

*Leave of Absence**Tuesday, August 8, 2000***SENATE***Tuesday, August 8, 2000*

The Senate met at 10.30 a.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Leave of absence from sittings of the Senate has been approved for Sen. Danny Montano for the period August 4 to August 14, 2000.

PAPERS LAID

1. The Education (Local School Board) Regulations, 2000. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]
2. Procedure with regard to the Grant of Scholarships and Training Awards. (*Sen. The Hon. W. Mark*)
3. Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities. (*Sen. The Hon. W. Mark*)
4. Guidelines for Contract Employment in the Tobago House of Assembly. (*Sen. The Hon. W. Mark*)

PETROLEUM (AMDT.) BILL, 2000

Bill to amend the Petroleum Act, Chap. 62:01 [*The Minister of Energy and Energy Industries*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.

Question put and agreed to.

SENTENCING COMMISSION BILL, 2000

Bill to provide for the establishment of a Sentencing Commission and for other related matters [*The Attorney General and Minister of Legal Affairs*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move that we proceed now to item Bills Second Reading, Bill No. 1.

Agreed to.

DANGEROUS DRUGS (AMDT.) BILL

Order for second reading read.

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

That the Bill to amend the Dangerous Drugs Act, 1991, be now read a second time.

The Parliament, in 1991 and 1994, amended the laws relating to dangerous drugs and psychotropic substances to strengthen the legal framework in an effort to provide a stronger machinery to combat the illegal drug trade. The measures which were introduced in 1991 and 1994 were measures to give effect to some of the requirements which were contained in the Vienna Convention on Drugs of 1998; that is the United Nations Convention on Drugs of 1998.

Mr. President, the first step that Trinidad and Tobago took to implement that Convention was in 1991, and in 1994, as I said, there was a second step taken to implement further aspects of the Convention. There are other aspects to be implemented, and this third step would be to implement some of those aspects. Before the Parliament there is also a Proceeds of Crime Bill which would deal with implementing what is considered to be the remainder of the measures contained in those Conventions.

Mr. President, just to give hon. Senators some idea of what happened in 1991 with the amendments, hon. Senators would recall that in 1991, the legislation gave to the state the power through the courts to confiscate the proceeds of drug trafficking, once there was a conviction for a drug trafficking offence. One knows the procedure, but just for the purpose of clarity, the law does not provide that the state can confiscate proceeds of drug trafficking if the state considers that to be proceeds of drug trafficking, unless there is a conviction in the criminal courts for a drug trafficking offence.

What the 1991 Act did, therefore, was for the first time in Trinidad and Tobago, give to the courts the power to order the confiscation of assets which are derived from drug trafficking. Included in those 1991 measures were measures which were ancillary to those powers; that is to say, to give the court the power to restrain the disposition of assets which were suspected of being the proceeds of drug trafficking until the completion of the proceedings for drug trafficking. What would have occurred if there were not this interim safeguard is that it would have meant that if the person was charged for drug trafficking, he could have had all his assets dissipated, and when the case is finished, the assets would no longer be there for the state.

In 1991 it was recognized that the country was not going the whole way in the implementation of the Vienna Convention, and it was recognized that there were other areas of law to be enacted. In 1994 there was the creation of offences relating to the prosecution of money laundering and additional measures to deal with drug trafficking. So, in 1994 for the first time, there was the question of money laundering being introduced as an offence, and for steps to be taken to trace whether money was being laundered or not.

There were also provisions for the recognition and enforcement of confiscation and forfeiture orders made by foreign states. What it meant, therefore, was that there was a machinery put in place in 1994 that if there was agreement between states that a confiscation order made, let us say in the United States, in respect of assets which are located in Trinidad and Tobago—the courts in Trinidad and Tobago—by the registration of that judgment, the order would have been enforced.

Mr. President, I am doing this in order to give hon. Senators an idea of what we are doing in these measures. What we are doing in these measures before the Senate today is to try to complete in legislative form, some of the requirements which countries have to implement in relation to the Vienna Convention on Drugs. What this Bill does generally, apart from filling or plugging some of the loopholes, for example—one would see we had to ensure that we, in effect, define exactly when a prosecution can be laid, and by whom, because there have been some arguments in the court that where the prosecution says the Director of Public Prosecutions, it must be the Director of Public Prosecutions personally. As I go through the Bill, I will show that we have improved that definition in order to make it quite clear that it can be someone designated by him.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

The more fundamental aspect of the Bill is that it attempts to concentrate in some form on the question of precursor and other chemical to be used in the manufacture of drugs. Also, what it does is put certain presumptions in law in specific terms so that if, for example, property is being used for the manufacture of drugs, there will be a presumption that it is so used, and the onus shifts on the accused person in order to rebut that presumption.

There is also the question of possession in this Bill. We have a situation in law in which it is said that if a person does not know that the stuff is in his property, the prosecution will have to prove actual knowledge that he knew about those matters. What we have tried to do is reform the law of possession in criminal law in these matters in such a way as to put some onus on the person in order to show that he did not know of the possession of these drugs.

Mr. President, what this Bill really does is, in effect, try to improve the legal infrastructure that we have in order to make it easier for the state to prosecute persons and to ensure that guilty persons do not escape, bearing in mind that it provides all the safeguards for the administration of criminal justice so that people cannot say they have been denied the substantive due process of law.

Mr. President, I am happy to say that this Bill got the unanimous support of the House of Representatives, and I should mention that in order for this Bill to be passed, it requires a certain majority in both Houses of Parliament. So, one would see that from the parliamentary records, this Bill got the unanimous support of the entire House of Representatives, but that does not mean to say that that is sufficient in order for this Bill to be passed. The Bill also needs the required support of the Senate at the appropriate time when the vote is being taken.

10.45 a.m.

Mr. President, I do not think we can doubt that the illegal drug trade presents one of the greatest threats to democracy and it also produces one of the greatest threats to human development, and it is in that context that countries throughout the world have been expending a lot of resources and money in order to combat this illegal drug trade. Governments have recognized that laws alone are not sufficient and although laws can deal with the question of prosecution, trying to set an example to persons who traffic in this trade, for society to know that persons will be punished and also to confiscate their assets, governments and the international community also recognize that one also has to take steps to ensure that there is a demand reduction for drugs. One, therefore, has to take steps to

ensure that societies are educated; better information is given so that the young people would know that this is an evil trade, it is harmful and that society, generally, would develop an anti-drug culture.

I want to say that this Government recognizes this and this Government does not produce this Bill as an answer to all the problems relating to the illegal drug trade. What the Government does is, it presents this Bill as a piece of ammunition together with other ammunition that the state has, as part of its arsenal in order to fight the drug trade.

The international Drug Trade Act provides a formidable enemy and the statistics have shown that the international drug cartels and those who are associated with them have financial resources which few national governments have and they can use these financial resources without formal restraints on them as to how they can be used. The drug syndicates also have the advantage of experience, and long before transnational crime had become recognized as a genuine threat to international stability, the syndicate of the drug world already had in place the impressive network of supplies centres, distribution networks, foreign bases and reliable entry into governments throughout the world.

These drug syndicates, Mr. President, pioneered many of today's advanced money laundering techniques and they hired first rate accountants and invested in state-of-the-art technology. International drug trafficking has become more sophisticated every year. Although the collective efforts of governments to cut the drug trafficking over the years, and in 1999 have kept drug traffickers on the defensive, it is a fact that the drug traffickers are still able to move hundreds of tons of cocaine, not only to the United States of America, but throughout the world.

One sees, Mr. President, that one is not dealing with a weak enemy; one is dealing with a formidable foe. One of the major problems which is confronting governments is not only the trans-shipment of cocaine and heroin, but the question of chemicals being trans-shipped and diverted in order to be used in the manufacture of illegal drugs. We have heard of the drug "ecstasy" called "MDMA" which is now being considered as one of the greatest threats in the drug trade.

I say this because I think hon. Senators would recognize that although the fact is that the problems are great, it does not mean to say that governments must sit and do nothing in order to deal with some of the problems.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

It is in this context when this administration took office that it had to look at the Vienna Convention—apart from other things with respect to the drug trade—to see what else had to be implemented, not only for Trinidad and Tobago, but it being the basis of the fight against the drug trade that one has to promote regional and international co-operation, it meant that Trinidad and Tobago had to put the necessary laws in place in order to ensure that the regional and international co-operation can be fully effective.

It is in this context, therefore, that the Government started work on drafting the amendments to the Dangerous Drugs Act. There was a draft which was subjected to consultation, to advertisement, to discussions and there had to be amendments. There is also the other bill, the Proceeds of Crime Bill. These measures came to the Parliament and had to be deferred a bit, so finally we have measures before the Parliament which it is hoped if hon. Senators support, these matters would be able to be implemented so that the legal framework will be stronger.

