargaining? Of course, if when I plea bargained or plea discussed I knew that the arrangement I was making would only get me a two-and-a-half-year sentence or, because of the arrangement, it is easier for me to plea bargain—but they take a chance under this plea discussion arrangement and get more time than a man—

Mr. Maharaj: As a matter of fact, may I help you? This is to give just what you are talking about that you would like to have. Under this Bill, there would be an agreement and the court would either agree to that or disagree. If the court disagrees, he does not have to plead guilty. In relation to what you say you would want, this is what this Bill will do. In other words, if a person agrees to plead guilty and it is agreed that this is the punishment, if for some reason it goes to the court and the court says that three years is not sufficient and that it should be 5 or 10 years and the man does not agree to that, he withdraws his plea and he decides what he wants to do.

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

Sen. M. Shabazz: Mr. Vice-President, I understand what the Attorney General is saying, but I wish again to bring my case, because I still feel that there

[SEN. SHABAZZ]

is a situation here I would like cleared up. A man could plead guilty again and get section 71 in a matter and no charge against him—as we see happening in this system. A man who pleads guilty under the plea bargaining arrangement cannot get better than that anyway.

My case is that a person could still plead guilty under the plea bargaining system and get a harsher punishment than somebody who pleads guilty or not guilty without this system. I think that is so clear. I am saying that it will boil down to which judge is dealing with the matter. So, it could happen that way.

Secondly, what is in it for the victim? The person pleads guilty, but the victim has no say. The victim does not take part in the plea bargaining arrangement. So, if I am a victim and 20 years is the extent that the case should be and I follow what the Attorney General says and they give this man three or four years under plea bargaining, since I have the right to appeal, I may as well appeal my case again. I will appeal and take it to another court and appeal and take it to another court, Mr. Vice-President.

A situation that certain lawyers have shown, even before they were in this Chamber, is that one can appeal, appeal and appeal until some point and stretch the system out. What is this Bill going to do for the victim? How will it bring about this kind of amicable situation that we want? Somehow, I am not clear on it. I know the goodly Attorney General will explain it, but I am not even sure that I will take his explanation because he is a person who could have any position on any side and come up with good arguments. He has proven that he has the ability to do that. He could be for today, against tomorrow, and when we listen to both cases they sound good. I do not know how I would take the Attorney General's word. Mr. Vice-President, I have to make up my mind when I hear the Attorney General talk, because he could be on any side.

We are talking about there being limited plea bargaining, and we have known a number of cases where people have plea bargained and got away. I must go to the last case where they said it was to stop the drug lords and help to get information on other cases. We have seen a situation here where a witness could commit a crime with nine other people—and somebody might be aware that he could really be the person who committed the most heinous act in this crime—but if he plea bargains, he may get a certain cover from the state; become a state witness and expose the others.

So, first the man runs to the relevant authorities and says, "I know what happened here. I was really involved in it and I would now like to give my view". They say, "Okay, we will listen to you" and they make all sorts of nice arrangements with that person. They could turn him down, but they accept it. He could then go to the United States and get a new identity. As a matter of fact, he could get more money than the victims of those crimes, because we saw that happen here recently.

While the witness was offered $100,000, the victim might only be offered one hundred and something dollars per month, but that is not the point. With respect to the other eight or nine people who were involved with him, he told a lie; he withheld certain information. What will now happen is that a man who may not be as guilty may now be convicted, may now have to serve the harshest punishment, even though he was not guilty, only because he did not enter into a plea bargaining arrangement. How unfair could it be?

If the man is in prison and new evidence comes up where we could let him go, that is fine, but it may be a murder case—as we have seen recently—and the man may be hung, then there is nothing one could do to bring this man's life back. It is a serious thing! We are looking at whether he was guilty.

Sen. Mark: Mr. Vice-President, under Standing Order 35(8), I wonder if you could give us some guidance as to whether the Senator is now enquiring about the conduct of a jury and the Judiciary.