With that little background, Mr. President, I want to go through the Bill so that hon. Senators would try to understand what is happening in the Bill. I am sure they would have read it and with that in mind, the way I propose to deal with the clauses in the Bill would be under seven headings—interpretation is one heading; offences dealing with possession is the second heading; precursor chemicals is the third heading; the fourth heading is supply of dangerous drugs; the fifth heading, burden of proof and presumption; the sixth heading, ICs and then miscellaneous.

If we first go to "interpretation" and go to clause 4 of the Bill, Mr. President, one would see clause 4 proposes to amend section 3 of the Act with the inclusion of the definition of "Director of Public Prosecutions" and "life". Under the Act, the Director of Public Prosecutions is vested, *inter alia*, with the authority to bring proceedings under Part VI of the Act to restrain accused drug traffickers from dealing with their assets. The inclusion of this definition merely serves to make it clear that the Director of Public Prosecutions must be taken to include:

"...any person assigned by him for the purpose of the Act".

It is also intended to give clear recognition to the powers of the Director of Public Prosecutions under section 90 of the Constitution.

The ingenuity of some legal representations has even gone to the point where the issue has been taken that the "Director of Public Prosecutions" as drafted, means that the Director of Public Prosecutions must appear in person in connection with matters under the Act, notwithstanding the provisions of section 90, so that this is to make it quite clear that:

“ ‘Director of Public Prosecutions’ means the Director of Public Prosecutions of Trinidad and Tobago or any person assigned by him for the purpose of the Act;”

Mr. President, one knows that if the Director of Public Prosecutions has to be in all the courts where there are these prosecutions, personally it would be impossible. We want to make it quite clear so that time can be saved with some of these legal submissions when the law appears to be quite clear that is what is meant.

For "life", the intention here is where it is stated "life imprisonment" in the Act, it means:

“..the natural life of a person;”

So that the law can be quite clear that it means “life” and it means the natural life of the person.

One would see in clause 4, the new section (2A) says:

"For the purposes of this Act possession of a thing shall include control of a thing which is in the custody of another."

What does that mean? This new section (2A) broadens the legal term of the word "possession". The current state of the law on "possession" provides a serious loophole for persons who are concerned in the possession of and trafficking in dangerous drugs. It is not now legally permissible to charge a person with possession of a dangerous drug which, although in the physical custody of another, is under his or her control.

So, one can have a situation where the big people would not be in physical custody but will be using people in order to have this drug and it is not possible because of the law of possession as it is now. If one is charged, it provides a good defence. That is to say that:

“For the purposes of this Act possession of a thing shall include control of a thing which is in the custody of another.”

So if Mr. A gives to Mr. B drugs, but he is controlling the operations and Mr. B is found in the drugs and it is ascertained that Mr. A also is involved in this operation, both A and B can be charged for possession of the drug under this Act, or for trafficking, or whichever it is, depending on the circumstances.

Mr. President, the other heading, offences dealing with possession, the new clause 5(3) and (3A) of the Bill separate the offences of cultivating with respect to marijuana on the one hand from that of coca and opium on the other. The reason for that, Mr. President, is that the offences concerning the cultivation of coca and opium, from which the more harmful and more valuable narcotic substances of cocaine and heroin are derived, would attract more serious penalties as set out in clause 5(3) and (3A).

If one looks at the amended version of section 5, one would see:

- "(3) A person who cultivates, gathers or produces any marijuana, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person having such a licence, commits an offence and is liable—
- (a) upon summary conviction to a fine of fifty thousand dollars and to imprisonment for ten years; or
 - (b) upon conviction on indictment to a fine of one hundred thousand dollars or where there is evidence of the street value of the marijuana, ten times the street value of the marijuana, whichever is greater or to imprisonment for twenty-five years to life."

When one looks at what the present law is, one sees that if one is under the present Act:

"Upon summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years."

Now, it is:

"...fifty thousand dollars and to imprisonment for ten years;"

And upon indictment, instead of a fine of \$50,000 and to imprisonment for a term which shall not exceed 10 years, it is:

"upon conviction on indictment to a fine of one hundred thousand dollars or where there is evidence of the street value of the marijuana, of ten times the street value of the marijuana, whichever is greater or to imprisonment for twenty-five years to life."

11.00 a.m.

Mr. President, then in the section which deals with opium poppy or the coca plant, one sees that the fines and imprisonment are heavier, section 5(3)(a):

“Every person who cultivates, gathers or produces any opium poppy, or coca plant, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person having such a licence, commits an offence and is liable on conviction and indictment to a fine of two hundred thousand dollars or where there is evidence of a street value of the dangerous drug, fifteen times the street value of the dangerous drug, whichever is greater, and imprisonment for a term of twenty five years to life.”

Prior to that, Mr. President, it was to a fine of \$100,000 or where there is evidence of a street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and imprisonment for a term of 25 years to life. That is one of the aspects that this Bill is expected to change.

The other matter I want to indicate, Mr. President, is that the current provisions of the Dangerous Drugs Act have created hybrids for the following offences: trafficking in a dangerous drug, trafficking in a substance other than the dangerous drug which is represented or held out to be a dangerous drug, and possession of a dangerous drug in any school premises or within 100 metres thereof.

The current state of the law is that prosecution for any of the offences identified above could be taken either summarily in the Magistrates' Court or by trial on indictment in the High Court after committal proceedings in the Magistrates' Court.

The amendments which are being proposed in the new section 5(7)(a) and (b) dictate that the proceedings for any offence under section 5 of the Act are done indictably. Summary trial provided by section 5(7)(b) is at the election of the Director of Public Prosecutions and the consent of the accused. In addition, the offences attract greater penalty. It is proposed under the new section 5(9) to increase the threshold quantities, that is, to increase the threshold quantities in excess of which the law will deem that a person is in possession of a dangerous drug for the purpose of trafficking, and within which a person could be charged with possession *simpliciter*. Let me see if I can explain that, Mr. President.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

If someone is found in possession of drugs, under the existing law if he is found in possession of a certain amount of drugs then there is the presumption that he is in possession of that for the purposes of trafficking, section 5(9). What we have done with that section is that we propose to increase the threshold so that in excess of which, the law would deem a person possible to be in possession for trafficking.

The Government recognizes that under the current law where the threshold quantities were at a minimum, persons who had no financial interest in the possession of a dangerous drug, persons who were not traffickers, if they were caught they would be regarded as offending the provision under which traffickers would have been charged and convicted. It was thought, as other countries have done, to try and find a formula with quantities that we would use as the threshold, and that is why section 5(9) of the Act is repealed and you have a new section 5(9).

Under the existing law it says:

“A person, other than a person referred to in subsection (2), found in possession of more than—

- (a) two grammes of...(heroin);
- (b) one gramme of cocaine;
- (c) fifty-five grammes of opium;
- (d) three grammes of morphine; or
- (e) fifteen grammes of cannabis or cannabis resin,

is deemed to have the dangerous drug for the purpose of trafficking, unless the contrary is proved, the burden of proof being on the accused.”

What we have done is change that to say that a person, other than a person referred to *et cetera*, found in possession of more than 20 grammes of heroin, 10 grammes of cocaine, 500 grammes of opium, 30 grammes of morphine, one kilogram of cannabis or cannabis resin, is deemed to have the dangerous drugs for the purpose of trafficking unless the contrary is proved.

What has happened is that many people have been found with drugs, because under the existing law they are charged with trafficking, therefore, trafficking has this higher penalty. Based on the recommendations of the police and the Director

of Public Prosecutions and on what has happened in other jurisdictions, this threshold has been increased so that persons who are found in possession may want to plead guilty and opt for the shorter punishment, instead of having to face heavier sentences for trafficking.

It does not mean to say, however, that if a person is found with a smaller quantity and you can prove that he is trafficking, he cannot be prosecuted for possession for the purposes of trafficking. This is merely a presumption that if he is found in excess of this amount, he is deemed to be in possession for the purpose of trafficking. For example, if a person has a smaller amount than this and he is found actually selling it, then he will be trafficking, so he can still be prosecuted for trafficking.

It must be recognized that persons who are found with these drugs are either drug traffickers or persons who are drug addicted, and, therefore one has to make a distinction between those who have it in their possession for trafficking and one who has a serious problem with respect to drug addiction. Therefore the law is trying to make that distinction so that persons who have the problem would not necessarily have to face the consequences of being a drug trafficker.