4.10 p.m.

Mr. Vice-President: I have been referred to Standing Order 35(8). The other Standing Order deals with the issue of references to judicial decisions and judicial activity, and whereas you have made specific references to specific judicial hearing, I would caution you that you stay clear of that in your contribution. You may make implied references because there are clear implications of what you are making to a particular case which has been heard by the court. I want you to stay clear on that.

Sen. M. Shabazz: Mr. Vice-President, I am still guided by you. It seems as though that on the limited plea bargaining arrangement or plea discussion that we have now, one could be punished very harshly depending on the course that one takes or did not take. I think that case is clear and we need to look at that.

I want to go a little further. Of course, there are arguments for plea bargaining. One of the arguments is criminal justice and law enforcement in a document from Floyd College. One could be rewarded for a guilty plea. It reads:

"Incentive for cooperation with police."

I guess in this situation here in Trinidad and Tobago you would be rewarded for a guilty plea, as they are saying, by a lesser sentence, but I have already shown that you do not necessarily get a lesser sentence if you plea bargain. It continues:

"Arguments against plea bargaining, the innocent defendant may be induced to plead guilty."

I have seen in the Bill where it says that all steps would be taken to ensure that you are not induced, that you are not forced to plead guilty but there could be no real guarantee as far as that is concerned. I continue:

"The guilty defendant not punished fully.

Some people may plea bargain in a way that the type of leniency that they may get, may not, indeed, be just as far as the crime is concerned."

Mr. President, this is the point I wanted to make before my concentration was broken. One, if you cannot plea bargain—we have a limited plea bargaining arrangement. If one cannot plea bargain for murder, it is really difficult that you cannot plea bargain but you could become a state witness and be free or not charged for murder as a state witness. It is indeed a form of plea bargaining but they are saying that under this Bill there would be no plea bargaining for murder, but one can make an arrangement with the state to not be tried, as they said that it has been done all the time—the Attorney General explained that it has been done all the time—not to be tried when you become a state witness.

I want to go a little further. It would help the system of administration and the system of justice. It would help cases to come through faster. In one situation where I have shown you as far as the appeals are concerned, it may not really do that. As far as personnel are concerned if we do not have the amount of personnel to deal with the matter it may not do that. And I quote:

"Administering criminal justice by Burt Sadster

The whole criminal justice system is stacked against the poor. The poor cannot afford bail or expensive lawyers."

Mr. Vice-President, we know that in this system if you do not have the money to pay certain lawyers—they are right—they are not going to defend you. That is

why, recently, we set up the Legal Aid Bill. All these Bills are set up to, again, assist the accused—the last time I said the criminal and the Attorney General made it clear that they were not. We have these Bills so that if, as a poor person, you cannot afford the best lawyers in this country who can argue both sides and be victorious on either side, then you are going to have some problems.

It went further to say:

> "In many cases poor people plead guilty to crimes they did not commit simply to get out of jail sooner."

I have seen that happen and I know that happens. Not only that, the poor deserve prompt, fair trials. Better yet, the poor deserve an assault on poverty and racism. Only social and economic changes would lower the crime rate and eliminate the need for plea bargaining.

Mr. Vice-President, we have made that point here all the time. There are all types of courts, for example, the criminal court. We had asked about a court here recently which is the family court. The Attorney General said that you should not just want to take people to a place. All these things must be put in place. You must be able to deal with citizens in a certain type of way if you really want to reduce crime. Plea bargaining, in truth and in fact, may not quicken the system or may not, indeed, reduce crime. We need to look at the situation of justice in this country in a holistic kind of way. We have made that point, bringing Bill after Bill to try to patch everything up. We have brought about four Bills to this honourable Senate.