Mr. President, the other section which I said I was going to deal with was under the heading of "Precursor Chemical", and that is No. 3. By amending clause 8 of the Bill, section 6(a) of the Act is repealed and replaced with the following—there is a Schedule to the Act contained in the Fourth Schedule which contains a list of chemicals. It says:

"A person who manufactures or is in the possession of a substance referred to in the Fourth Schedule or transports such a substance or supplies it to another person knowing or having reasonable grounds to suspect that the substance is to be used in or for the unlawful production of a dangerous drug, commits an offence and is liable upon conviction and indictment to a fine of one hundred thousand dollars or where there is evidence of the street value of the dangerous drug three times the street value of the dangerous drug whichever is greater and to imprisonment for a term which shall not be less than twenty five years."

Mr. President, this is very important, because as I said in my opening contribution, most governments are finding that the control of chemicals for the manufacture of drugs is really posing a serious problem. It has been recognized, recently, in a study done by the European Commission that the geographical location of countries in the Caribbean—the countries named are: Suriname,

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Guyana, Trinidad and Tobago, Barbados, Antigua and Barbuda, St. Kitts and Nevis, Grenada, St. Lucia, Jamaica, the Bahamas and the Dominican Republic—have made them ideal potential transit points in the movement of chemicals for diversion and use, to manufacture illicit drugs and for the finished products moving to illegal markets elsewhere.

It is also recognized that it is not only a transit situation, but it is also a situation where you can have drugs being manufactured. It has been found that in countries there are laboratories which are set up; clandestine labs are used. They receive these chemical precursors and are able to manufacture these illicit drugs. I think I would be correct in saying that a lot of international energy is now being given to ensure that the movement of these chemicals is not diverted and used to manufacture illicit drugs in countries.

What we are attempting to do here is that we propose to increase the penalties for offences concerned with the manufacture, possession and transport of precursor chemicals. In addition to this, the offences under this section which were hybrid offences, could be proceeded with either summarily in the Magistrates' Court or by trial and indictment in the High Court or committal proceedings before a magistrate. It is now proposed to make these offences indictable, subject to the power of election of the Director of Public Prosecutions under the new section 5(7)(a) as proposed in the Bill.

Mr. President, it is also recognized that quite apart from having additional penalty and different procedures, that the necessary administrative changes must take place in order to ensure that some of these chemicals are not diverted, because if there are no effective administrative measures then you can have the diversion, but you would not have the detection.

The next heading which I said I was going to deal with is the supply of the dangerous drugs. If one could submit, the simple consequence of this amendment is twofold; firstly, proceedings for an offence under any of the sections mentioned in section 10 shall be taken indictably. I think I should probably explain to Senators who are not lawyers what “indictable” means. In the criminal law there are two kinds of offences: a summary offence or an indictable offence; two major groupings.

A summary offence is a matter which can be determined before a magistrate, and the magistrate can be the ultimate judge of the facts. When I say ultimate I mean that he can decide the guilt of a person and can impose punishment. If there is any dissatisfaction with that, it can go to the Court of Appeal and even to the judicial committee of the Privy Council. When a matter goes before a magistrate in a summary matter, the magistrate hears the evidence and decides on it.

In an indictable matter, which is considered to be the more serious matter, the magistrate conducts what is called a preliminary inquiry. His function is not to decide guilt. His function in a preliminary inquiry is to decide whether the prosecution has established a *prima facie* case, so that he can send the case to go upstairs—to use that expression—to a judge and jury.

Obviously, if the magistrate believes that the essential ingredients of the offence have not been established or that the case is so manifestly unreliable, the magistrate has the discretion to discharge the accused. If he is discharged and the Director of Public Prosecutions (DPP) believes that the magistrate was wrong, the DPP can apply to a judge to get a warrant and take the matter to the High Court for trial before a judge and jury. In an indictable matter the judges of the facts are the members of the jury, and the judge of the law is the High Court judge. That also, depending on the jury's verdict, can go to the Court of Appeal and the Privy Council.

When I say “summary” and I say “indictable”, it must be understood in that context. I do ask for forgiveness, if I assumed that Senators would have understood that, because I was wrong.

11.15 a.m.

Mr. President, as I said, that was what we were doing with section 10 and under that, the Government takes the view that the person, to whom licences in respect of the supply of narcotics have been issued by the Minister of Health under section 4 of the Act, has been entrusted with special responsibilities. It was our view therefore, that any breach of these responsibilities or the doing of anything which is inconsistent with these responsibilities should attract the greatest of penalties provided for in the new section 10.

Mr. President, the current section 17 of the Act concerns the use of mail or courier services for the transport of dangerous drugs. This Bill proposes to introduce the scienter requirement in this section by providing for a person who knowingly encloses a dangerous drug or sends such a substance in any letter, packet or other matter by post or courier, and in addition to this the greater penalties are to be imposed. If one looks at section 17 one sees, except as otherwise specifically provided, a person who knowingly encloses a dangerous drug in or with any letter, packet or other matter sent by post or courier, commits an offence and is liable upon conviction on indictment to a fine of one hundred thousand dollars, or where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug or whichever is greater and to imprisonment for a term which should not be less than 25 years.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Section 18 merely says where the fine has not been paid the person shall be imprisoned. An important aspect of this Bill is Part IVA and that, you may recall, came under my fifth heading Burden of Proof and Presumption.

Mr. President, the new section 29A would provide that it would be for the defence, where the issue is raised as a defence to a charge under the Act, to provide evidence and proof of any licence, authorization or authority without the need for the prosecution to negative such evidence. In other words, if someone is saying that he has a licence, it is for the person who is saying that he has a licence to prove that he has a licence. For example, in the prosecution of an offence under either the current or proposed amendment in section 60 (16) of the Act, it would be for the accused person to prove that in order to secure an acquittal that although a precursor chemical was in his possession he did not know or had any reasonable grounds to suspect that it was a precursor chemical.

Mr. President, if we look at section 29(b) which is an entirely new section we would see that it seeks to make provision for the general application of a series of assumptions for offences relating to the possession and supply of dangerous drugs. I propose to deal with each subdivision individually so that we can understand what we are trying to do.

Mr. President, the simple effect of this presumption may be seen having regard to section 53 of the Act which deals with forfeiture orders. Section 53 of the Act provides as follows:

“53(1) Where a person is convicted of a drug trafficking offence and the court by or before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension—

- (a) has been used for the purpose of committing a drug trafficking offence;

the court may make an order for forfeiture of that property under this section.”

Mr. President, if a person convicted of a drug trafficking offence was found in a house or a car in which 10 kilogrammes of cocaine was stolen it will be open to the court before which such a person was convicted to make an order in respect of the property that that was a presumption and the accused will be able to show that this was not so.

Currently section 21(1) of the Act provides without limiting the generality of section 5(1) any person who occupies any building, room or place upon which a dangerous drug is found shall be deemed to be in possession thereof unless he proves that the dangerous drug was there without his knowledge and consent. So with the aid of the presumption under clause 29B(b), any person found in a place in which dangerous drugs are found or appear to have the care, control or management of such place would be presumed to be the occupant. The burden of proof in accordance with the terms of the proposed section 29A would then be on the accused to disprove his or her status as an occupier.

There have been several offences created by section 15 of the Act with respect to devices which are used for the use and consumption of dangerous drugs and the conjoint effect of section 15 and 21(2) of the Act with the aid of this presumption is to make the occupiers of premises in which such devices are used, criminally liable for such user of the premises.

Mr. President, this presumption is designed to broaden the legal concept of possession and the concept of the current state of the law is in line in such cases, and if I may mention for the record, in the case of the *Director of Public Prosecutions and Brooks 1974 21 WIR (West Indian Reports)* page 411 and *Warner and Metropolitan Police Commissioner 1969, 2 AC* at page 256, a person cannot possess that which he does not know. Therefore, once this presumption now takes effect, the accused would have the burden of proving that he did not have possession of a dangerous drug and he did not know the nature of such a drug if an acquittal is to be secured.

May I mention that the law is not absent to that kind of situation in that if a person is now found to be with what is stolen property or what is reasonably suspected to be stolen property, it is provided under the law that the person would have to give an explanation; he does not have to give an explanation, but the onus is on him to give an explanation to show that it was not stolen and not unlawfully obtained.

Mr. President, the presumptions are:

“29B. In all proceedings under this Act or any Regulations made thereunder—

- (a) premises shall be deemed to be used for a purpose even if they are used for that purpose on one occasion only;
- (b) a person, until the contrary is proven, shall be deemed to be the occupier of premises, if he has, or appears to have, the care, control or management of such premises;

- (c) if a dangerous drug or device, article or apparatus designed or generally used for the administration or consumption of a dangerous drug, is found in any premises, those premises shall be presumed, until the contrary is proven, to be used for the purpose of the administration of a dangerous drug to, or consumption of a dangerous drug by a person and the occupier shall be presumed to permit such premises to be used for such purpose;
- (d) a person who is found to have had in his custody or under his control anything containing a dangerous drug shall, until the contrary is proven, be deemed to have been in possession of such drug and shall, until the contrary is proven, be deemed to have known the nature of such drug;
- (e) a person who is found to have had in his possession or under his control or subject to his order, any document of title relating to a dangerous drug shall, until the contrary is proven, be deemed to have known the nature of such drug;
- (f) if a dangerous drug is found to be concealed in a ship or aircraft it shall be presumed, until the contrary is proven, that the said drug is so concealed with the knowledge of the master of the ship or aircraft and has been imported or is to be exported in such ship or aircraft;
- (g) if a dangerous drug is found to be concealed in any premises, it shall be presumed, until the contrary is proven, that the said drug is so concealed with the knowledge of the occupier of the premises;
- (h) if a dangerous drug is found to be concealed in any compartment, in any vehicle, it shall, until the contrary is proven, be deemed to have been so concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle at the time the drug is found;
- (i) evidence by a police officer above the rank of Sergeant or by a senior Customs Officer that any device, article or apparatus is for use in the consumption of a dangerous drug, or in the preparation of a dangerous drug for consumption, shall until the contrary is proven, be deemed to be sufficient evidence of that fact, and for the purposes of this paragraph 'consumption' means eating, chewing, smoking, swallowing, drinking, inhaling or introducing a dangerous drug into the body in any manner or by any means whatsoever;

- (j) when any substance suspected of being a dangerous drug has been seized and such substance is contained in a number of packages, it shall be sufficient to analyse samples of the contents of a number not less than ten per cent of such packages and if such analysis establishes that such samples are all of the same nature and description...as the samples so analysed and if such analysis establishes that such samples consist of or contain a dangerous drug, it shall be presumed, until the contrary is proved, that the contents of all the packages consist of or contain the same proportion of such drug.”

What (j) does is to introduce the concept of representative analysis and that is a situation in which under the existing set-up, if you have tonnes of cocaine, you have to test all and the court has to see all the exhibits to be sure that each of the exhibits was tested and even when there is a shortage of weights the point is being taken that it is not the same cocaine and so forth. So this is done to be able to make the prosecution simpler.

Mr. President: Mr. Attorney General, I want to let you know that you have 10 minutes remaining.

Hon. R. L. Maharaj: Thank you very much, Mr. President.

Clause 14 of the Bill deals with the amendment to the Act to include the jurisdiction to the archipelagic waters of Trinidad and Tobago and that is defined. Because of time constraint I would not go through it in detail as I have been going through. What it really means is to give the courts greater jurisdiction in respect of ships found in these waters.

Clause 17 is very important because it gives to the Director of Public Prosecutions the power where you have conspirators and co-conspirators as assisted in the prosecution or detection of a matter that the Director of Public Prosecutions on his application, the court may impose a lesser sentence upon a defendant. It reads as follows:

“53E(1) Notwithstanding any sentence of imprisonment prescribed under this Act, the court may, on the application of the Director of Public Prosecutions, impose a lesser sentence upon a defendant who at any time prior to conviction, co-operates in the investigation or prosecution of a drug trafficking offence.”

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Mr. President, what this does is that you will have persons who will assist the police in order to have the crime detected, will assist the police in the prosecution and it gives the Director of Public Prosecutions if he finds that person has assisted and the state has benefited to apply to the court for a lesser sentence and the court would have the power to give the lesser sentence.

Another important aspect of the Bill is clause 18—what that does is that it is also designed to address another problem associated with the production of exhibits in court. It has been the case that members of the jury and even magistrates complain about the smell of cocaine and marijuana, particularly in large quantities. So the effect of this on the jury or a witness could be avoided and a picture or video of the exhibit may be available for production so that an exhibit could be destroyed for example in the interim between the proceedings in the Magistrates' Court and the proceedings in the High Court.

11.30 a.m.

The interest of the defendant in maintaining the exhibit is sufficiently protected by the necessity of the DPP to give seven days' notice of his intention to make an application of the kind contemplated to the court. So one would see that, where the person has been charged, photographic or video evidence of the exhibits may be used. If the defendant has failed to show reasonable cause why the substance should not be destroyed, the court may order the destruction of the substance before the completion of the legal proceedings against the defendant and the photograph or video recording can be used as the substitute.

Clause 19A was an amendment that was inserted in the—it was redrafted, I think. It states:

“Where a person under the age of twenty-one years appears before a court and is found guilty of an offence under this Act, the judge or magistrate may impose a lesser penalty on such a person than that specified for the offence in this Act.”

What we tried to do there, Mr. President, is that we recognized that persons under the age of 21 years could find themselves in difficulties. Although the Bill does have heavy penalties, we would still want to leave some discretion with the court—a judge or a magistrate—to give a lesser penalty on condition that the person is under the age of 21 years.

Mr. President, I know this Bill has been a bit technical but in substance what it does really is try to fill some of the loopholes. Two, it tries to remedy some of the defects which, when we deal with the law of possession in criminal law, it puts in

specific terms the presumptions in respect of matters when persons are found with drugs or when drugs are found on property; cases in which persons either know or ought to know. It, in effect, increases penalties and provides added machinery that deals with precursor chemicals.

The Bill needs the special majority and I think that hon. Senators recognize that it needs a special majority. The reason for that is, it is stated that where any Bill introduces measures which are inconsistent with sections 4 and 5 of the Constitution of Trinidad and Tobago, it must be passed with a specific majority, a three-fifths majority. Mr. President, there can be no doubt that with respect to some of these matters dealing with presumptions, those are matters which are inconsistent and we must get the specific majority.

Trinidad and Tobago is not the only country in the world or in the Commonwealth that has decided to come this route with some of these provisions. As a matter of fact, in relation to the Vienna Convention it has become a must for countries to do it. We have acceded to the Vienna Convention since 1988 and, as a matter of fact, I think hon. Senators know that recently several countries in the Caribbean area have been put on a blacklist in relation to non-compliance with Conventions relating to drugs. One also knows that, in relation to these matters, if there is no compliance, not only with passing the laws but also putting the requisite administrative procedures and measures in place, it can have serious effects on the financial sector of any country.

I am sure many of our hon. Senators have been reading the newspapers and even, quite recently, in *The Economist* there has been an article on the tidal wave of drugs in the Caribbean. There has been much discussion on countries that have taken steps in order to comply with international norms. Trinidad and Tobago recently—I have the article somewhere in my file—has been singled out as one of the countries in the region that has taken those bold and forward steps.

In conclusion, I would ask hon. Senators to give support to the people and to the Government for these measures. As I said, it had unanimous support in the House and I have no doubt, Mr. President, if we are truly committed to putting in place whatever measures are necessary to make it easier for the state to detect these persons who are guilty, we would want to detect them to save the children from being poisoned by this illegal drug trade. Thank you very much, Mr. President. I beg to move. [*Desk thumping*]

Question proposed.

Sen. Muhammad Shabazz: [*Desk thumping*] Mr. President, the question of drugs and dangerous drugs continues. Having heard the Attorney General, we see that it is indeed a national issue. In 1991, 1994 and again we see some amendments being brought or some things being done to curb that illegal drug trade. On this side I think that we could do nothing else but support the Bill because it is the desire of not only the Parliament but the whole country to see the drug trade really eradicated in this country, and probably throughout the world. Any measure taken to ensure the reduction of drugs or to hold people who deal with drugs must be important and, therefore, must be supported. Not only that, Mr. President; you see, it has a sort of social effect at which we must look, but there are things that must be taken into consideration when we talk about curbing the drug trade.

There are so many inconsistencies as far as the social effects are concerned. Mr. President, let me just give you some examples. One is, we keep dealing with drugs in the sort of a way as though the illegal drug—which is really what we want to eradicate, but we have to look too at the fact that there are some legal drugs that could be the starting point from which young people get to illegal drugs and continue or see drugs as an important thing. That is not the only issue. The drug trade is indeed big, big business and not until we understand that drugs is big business would we understand the type of problems we have on our hands. It is good to hear the Attorney General say that laws are indeed not sufficient. Demand reduction, better education, a society that will have an anti drug culture are things we must first seek to ensure we have. Drug dealing is indeed big business.

In Trinidad and Tobago one of the first drug cases that we read about, Mr. President, occurred years ago. I remember that clearly. It was a drug case that took place in Glencoe. I could tell you because one of the people held was a man by the name of Winston Bruce who is known in this society as “Dr. Rat”. I went to him some time after and said, “Well doctor, how this drug thing, this cocaine thing, reach in here and thing, and what is happening?” He said, “Shabazz, do not bother about that. The cocaine that coming in here costing \$50,000 a kilo. We in the ghetto cannot afford it. It comes from the high places. We only selling it and we only smoking it”. Mr. President that is still the situation in Trinidad and Tobago today.