Mr. Vice-President, there are certain things that we have found. There are certain cases and I believe the last case here was where a policeman shot and killed someone. That case was tried in a matter of three months. There are cases here that are tried very quickly. There are some people who go to prison who do not even spend one year in prison for crimes such as murder. We know this is happening in this country, and we have seen about two and three cases happening over the last three years. For example, the policeman incident; the guy who was killed by the nightclub, that case was tried very quickly. For example, the case with the chicken magnet was tried very quickly. We know of a person who claimed to be one of the top lawyers in this country, doing the work of the Attorney General and we cannot as yet free that system of all this backlog of cases: People are going into court; people are staying one, two and three years in Remand Yard. There are cases that are taking 11 and 15 years and all they do is talk about it happening the last time.

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

Mr. President, if this Bill is to do that we must have the confidence that this Bill could do that by seeing the other things put into place really happening, and in truth and in fact, they are not happening. Take for instance, what has happened with the Community Mediation Bill; the Summary Courts Act. We brought them; we passed them and then they seem to have passed away. They never seem to finish or to come here. They never seemed to reach to the people for whom they are intended.

When someone here said that it is a political thing, we feel that in this last two weeks in the campaign—maybe that is why this is happening. We feel that there are certain offences—we feel strongly about that—that we should not have to plea bargain, for example, rape and incest. A man committing incest with his child and coming to a court to plea bargain. On this side we feel that should be an exception. We feel strongly about that. A man who rapes a 12-year old child and comes to plea bargain, we find that should not be at all. We feel that if a man rapes an 11 and 12-year old child that should not be considered for plea bargaining. Because you are talking one way about raising the moral standards; you are talking about making better citizens; you are saying who do the crime would do the time, and then you seem to talk again from the other side. You seem to bring bills here that would facilitate people who commit crime; you seem to do all these things and that is something that keeps happening with this administration that keeps us wondering whether the things they proposed to do would really happen.

4.20 p.m.

We want to tell the Attorney General that, because it is hard for me to see somebody interfering with a 12 or 13-year old and coming to talk about plea bargaining. I feel, definitely, that he has overlooked that; why it has happened this way. I think he should go back and look at that in the Bill and exclude certain matters from this issue of plea bargaining. I am saying it as strongly as I am saying it because we believe in it as strongly as we are putting it forward. I think he should look at that.

They just passed a Domestic Violence Bill here because they want to help women, because we do not want to see atrocities against women. We just did all these things, but a woman could now be violated, Mr. President, and the husband comes and plea bargains. These things should not be open to plea bargaining. Be consistent. All we are asking this Government to do is be consistent in what they

are saying and what they are doing at all levels, from the new Senator right down. *[Laughter]* Be consistent. Do not say one thing today and another thing tomorrow. Represent labour or represent the Government. They cannot do both. They are always trying to serve two masters at one time. They cannot serve God and mammon at one time. This is what they keep doing most of the time, Mr. President. We again call upon them to be consistent. Say what they have to say and mean it. When they do that, we will be able to walk with them and be able to give them the support that is necessary, if necessary.

An important question came up, because in all the laws—and I want the Attorney General to understand—it is said that sorrow will not really be accepted without a firm purpose of amendment. I think the Catholics say it in the Act of Contrition. How many times will you allow a man to plea bargain? A seasoned criminal. He is a rapist. He raped once, he plea bargained. He raped twice, he plea bargained. What is the limit to plea bargaining? Fifteen times? Ten times? These questions I am really asking the Attorney General. I really do not understand this Bill. The only person here who seems to understand the Bill, Mr. Attorney General, is you. If everybody understood it the questions that we have heard would not have been asked. How many times could a man plea bargain? That is very important. It is something for us to look at and think about.

There was a point brought up at another place, but I would like to bring it again. The question of the prosecutor and the defence lawyer coming together. But when the person who is prosecuting the case is a police officer, as we see in our courts, we need to look at that. We need to look at the policemen in our courts. Not that we are saying they are not good, most of them, maybe, have learnt the work, they may not have been trained lawyers, but not only that, to some extent, because of their attitude or what their attitude to crime is supposed to be, it is something we need to look at as far as this Bill is concerned.