When we look in the Caribbean what do we see? Sometimes the very politicians who are presenting the drug Bills are the politicians dealing in the drug business. [*Desk thumping*] When we look through the Caribbean and we look throughout the world we see that is what is happening. They are the people who

are involved in drugs. Lee Iacocca in America said that the reason he went to drugs when his business fell was to build it back. Do you know how many businesses are being built up and run as a result of the drug trade in the world? What can we really do to eradicate drugs? The biggest drug dealers—the country that deals with the most drugs in the world is the same country that has the biggest laws, which is America. We are indeed talking about how we will curb drugs yet we seem to be coming back to the same issues.

Mr. President, look at this. You know, in Trinidad and Tobago we try to tell people about drugs, because we see where drugs—there was a situation where the churches came together and decided that they were going to have a rally against drugs and they were going to fight against drugs. One section said all drugs, which included marijuana, cocaine and all these things, including alcohol. The next section said, “Well, alcohol is not a drug”; and the argument started there. How is alcohol not a drug? With one section of the society saying because alcohol is legal it is not considered a drug and some other people saying that maybe marijuana should be legal, how do we come and clear and deal with a paradox like this?

In Trinidad right now we are saying that the people involved in sports use enhancing drugs and we are fighting against them, yet the biggest sports foundation in this country is a tobacco company, which people are saying again that tobacco is the first step that we take on the road to drugs. The national cricket team, the West Indian cricket team, is wearing a Carib beer—and I am not against these companies—sticker on their jerseys all over the world giving legality to alcohol, then we are telling people, “You should not be dealing with drugs”.

How are we, in using such a system and as a people, looking at that? What are the types of things that we are building up in the minds of youths when the very judge who will be trying them for marijuana and cocaine just had a nice vodka before he sat on the Bench? What are we telling people? As the people who are supposed to pass the laws, we will sit and have a nice drink of alcohol, get high and talk nice, then we are going back to tell the people “Do not use drugs”. I am just bringing it forward here so that we would look at this social order, see what it presents and how it looks. Mr. President, this is where we have to talk and look at the drug trade to see how we are going to deal with it. Are we really going to do sufficient work or just do a certain kind of work to stop it?

We read in the newspapers about an MP—I cannot quote it but it was—
[*Interruption*]

Hon. Maharaj: Mr. President, I must thank the hon. Senator for giving way. He has been so kind. Perhaps he could tell us whether he believes the Opposition should ban the use of alcohol because it is—[*Interruption*]

Sen. M. Shabazz: Mr. President, the people of Nariva told a Member of Parliament, “Listen, all we are doing is planting marijuana and we would like to get away from that. Help us with the agricultural trade”. You know, nothing has been done about agriculture in that area and the marijuana trade is still continuing big and strong; and he is the MP. They asked him, “Please, Mr. MP”. We once had a President here—and I really would like to commend him for not having alcohol in his home, not drinking alcohol—President Noor Hassanali. When one is telling young people not to be on a drug scene, they look at the exemplars, you know. They look at presidents, they look at prime ministers, they look at Speakers, they look at Members of Parliament and see what—[*Interruption*]

Mr. President: Senator, under Standing Orders, the name of presidents must not be used to influence any discussion in a debate.

Sen. M. Shabazz: Point well taken, Mr. President. We look at the exemplars and see how they deal with alcohol and drugs to know in which direction to go. These are the things that are important. You cannot be presenting one picture here and doing another thing. [*Desk thumping*] Who determines the social order? Who determines whether alcohol is going to be legal or not? Who determines whether the weed eater comes into one’s country and kills all the marijuana trees, yet there is cocaine in the country flowing harder and bigger than everywhere else? Sigmund Freud told us that the best drug he ever used was cocaine. He was the father of psychiatry and liked to use cocaine. Who determines? Coca-Cola some years ago had been made with extract from the coca leaves. It was recently banned.

There are politicians who have smoked marijuana, because we have seen it happen with—well, I could talk about the President of America, Sir. He said he only pulled it in yet never inhaled. These are the people who should be able to say, “Well, I have smoked marijuana so these are the effects and you should not do it”; or, “I have used some type of drug and this is the effect”, but they are afraid. Nobody in this House ever smoked a joint, because we see it happening. Nobody in this House ever was involved or took a sniff in anything because politicians never did. They could only pull it in but not inhale. That is all politicians could do. So what are we saying to youths? How could we reach them in an environment like this? Is it not that we are just talking?

All we are doing is talking and nobody could give the example to say, "This is why you should not use drugs", because we do not use it. One cannot become a politician and use it and if one is a politician who uses it one will lose one's political position. What are we bringing? We are bringing things here and asking that they be administered and done in a proper way, but we really have to look at what we are doing and the type of examples we are bringing forward for people.

11.45 a.m.

I have looked at the Bill, Mr. President, and as I have said, really there could be no objection to it. However, there are two things I would like to ask about. On page 8 of the Bill, I am a bit concerned about why "evidence by a police officer above the rank of Sergeant or by a senior Customs Officer that any device, article or apparatus is for use in the consumption of a dangerous drug, or in the preparation of a dangerous drug for consumption, shall until the contrary is proven, be deemed to be sufficient evidence of that fact". I want to know why it must be a sergeant and above. If a corporal or a constable saw someone with the apparatus, would their evidence not be strong evidence?

The sad thing about the drug trade is that although drugs mean big money, like big people do not get held for drugs. When they get held, there is some loophole. We had a sad case in this country. I have no objection against the young "fella", because if it was my son, I would be cool. The police held a young "fella" with drugs in this country. They took him to court and he pleaded guilty for possession of drugs. When he pleaded guilty, it was found that it was stopping him from attending university. He appealed the case, went back to court, and he was freed under section 71.

There are certain people who cannot get that condition in this country, Mr. President. Some youths were driving a motor vehicle which they rented and the police found marijuana in it. They said the marijuana was left in the car by the people who rented it before, and it had nothing to do with them. Could a group of people like me rent a car and use that as their defence?

Some people from Venezuela recently got caught with drugs, were charged in the court and were freed. After they were freed, it was said that the judge who tried the case made a mistake, but by the time they were ready to bring these people back to court, they went to Venezuela and up to today, they cannot find them. Every time the people who seem to have money are caught in the drug trade, something seems to happen so they could go free. What are they saying to the young people?

Dangerous Drugs (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

Mr. President, last night I drove by T&TEC. I wish I could ask the hon. Minister of National Security—this is a sad state. Do you know where T&TEC Power Stars is at the end of St. James? Somehow nobody knows where the drug lords are and who to hold for drugs. When one drives up that street, there are only “sprangers”, “pipers” and drugs selling there morning, noon and night. When I drive up that street, I see people who I know, who are talking to me as friends, and nothing is happening on that street to deal with the problem and that is one of the biggest drug holes in Trinidad.

It is time that maybe the Minister of National Security could put on some ordinary clothes and drive up in the night and see what is happening there.

Sen. Brig. Theodore: I will come with you. *[Laughter]*

Sen. M. Shabazz: I am willing to take him. I am willing to go with the Minister of National Security and show him the level of drugs being sold there and nobody is holding anybody. We know who the traders are in this country. Drug lords could give people million-dollar bribes. I have two rewards for drug cases. Drug lords could give big bribes; two million-dollar bribes.

Drugs keep confusing the country. The thing is sad, Mr. President. Very sad. When there are drugs in the country, it destroys the fabric of the country, the young people. People are stealing even from their own parents, setting up their own families to have them robbed, because that is the kind of situation, the type of effect drugs have on the minds of the people and how it affects the young people.

When the Attorney General talks about education, what are the programmes for education that the Attorney General would be talking about or that this Government would be talking about to take young people away from drugs? Where are the programmes for young people that this Government has stopped and has interfered with that will keep these young people from drugs? Are they going to implement them? The Civilian Conservation Corps has gone away to shambles, as well as YTEPP and the youth camp facilities. We keep talking about that in this Senate over and over again and they seem not to take it seriously. These are the programmes set up to help young people move away from drugs.

The cultural things like the Best Village programme; all of these programmes were set up to have people culturally directed in such a way that we will remove or take their minds away from drugs. Where are these programmes? Will the Government be ensuring that these things be put back into place? Mr. President, the list goes on and on.

We are not hearing the radio programmes and the types of calypsoes that are going against drugs on the radio stations. As a matter of fact, we have a culture where there is a foreign type of music that encourages drug use and all other sorts of things, and the ones we have here that should go against drug use, that talk about not using drugs and uplifting the society and building the nation, those are the ones we and our children are not hearing.