We look again at the question of a man's ability to shop around if he does not like the decision of one judge. We have been told that if he does not like the decision of one judge, he could go to another judge, explain the position, what had transpired with the first judge. We could have a lot of that shopping around that will take time on the system and defeat the very Bill that we are try to bring forward. It will defeat the purpose. The question of how much he could bargain. The question of how long the plea will take. Could you give us a guarantee that the system will be properly set up to deal with these things in the way that it should be? I want to be sure.

[SEN. SHABAZZ]

There is another thing I would like to ask the Attorney General. Somebody could be in prison and want to plea bargain. They are not on bail, they do not have a lawyer to fight the case, what guarantee will we have that this situation would speed the situation up? What will happen inside of there? These are things that we need to know and we want to look at and deal with in a serious way.

I want to go to another point. The Bill states that when an accused person pleads guilty to an offence in accordance with the plea agreement, any procedures taken subsequently against the accused person in contravention of that agreement shall be prohibited unless the prosecutor was, in the course of plea discussions, wilfully misled by the accused person or by his attorney in some material respect; or was induced to conclude the plea agreement by conduct amounting to an obstruction of justice. I would like to know how we will go about the investigations. I am not seeing what type of action or penalties would be imposed upon these people. I think that needs to be explained in a better way than it has been in the Bill.

Mr. President, again, as I have said, there are certain rewards, certain pros and cons as far as this whole thing is concerned. But we feel that the points going against it need to be looked at. Really and truly, I am asking these things here in order to get a better explanation or some type of guarantee from the Attorney General that a number of those things will be dealt with and dealt with effectively. I would like to hear him talk on the issue of the system set up, just as he said the last time that there was no need for a family court because there is no need to move people from one place just to put them in another place to say you have a court.

On that note, I think that at this point I would wait for the Attorney General's answers and I would give way to him at this point to really sum the thing up.

Thank you.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, may I express our thanks to all Senators who contributed in this debate. I think that I would be able to put this in perspective so the hon. Members of the Opposition, firstly, would be able to support the Bill and I am sure the Independent Senators, who expressed some concerns about the Bill, would be able to support the Bill.

Mr. President, in respect of the Opposition, I am a bit confused in that the Opposition in the other place felt it was a good Bill, did not vote against the Bill

and took the original Bill's suggested amendments. We accepted some of those amendments and we have come here today and we see that the Opposition is sending a different signal. I do not know whether the local government election has caused that, but they have made their politics out of it and I would ask that we look at the Bill and really try to support it.

Mr. President, in respect of the last speaker, Sen. Shabazz, it seems as though at one stage he was saying that he wanted a Bill which, when there is a plea bargain, the person would know that one is going to get that. This Bill does that. It does that in the form, as I said, one will get it unless the court decides that one should not get it. If one does not get it, then the plea agreement is at an end and one can go through the ordinary process.

That, in effect, sums up why it is necessary to have such a Bill in that, in countries in which there was an informal system, it was found that very few people pleaded guilty although they were guilty because they were not sure of what the punishment would be. We must remember that the sentence would not necessarily only mean imprisonment, it can mean a fine and it can also mean compensation. It is in that context, in respect of what Sen. Prof. Kenny had raised, that the victim's feelings and expressions can be important in that, in respect of compensation the court would have to know exactly how the victim felt and be able to determine whether what is being offered is reasonable and, therefore, the court would have it from—if I may use the expression—the victim's mouth itself.

As to the question Sen. Shabazz raised with regard to repeat offenders for rape, indecent assault and matters like that; yes it sounds very emotional, it may make very good headlines, but in truth and in fact, it is not supported by the Bill. What it does, under this Bill, even under the informal system, one can have some form of negotiation by a man who has been convicted for rape three times under the same system that we have now, with the exception that they cannot agree that this would be the punishment. If one has a system in which one has, let us say, a man convicted for rape twice and between the prosecutor and the accused, for some reason there is an agreement that this man should not get life but should get 25, 30 or 40 years, the court will consider it. The court will say what is the age of this person, what is the number of years? And, it is in that context that the court will have to determine whether this is just.

Mr. President, we must understand that there are three arms of the state: the Government or the executive is only one arm, we have the legislative which is the other arm, and the judiciary. Under the system of Government that we have,

embedded in our Constitution, the judicial arm is given the power to determine what is the adequate punishment, what is the adequate sentence. As a matter of fact, even Parliament cannot, by legislation, take away, to a great extent, that discretion. One may have to do that with a specified majority. That implies the importance of the judicial arm in the administration of justice.

So when we say that we can buy justice, justice will be cheap, we are bartering justice, it means that we are in some form saying that we cannot trust the courts totally. Now, if that is the signal we want to send, then let us send it. That does not mean to say that we cannot criticize the administration of justice. But a government has to deal with a situation in which it is shown from the statistics that if one has a formalized plea bargaining system, one is likely to have more people who are guilty pleading guilty and more people who are guilty and involved in offences helping the prosecution and the state to establish convictions. A government must come with a formalized system in order to help the public interest.

There have been concerns raised in respect of the repeat offenders; yes, it can apply to repeat offenders, but the court can stop it.

4.35 p.m.

In relation to types of offences, it applies to all offences and let me explain this matter about murder. If Mr. "A" is charged for murder, there can be a plea bargain as to whether that killing was murder or manslaughter. There are many cases in Trinidad and Tobago. When there is a killing, the Director of Public Prosecutions is responsible ultimately for prosecution. It is not the Government or the Minister, it is the Office of the Director of Public Prosecutions. At that office sometimes the police cannot determine whether it is self-defence or not, before the person is charged, or whether it is provocation or diminished responsibility.

What happens is that the person is charged for murder. After the person is charged there may be evidence coming forward, which would show that this really was not murder, but it is reasonable for a manslaughter because of provocation or diminished responsibility. In respect of that offence, there can be a negotiation to say, well, listen I will offer you manslaughter if you plead guilty to manslaughter and the punishment in the circumstances we could recommend would be so many years—7, 10 or 15 years as the case may be.

Mr. President, what cannot be negotiated is that if one pleads guilty the punishment would be other than the mandatory death sentence because that is the law of the land.

What has happened is because of the system that we have had over the years, we did not have uniform sentencing and there are several cases in which the sentences are different. That has happened because you can have an indecent assault, killing, or a break-in in different circumstances, and for different reasons and, therefore, you cannot have a fixed tariff to say that for breaking and entering, the punishment must be seven years. You may have a young person under different circumstances—he should not even be in prison because of the circumstances, and you may have another person because of the circumstances and the background, he should be in prison. So it is difficult to have a fixed tariff.

What has happened in countries in which there is a formalized plea bargaining system, is that they start to develop sentencing guidelines, where in relation to different kinds of cases, you would have a range of what the sentence should be. For example, in countries such as Canada, Australia, England and America you have had that kind of system. As a matter of fact, what other countries have done, when they have introduced the system, a few years afterwards they introduced what is called "A Sentencing Commission" in which the commission considers all these matters and makes representations to the executive arm of the state and thereafter, to the judiciary in order to see whether there can be guidelines in respect of this.

Mr. President, what this Bill is really doing—it is not a Bill in which one is going to be bartering with justice, in the sense that people's rights, or the rights of the public are going to be thrown away, because the rights of the public are protected by the court. Under the Constitution of Trinidad and Tobago the court is the guardian of the public interest and the rights of the people and this Bill preserves that. As a matter of fact, the Opposition supported that principle in the other place, because it was felt that one could not have a system where the court would not have the overriding say.