Let me give an example, Mr. President. My daughter is 29 years old going on 30 years old. When she was at age 16, because I wanted her to hear a calypso sung by Sparrow called "Education", I had to take her to a Sparrow concert, because we were not even hearing it on the radio station. There were other kinds of calypsos there, so I had to explain to her about the different types. Where are the calypsos on the radio stations talking about nation building, talking about anti-drugs, things like that? We are not hearing them, but we are hearing others with words that will shock you, Mr. President.

We talk about building a nation? We are talking about educating people on an anti-drug position? The musicians continue to ask that they get a certain percentage of their music played on the radio to help build and uplift the nation. For some reason, we do not know why that is not happening. It has been asked long before. Let us seriously talk about building a nation and about anti-drug programmes and let us work very hard on this, because it seems not to be happening.

It is good to hear the Attorney General talk about hundreds of thousands of dollars worth of cocaine passing through. Look at how the drug trade is going on and on and how many Venezuelans and people from our neighbouring islands are involved. Nearly every time we hold somebody with big drugs—we still do not know how to guard our coastline and how to deal with it. We cannot go to Venezuela, but they could come here so easily. We are asking our foreign ministers to do something, and we are not hearing anything, but when we bring it up they say we did not do anything 10 years ago and we had it in our hands, but for the Venezuelans, the trade continues.

Let me tell you the sad thing about drugs, Mr. President. When drugs are in the country, especially cocaine, cocaine brings guns into the country. One has to have guns to protect cocaine. When cocaine is coming into one's country, arms and ammunition must come with it. A man could lose a whole room of marijuana and that might only cost \$.5 million. A handful, two handfuls of cocaine, might cost \$1 million. Cocaine is a big trade, and they know it. What are we doing about it?

Dangerous Drugs (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

I am not saying not to fight the weed. Fight it down, but just as alcohol is legal, I am telling you, Mr. President, that in the next 15 years marijuana will be legal in America, because they already have factories with marijuana stacked up like cigarettes, only waiting to kill all the marijuana in the Caribbean to let that go to sell to the world. By then they will have the control. This “weed eater” thing is a big joke. We want the “cocaine eaters”, not the actual ones, but the cocaine destroyers. What are they doing about it?

All these crimes we are hearing about seem to be related to drugs, to cocaine and bigger drugs. Where will we be taking our society? There are places in the world—if we go to Sweden and other places—where they are giving out needles to drug addicts, and there are squares full of addicts. Go to Nelson Street at 2.00 or 3.00 a.m. and water will almost come to one's eyes. Many of these people who are bringing laws do not see that. Many of these people bringing laws to change the drug trade are not seeing what is happening to people's families and how it is destroying their families. I know they are not seeing that, but they are bringing the drug lords.

When we talk seriously, they say they hung nine drug lords in this country. Hear the “kicks” about that. Ten of us will be selling drugs and involved in the drug trade, but this is a system now that will take out two of us to give evidence against eight, so two drug lords come to give evidence against eight, they kill the eight and give these two special treatment as though they are heroes, yet all of us are dealing in drugs.

Mr. Maharaj: All of us?

Sen. M. Shabazz: I say “all” meaning not all of us here but the 10 people dealing with drugs. Whoever said “all of us” over there might have a history that we do not want to go into, because I do not want to get into that personal life. I said “all of us” because it might be my job to defend drug lords, but I do not know. Let me not go into that, Mr. President. Some of them I might be defending might fall down and die just so and I would not know who killed them. I do not want to go there.

We know who defended the most drug lords and who is bringing the most laws to lick up the drug lords now.

Mr. Maharaj: I thought he would congratulate me.

Sen. M. Shabazz: I congratulate you for defending them and I am congratulating you for killing them. You defended them like a hero and killed them like a hero. Since they have been killed, we are seeing no more. Why is he

not silencing any more? Some people feel it is because that set he silenced had some knowledge of some things he did not want known, but I am not getting into that. No more are being silenced and he is looking to put the blame on me for not silencing them.

Mr. President, I am saying that this drug thing is a serious thing. One of the things I looked at—and I mentioned it to the Attorney General—is where a sentence in life means the natural life of a person. Natural life of a person is something we need to be careful about. Our society must not seem to be brutal. If a man commits an offence at age 25 where he gets life, under this section, I cannot see them putting this man in jail until he lives to age 88 or age 92. To say “natural life”, we need to be always careful with that.

It is the second time I am seeing a Bill here saying that “life” means “natural life”. A society must be softer than that. It is different to life imprisonment; the natural life of the person. I am saying that I do not like to see that appearing in any Bill at all. It is the second time I am saying this to the presenter of this Bill; take natural life out, because there may be a man in prison for 60 or 80 years. When the man has realized he has done a wrong and has paid his debt to society, he is still in prison, and it might be time for him to come out and start to preach or talk to people about why this life is not good. I am objecting to that, and on this side we ask him to look at the question of what indeed is natural life.

Mr. President, the whole thing goes on and on. We have to help the addicts, even the people who get on drugs. Sometimes it is not their fault. We live in a society where legal drugs have become a serious thing. People take pills to sleep, pills to wake up, their child has a problem—long ago when I had a problem, my father talked to me and I had to deal with that, because nobody wanted to have a nervous breakdown. We dealt with that in the structure of the family. Today, as long as the child does not listen to them, they run to take him to a psychiatrist and put him on some pill. Right away, they start the children learning to understand that pills are very important things in the direction they are heading.

Then, they reached to where the legal pills are not working or they are not getting the type of responses they want from them and they try to experiment with other things that keep destroying our social fabric.

12.00 noon

We need to look at that. These are the types of things we need to be talking to parents about and educating them on. We need to open up the society in a better way doing more for people, helping people more, reaching out more to people and being very serious about the way we do things in order to help them.

Dangerous Drugs (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

We talk about the youths in our society. What about the older people? We ought to be reaching out and helping them. Stalin once sang a calypso which always stayed in my mind. If you do not take care of your older people, you are really telling your youth that if they do not make it or they miss, they are going to end up on the side and nothing will happen to them.

The vagrant situation—90 per cent of the crimes happening in this country is because of the drug trade and the vagrant situation we are seeing in Trinidad and Tobago is because of the drug trade; much of it is because of that. I ask the hon. Attorney General to pass laws and do something now. Take a different position to the one taken before where the vagrants were concerned and try to pass laws to help the vagrant population change so that when people see you working with the people who do not have a chance, it will give them the strength to know that if by chance they did not reach their goals, this society that they tried to serve and that they worked in, will, at some point in time, take care.

Mr. President, through you, I appeal to the Attorney General. Although he knows the vagrants have rights and they now have so much rights that we now have a president of the vagrants association in Trinidad and Tobago. Understand. It might sound like a jokey thing and we will laugh at it but we have a president who is saying, "You cannot move me from Tamarind Square because I have my rights." Who induced that feeling of rights into them? Human rights—"You cannot touch me. I have my human rights." That seed was sown in their minds by Members, or a particular Member, but we are not going there because it will be said we are inducing wrongful motives and I do not want it to be that—but he told them that they have the human rights and now the vagrants in Trinidad and Tobago have an association with a president, a secretary, a treasurer and all that and you cannot interfere with them.

As a young person, as a Trinidadian, as a foreigner walking through our city now, one sees what is happening with the vagrants. They might even lick you down, too. They may sit on you. As a matter of fact, town is almost becoming vagrant town because you have to give them room when they are passing. The city is no longer ours. It is like they take over the city. Do you know why? It is because they have human rights. This is what the society is supposed to look at. These are the things that we need to look at.

All the other things that we see happening in this society, we know that many of them have their roots in drugs. As we go along, we say, again, because I think the Attorney General hit it on the head, laws alone are not sufficient. Demand reduction and better education to bring the society to an anti-drug culture, that is

what we need to see happen. Mr. President, if they will work on that, if the Attorney General would tell us what the programmes are, we will know that the thing could work better and that is what we are looking to see.

Much of the violence among families stems from drugs and I feel very sad when I read recently that the hon. Minister is no longer the Minister of Women's Affairs. I think it has been handed to the Prime Minister's Office. I feel very sad about that. I read it in the newspaper. One of them was handed over to the Prime Minister's office and I think that is very sad. I asked and the hon. Minister told me she gave it up, it was not taken from her, so it is very, very sad. I feel it in my heart because I think that the hon. Minister should really be handling that. Somebody should be dedicated to doing that and I think that where it was sent, I do not want to go further into that, but I do not think it was sent to the best place.

Sen. Dr. Phillips: Mr. President, I want to state that my colleague is very badly informed and he may have misinterpreted something he read in the press. Please, be careful.

Sen. M. Shabazz: The Minister gave up a serious ministry because I asked her—

Mr. President: Senator, try to be relevant please, otherwise I will cut you off.
[Laughter]

Sen. M. Shabazz: Yes, Mr. President, but I am saying that because of the domestic violence, it is really important to see that these ministries are worked on and kept by people who can work on them very hard and positively.

Mr. President, the argument goes on. We need to be very serious about what we are doing. We need to find rules to deal with the foreigners in this country on the drug trade. We need to look at ways to be seriously educating the people, especially the young minds as to how to stay away from the drug trade. We need, when we see ourselves as exemplars, that we do not create these kinds of confusion in the minds of the young people as far as drugs are concerned. Look at what is happening with the criminal activities. It is important. We look at our country. We do not know. Sometimes when leaders and heads of state boast of how much they can drink and sometimes we hear stories of them getting high, it leaves a bad impression on the nation.

Mr. President, it is an attitude called the drug attitude, too. A drug lord attitude is an attitude, too. That attitude can only develop—because what is a drug lord all about? The first thing with a drug lord is that the drug lord attitude could filter

Dangerous Drugs (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

into other things because we have business lords in this country, too. Listen to what they like. They like to be close to the seat of power. That is the first thing a drug lord likes. He likes to hobnob with the seat of power. A business lord is just like that, too. They like to be close to the seat of power. If they could call a minister or a Prime Minister and say, "Come now", when he cannot attend to other matters, they would call him and say, "Come now", and he would rush to them. That is what lords are about. So you could have a drug lord and a business lord in the same way.

What does a drug lord like? Beside being first, a drug lord, if he likes you, will treat you like a king. You are his friend. A business lord is the same way. A drug lord, if he does not like you, destroys you. A business lord, if he does not like you, will destroy you even if he gets people to bring false evidence on you. The attitude of the drug lord is the same and we are starting to see people believing that the drug lord attitude is the better attitude because the young people are doing the same thing.

Young people do not want to work because they watch the drug lord making 10 or 15 years of a good life driving the big cars, living in the nice homes. He might die some time but do you know what they say, "It is best I get 15 years like that." The drug lord's attitude seems to be filtering into our society and we need to look at that. Power, nice times, nice ladies, nice material things—those are what the drug lord wants and enjoys, but the drug lord's real thing is to be close to the seat of power.

When you as a minister cannot call another minister; a lord, whether it is business or drug, might be able to do that. We see developing in our country where sometimes a head of state wants to meet another head of state to talk important business and they are busy for weeks and a business lord might call and they are gone, one time—10 minutes. "I am coming", and it might not even be on governmental national business. We need to look at the attitude of the lords filtering into our country.

When you put these lords as exemplars, they are destroying the fabric of the nation because you are causing confusion and we need to look at that attitude filtering, whether it is the drug lord or the business lord. We do not want any lords; we want people who are simple, operating, developing and making sure that the country becomes a better place for all of us to live in.

I say this, really, looking at what is happening with the youths of our nation, looking at where everybody knows where drugs are sold but you are not hearing people getting arrested. Everybody understands the effect.

I saw a sign that touched me some years ago about which I always speak. As an ex-policeman—I am not making anything against the police—I know the country was going into trouble when I saw a sign in Laventille which said, "Bandit is Bandit and Police is Bandit too". What they were saying is that they were already getting corrupt people in the service.

Mr. President: The speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. M. Shabazz: Mr. President, because of this whole talking scenario that we are on, the youths are now telling us, "Too much prayers", because all we are doing is talking and really not doing anything to help them. We are talking; we are passing laws; we are making laws but they are really not seeing a society that is changing. What we need for the young people, for the poor people, for the underprivileged, for the rich, for everybody, is a society that will be changing, not on the basis of, "I for me", "You for you", "I see about you" and "You see about me", but of a nation building which is taking care of everybody, looking at the underprivileged and all of us trying to reach out to them; looking at those who have but seeing us moving as a society, working as a people and putting into our minds and our consciousness that one of the things we want to do is not let drugs infiltrate our society, understanding how drugs destroy the society.

Play the music; get on the radio station and make that kind of demand just as you can make the demand to have a certain time on TV for government programmes; play the music to ensure that the people will understand that there will be a rallying call for the nation to keep the youths away from drugs.

Set up the programmes that will educate them. These are the things we need to do. Put programmes in place and let us try, really and truly, regardless of our religious and political differences, to have a society that will be meaningful at the end of the day for all the children all the time, because it is the children, the young people, whose minds are going to be destroyed.

Dangerous Drugs (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

The whole cigarette argument that goes on, let me tell you, Mr. President, nobody starts to smoke at age 24 or 25. All who started to smoke cigarettes started at ages 8 and 9, or taking your father's or aunt's cigarettes and running and hiding. When a fellow reaches age 24 and he is not smoking, he would hardly smoke again. We know that.

Do not fool yourselves that young people are smoking the cigarettes because of the example and because you left a pack of cigarettes somewhere, or they see you doing it as an elder, they like how you look and they take the chance.

The advertisements with the nice ladies, the boat with them diving into the sea and keeping the cigarette in the air, not wetting it to take a puff when they come up makes the young "fella" feel that is the right way to go. We are doing the same thing with cigarettes as with alcohol.

I end by making two points. I have nothing against the West Indian Tobacco Company Limited, but I really wish a company that does not deal with alcohol could become the company that gives the prize to the best sportsman and best sportswoman of the year in Trinidad and Tobago. It is the best way to set an example. You cannot tell a fellow not to smoke, to keep off cigarettes because he is a sportsman, but still he gets the biggest award from cigarettes.

I have nothing against Carib Brewery and I am glad for them, but I wish our West Indian cricket team could wear a Malta cork on their shirts rather than a Carib cork. Because while we are watching them playing cricket throughout the world, it is sending a message to young people that nothing is wrong with drinking and nothing is wrong with alcohol.

I wish all these people who have to pass the laws—and I would probably take that ruling for myself today; I would think about it this afternoon—all the judges who have to prosecute people who are dealing in drugs and other things, would not drink and get high, too, to go and prosecute the people who they do not want to be high.

Thank you very much, Mr. President.

12.15 p.m.

Sen. Martin Daly: Mr. President, this amending legislation presents a useful occasion on which to consider how far a Parliament should go in accepting draconian laws in order to attack a particular problem. This is a very important question. It is something we have debated before, but as this Bill goes a little further along the road into the incursions of traditional freedoms and understandings in the society, it is important to raise the question again.

I do so against a background where at the moment we seem to have something of a legislative trend of bringing draconian laws in order to solve particular problems. We are interfering with structural changes in our fundamental laws. We are interfering with fundamental things in our Constitution, always in the name of attacking some particular problem; whether it is racial and religious abuse; whether it is the drug trade, whether it is various forms of antisocial behaviour that none of us would support. [*Interruption*]

Mr. Maharaj: Integrity.

Sen. M. Daly: It raises the question of how far we must infringe on traditional freedoms and understandings in order to deal with these problems. It also raises the question of whether legislation is either the most effective or the only effective solution against antisocial behaviour.

This Bill has certain provisions in it that represent substantial incursions into our traditional arrangements and understandings about our liberty. I cite as two examples, as the most serious part of this Bill, from that point of view, Part IVA which begins on page 14. You would see that that deals with burden of proof and presumptions and it also deals with sentencing in clause 19, which excludes the operation of the Interpretation Act that applies to the penalties that are contained in this legislation.

Now, Mr. President, fortunately for me—although by being an Independent Senator, I am in politics—I am not a politician, and no one, including those who apply both personal abuse and economic sanctions to my activities in the Senate could be so stupid as to tell anybody on a political platform that if I oppose or suggest an amendment to a particular provision in a piece of legislation like this, that I am soft on the drug trade; I am in that happy position.

Mr. President, because I intend, at least, in relation to clause 19, to seek to persuade the Government that that particular clause is inappropriate and not required, may I put down my markers again. No amount of personal abuse by politicians; no number of economic sanctions by the people who do not like what I say is going to deter me from putting forward what I consider to be the appropriate arguments in favour of our liberty. [*Desk thumping*] I am putting down those markers very, very clearly. Anyone who is involved in politics or looking at politics very closely would understand why I am putting down those markers. Let those who have ears to hear, hear.

Dangerous Drugs (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

Against that background, I would like to continue the reasoned argument against draconian laws. In my view, Mr. President, and I apply these arguments particularly in relation to Part IVA of this Bill, they could apply equally well to other things on the Order Paper; some of which we have to debate today, some of which we may have to debate in two or three weeks' time, or maybe not at all.