Mr. President, a point has been raised in relation to clause 4 of the Bill; it has to do with a recording of the plea. At one time a study was done as to whether they should electronically record police interrogation. The cost would have been so much that it was decided that one cannot go with that. Under this Bill, however, although you do not record everything that is said on the schedule, you have both sides signing and maybe we could even look at having the accused and the party signing as suggested by Sen. Montano, but you have a record of the plea agreement which nobody would be able to deny because there are lawyers, accused persons and justices of the peace, so it is not electronically recorded but there is a record.

I have dealt with the question of the victim's compensation and there was a point raised by Sen. Prof. Julian Kenny, which is very interesting and then you have a situation where one person saw the murder instead of two persons and, therefore, you can have a situation where there are two and one is used, but in one case the person cannot be used and that brings us to the point that we may have to look more at the forensic side of it because in those kinds of matters one can have that also.

Mr. President, I think that there seems to be a misconception because a point was also raised in relation to different degrees of the offences, not necessarily murder, but in all offences. There seems to be a misconception that a person who is not at the scene of the crime cannot also be guilty of the offence. One will have several cases, for example, where a person who may not be at the actual scene of the crime, but he aided and abetted or counselled and procured the commission of the offence, and it was decided sometimes, in those cases, that if the person comes forward for the prosecution, they can be used as witnesses.

You can have instances also where the person was at the scene of the crime and the person comes forward. This is a tool which is not only being used now, it has been used for centuries. We have inherited it from the British and we have to use it in all jurisdictions and it is important. I do not want to go into it because this would be the subject of another discussion at another place, but you will have instances, when you look at the facts of a murder, for example, you would see that unless you had this tool the accused persons would have gotten away or can get away, and there would be instances where that is the only witness, and if the witness is killed and that is the only evidence, the accused would have to get away. Therefore, you have to balance the public interest.

If you have a situation where persons who are totally guilty and they know that they are guilty and have said that, but you cannot establish it in a court of law, and the public also believe that they are guilty and they just get away, not because the law found them not guilty, or the law said that they have a defence, because if that is the case then the law has decided that; but because the legal system was hijacked, that public confidence in the criminal justice goes.

Mr. President, it is in that context that when we look at some of the comments—and forgive me for not replying to all of them—it seems to me that if we are really interested in ensuring that some of these matters—if only for one reason, what this would do is that it would have swifter justice in respect of persons who are guilty.

A point had been made that you have a system where rich people get expensive lawyers. In any system we would have that. What we have to do is improve the legal aid system and that is what we are trying to do. No system of justice is perfect, all systems make mistakes. What we have to do is try to come up with the best that we can with the necessary safeguards.

Mr. President a point was also made—let us stop, halt, there are too many laws, let us halt, let us pause—look for example, there is no water in some places—let us halt, do not pass laws. Under the system we operate, if we must have reforms, it must be by administrative action which does not need any legislation but you also have reforms which would need legislation and there is no other way we can do it. It is not a system where one can issue a presidential decree or have an order. It is a system we have where you have to come with a law to the Parliament and let it be scrutinized, and the law provides the legal framework for it to be implemented.

Mr. President, notwithstanding there may be some reservations, I would try to answer as much as I can at the committee stage, with respect to some of the matters raised. We are looking at a situation in which we know that there is a problem with the criminal justice system with respect to delays. We know that there are cases which take a very long time and that neither the Attorney General nor the Government is responsible for it. We also know that it did not come overnight and that the Chief Justice as head of the judiciary is head of the judicial arm.

4.45 p.m.

What we can do as a Parliament is create the legal framework in order to facilitate speedier justice, and if it is felt that we are doing this and for some reason nothing is happening in that area in the administration of justice, the Standing Orders provide for us—the Opposition and the Independent Senators—to file a substantive motion on the administration of justice and for the matters to be discussed. Even though there may be legitimate concerns, I would ask Members, Mr. President, to support the Government in this measure in order to improve the administration of criminal justice in Trinidad and Tobago.

Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Mr. Chairman: Hon. Senators, this is a Bill which contains four Parts, 18 clauses, and one Schedule. I seek your permission to deal with the Bill in parts rather than clause by clause. Do I have your permission?

Assent indicated.

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

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Sen. Dr. St. Cyr: Mr. Chairman, clause 3(3)—if this is not the only Bill with this clause then we should delete it.

Mr. Maharaj: I must confess, Mr. President, that I do not feel very strongly about this clause, but I understand that in other pieces of legislation if it could have the effect like this, it is necessary to have it.

Sen. Dr. St. Cyr: Yes, but then logically it cannot work. Clause 3(3) says:

"Where this Act is at variance or in conflict with any other law the provisions of this Act shall prevail."

So if this exists in another Act, they both cannot stand.

Mr. Maharaj: I will go with Sen. Dr. St. Cyr. I would delete it.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clauses 4 to 8 ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 9(3) be amended as follows:

"In the last line of subclause (3), delete the words 'sitting in Chambers'."

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clauses 10 to 12 ordered to stand part of the Bill.

Clause 13.

Question proposed, That clause 13 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 13 be amended as follows:

In paragraph (b) line 2, delete the word "significant".

It now reads:

"(b) it was entered into as a result of a misrepresentation as to the substance or consequences of a plea agreement;"

Question put and agreed to.

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 14(2) be amended as follows:

In subclause (2), line 3, substitute for the word "to", the words, "with leave of".

It now reads:

"(2) Where the Director of Public Prosecutions is of the opinion that the grounds described in subsection (1)(a) or (b) exist he may appeal against the sentence with leave of the Court of Appeal or a judge thereof."

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Clauses 15 to 18 ordered to stand part of the Bill.

Sen. Prof. Spence: Mr. Chairman, there seems to be a typographical error on page 3 where it says:

"prosecutor" means the Director of Prosecutions..."

It should be the Director of Public Prosecutions.

Mr. Maharaj: Thank you very much. It is a typographical error.

The Schedule.

Question proposed, That the Schedule stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I wanted to take on board what Sen. Montano and Sen. Prof. Kenny stated. I beg to move that the Schedule be amended as follows:

In Form 2, add the following:

"(Signed)

Accused/Defendant"

before the line "*[/] particular course of action to be taken".

So that there will be a situation where the form would have the prosecutor, the attorney for the accused, and the defendant, and also the defendant and the accused. The others are left like that because the attorney must sign there.

In effect, Mr. President, there would be three persons to sign that form.

Question put and agreed to.

The Schedule, as amended, ordered to stand part of the Bill.

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

Senate resumed.

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

5.00 p.m.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to adjourn this honourable Senate to Tuesday, July 06, may I take this opportunity to inform my colleagues that we are going to deal with Motion No. 2 on the Order Paper dealing with the National Insurance (Harmonisation of Pension Fund Plans) (Amendment) Regulations, 1999 and we are going to commence debate on a Bill entitled: "An Act to provide for the establishment of the Integrity Commission; to make new provisions for the prevention of corruption of persons in public life by providing for public disclosure; to regulate the conduct of persons exercising public functions; to preserve and promote the integrity of public officials and institutions, and for matters incidental thereto".

Mr. President, I beg to move that this honourable Senate do now adjourn to Tuesday, July 06, 1999 at 1.30 p.m.

CONDOLENCES
(MR. VERE CORNWALL BIRD SENIOR)

Mr. President: Hon. Members, before putting the question, I wish to make an announcement; and that is, that we have received information that the former Antigua and Barbuda Prime Minister, Vere Cornwall Bird Senior died last night after an illness spanning months.

Mr. Bird Senior was aged 89 and died at the Holberton Hospital where he was admitted in late March.

We are also advised that his interment will take place later on, perhaps at the end of next week, after the Heads of Government meeting in order to permit those Heads of Government who wish to attend the funeral, to be available.

On behalf of the Senate, I have asked the Clerk of the Senate to send an appropriate letter of condolence to the bereaved family. Members who wish to pay tribute may do so now.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, on behalf of the Government Senators in this honourable Senate I wish to record our profound sympathies to the family and close associates on the passing of the former Antigua and Barbuda Prime Minister, Vere Cornwall Bird Senior who, as you indicated, died on Monday.

Mr. Vere Bird Senior was a member of a group of militant trade unionists who blazed a trail through colonial times. Members of this group—all of whom are now dead—included Alexander Bustamante and Norman Manley of Jamaica; Robert Bradshaw of St. Kitts and Nevis; Grantley Adams of Barbados; Dr. Cheddi Jagan of Guyana and Eric Gairy of Grenada, among others.

Vere Bird Senior will be buried, as you said Sir, at the new National Heroes Park in Antigua. His body is expected to lie in state in the Antigua and Barbuda Parliament and at the headquarters of his former trade union, the Antigua Trades and Labour Union.

Mr. President, Vere Bird Senior played a very critical role in the formation of both Carifta and Caricom. He was a very powerful and towering figure and he made a very significant contribution to the development of his country and, by extension, the region.

We on this side, as I said, extend our profound sympathies to the family of Vere Bird Senior and we hope that his soul rests in peace.

Sen. Danny Montano: Mr. President, we on this side would like to send to the members of the family of Mr. Vere Bird Senior our profound and deepest sympathy.

Death is always a very sad event even at the age of 89. His family, at least, had an opportunity to make their peace with him and to say their good-byes over the period of his extended illness. For that, we on this side are happy to know that he probably went to some peace.

Mr. Bird was an outstanding leader and citizen of the Caribbean community. He was a leader and for all of us younger members of the community, he is a member whom we can look up to and remember the accomplishments of his life and say: well, we can only hope that we can accomplish, perhaps, just a little bit of what he did.

Mr. Bird opened the doors to foreign investment in Antigua at a time when it was considered inappropriate to do so. He was a visionary in that regard. He opened the doors to education to every citizen in Antigua. He was also a visionary in that regard; and he led his country to full independence in 1971.

Sir, we on this side are grateful for the leaders that our community in the Caribbean have managed to generate. Mr. Bird would stand head and shoulders with his peers and counterparts in a better place and we will struggle on with the battles that he and his kind have left for us. We will remember his wisdom. We will remember his accomplishments and we would like to congratulate his family on the reverence of such a noble individual. We wish him Godspeed. Thank you.

Sen. Prof. John Spence: On behalf of the Independent Senators, I would like to join my colleagues in sending sympathies to the family of Mr. Bird. Really, I think, we have come to the passing of an era. I do not think there are any leaders of that ilk left alive now. Those of us who are much older than the rest will remember, as far back as the 1930s, when labour leaders were struggling to get benefits throughout the Caribbean.

I remember as a child—I must have been 5 or 6 years old—when the riots took place in St. Vincent, which swept through all the islands in the 1930s. I remember being relieved when the British war ships arrived at the harbour—the situations in those days when we were still colonized.

Persons like Mr. Vere Bird, have allowed us to progress extensively. I think the best tribute that we can pay to Vere Bird is to be a little more successful than we have been in Caribbean integration. This is what they fought for. They gave their careers, they gave their lives and it seems rather sad that we should be so slow in achieving what they had as their goals in those years when they were struggling. I think that we should move forward and pay our tribute in that sense to those early leaders and Vere Bird was an outstanding example. My sympathy to his family. Thank you.

Mr. President: Hon. Members as a mark of respect I ask all Members as well as all others in the Chamber to stand in a minute's silence. Thank you.

The Senate stood.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.13 p.m.