The reasoned argument against this is simply that the traditional arrangements that have been made for making sure that innocent persons are not convicted, the traditional arrangements that have been made to ensure that politicians cannot rule the country without checks and balances, are there for very good reasons.

They are there because whoever comprises the Executive of the day would comprise an amalgamation of men and women who are merely a reflection of the broader society: some are good; some are not so good; some are compassionate; some are not compassionate, and some believe means justify their particular ends. It is for that reason that most democratic and most civilized societies put legal structures in place to ensure that no particular government, whatever its stripe, has total control of the state at any given time. I would like to repeat that.

We put many legal structures that are designed to ensure that no government, whatever its stripe, has total control of the state at any one time. So we have carved out certain privileges and certain constitutional provisions, for example, for the media, for religion, for liberty and other things, because the society operates on the basis that those are things that should be preserved, otherwise the society will not function with equanimity, equity and in a balanced and civilized way.

One of the arrangements and one of the traditional understandings that we have is that it is the burden of the state to prove that someone has committed an offence. I am sorry to restate all of this, it is very trite, but I think it is important to understand what we are doing. Not only is that burden on the state, but the state has to prove that to a high standard of proof. They have to make the persons who are trying the accused—whether it is a jury or a magistrate—sure. We debate beyond reasonable doubt, but let us accept that we have to make them sure.

That has been so unlike, for example, in the civil arena where it is sufficient to persuade a judge—or sometimes if you have a civil jury; we do not have any in Trinidad—that something has happened on a balance of probabilities. We do not convict people on a balance of probability and we do not put the burden on people to prove that they are innocent of the charge which has been placed upon them.

What we are doing in this legislation, in many of these provisions burden of proof and presumptions, is that we are reversing or standing on their head the traditional arrangements about burden of proof and the traditional understanding of the law about what constitutes possession and so forth.

If we go back to, for example, page 9—which the Attorney General explained—at the top of that page, we are including in the definition:

“(2A) For the purposes of this Act possession of a thing shall include control of a thing which is in the custody of another.”

That is a very vivid example. Traditionally possession and control may not necessarily be the same thing. In order to make sure that the links in the drug chain are defeated, we are making this change, but we are actually saying—to take a more pedestrian example—east is really west, or that north is really south, and that is what we are doing in this legislation.

That is a very serious matter, and it is not enough to simply say that drugs are a scourge and that we have to eradicate the dangerous drugs trade and, therefore, that compels us to pass draconian laws. Having passed this draconian law, let us assume that a policeman plants a dangerous substance, a forbidden substance on someone for whatever motivation; it might be personal. He might plant it on his spouse who has left him or he might plant it in the house of the spouse who has left him, or he might plant it in the safe house that is accommodating the spouse who has left him. I ask, rhetorically, I wonder where that would leave the providers of the safe house? Where will it leave the providers of the safe house?

When you start standing the world on its head and start saying this has to mean that, because we have to get at the drug trade, then, presumably, one could find a situation where if the evidence was skilfully assembled—let me not use a more emotive word—some of our revered social workers might find themselves on a charge which they might not be able to rebut, because this legislation is so tightly drawn. That is a very serious thing, because what we are doing is building this chain by these presumptions and by interfering with the burden of proof, to make it so that once the police drop the noose on you, it is as tight as it possibly can be. To use the current phrase, there is no “wriggle room”. That is what we are doing.

It may be necessary to do that, but many of us question it; many of us question whether laws that are so totally devoted to interdiction do not have the power to do more harm than good in the long run, particularly when placed in the hands of

Dangerous Drugs (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

any government, whatever its stripe. Maybe someone would say that I attacked this Government, I am not doing any such thing. I am trying to make a philosophical contribution about draconian laws; that is what I am doing.

If anybody chooses to misinterpret it and say things about me, they are free to do so; it will make absolutely no difference to me, but I am going to do my job. [*Desk thumping*] We must have a philosophical consideration of the need for these draconian laws, because they can have the consequences of which I just gave some examples.

The whole philosophy behind this legislation is committed to the full-scale support of interdiction which any statistics you look at will tell you is one of the least successful operations in the world. Of the most favourable view of the interdiction operations of the world authorities, they probably interdict, on a good day, 10 per cent of the world's supply of hard drugs. This is where we are going; we are going in full-scale support of something that is inherently unsuccessful, and having draconian laws that could be seriously abused and provoke serious injustice.

Mr. President, I would simply say that these reasoned arguments apply to constitutional amendment and opportunities legislation as much as they apply to legislation like this. It is a philosophical question: how far do you take the law and fashion it into a cold blunt instrument in order to attack a particular piece of antisocial behaviour. It does not mean that we do not all agree that the behaviour is antisocial. The question is: how do we deal with it? This is a very, very useful time in the course of this country's relatively young history to pose these philosophical questions about these laws which we pass and which we look at.

These are things that we have to consider very carefully, and if it suits anyone to say that by raising these philosophical questions you are soft on the drug trade, let them say so; it is not going to make any difference. You are not going to fool anybody with talk like that. Having put, what I consider, the philosophical context of this Bill, may I just be permitted to say what position I intend to take. It is a matter for everyone else what position they intend to take, but because we have to have a position on this I wish to state my position very clearly so that it cannot be misinterpreted.

On balance, Mr. President, this is a personal view—I am satisfied that we have to do whatever we can to bring successful prosecutions against people who are engaged in this deplorable trade, so on balance, I am prepared to accept section 29(a) and (b) and a lot of the other presumptions, because of this reason.

12.30 p.m.

At the end of the day no matter how tightly you draw this legislation, we still have independent judicial officers and we still have juries, and I am confident—I do not know at what stage we are going to start interfering with that—that if, for example, the director of a safe house for battered women found that that person was placed on a charge of some abuse by someone with the power to abuse these laws, it does not matter what they tell the jury, what instructions they give the jury about possession equals control, the jury would know what to do. Such is my confidence in that particular check and balance. At least, at the end of the day, however the evidence is presented, you will face judgment by your peers in most cases.

Of course, sometimes you will face the magistrates and even though I am confident that the magistrates would know how to deal with the evidence, because at the end of the day, whatever you present forensically, people still have instincts, very good instincts and I daresay my dear friend and colleague, Sen. Prof. Kenny could give us a philosophical discourse on how people operate their instincts when it comes to making an assessment of whether people are guilty as charged or not.

So on balance, having said what my philosophical position is, I would accept most of these provisions and commend the Government for bringing them in line with certain interdiction. I am merely sounding a query as to how much longer we are going to carry on with full-scale interdiction when it probably only attacks 10 per cent of the world's supply, but that is another type of debate and as they say we need not go there on this particular occasion.

Mr. President, I do have a serious problem with section 19 and that is why I am putting the philosophical context that I am, so that the position I intend to take on section 19 will not be misunderstood. What section 19 does is exclude from the operation of this Act those provisions of the Interpretation Act which work this way. If I could make it as simple as possible and as quickly as possible, what the Interpretation Act does is, it says in simple terms if you indicate a particular amount of punishment for an offence, then that is a ceiling, you cannot impose more than that, but it does not mean that you have to impose it. If it says 15 years and \$200,000 you can go up to 15 years and you can go up to \$200,000 and you cannot exceed it, and it also provides that if you provide for a minimum penalty, that minimum is not in fact binding. That is how I understand it, and it also provides that if you have two penalties linked by the word “and”, in fact they are alternatives.

Dangerous Drugs (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

Again, the Interpretation Act is a very old and important piece of legislation and I am certainly not against change. In fact, I think we should have change as often as possible, but that is another philosophical question. That then raises the question of the devil you know and the devil you do not, or the devil you knew before, so that is a different problem and many of us will have to confront that dilemma some time this year, but that is another problem.

Now the point about it is, that those very general provisions in the Interpretation Act have been there for a long time to ensure that ultimately what sentence is imposed is left to the courts and I have a philosophical position against the legislature or the executive telling the courts what to do. I have a philosophical problem with that and, therefore, I cannot support this Act with this section in it. It offends my philosophical position against the executive or the legislature telling the courts what they must do. You can tell the courts this is the policy we would like to have, this is how we would like you to regard this offence, so that when the court sees that you have made high penalties, the court will take it. But as an expression of the will of the people through Parliament, you have decreed that this offence should get a stiff penalty. Precisely how stiff the penalty should be within the range which the legislature provides is ultimately in my view, a matter for the courts. It does not mean that you cannot influence what the court does, you can influence what the court does because when you lay down very heavy penalties, that is an indication to the court how you would like the matter dealt with and how the people acting through their parliamentary representatives would like the matter dealt with.

Moreover, there are no two cases—whether it is in this horrible drug trade or not—in which the circumstances of the offence are the same; and it is particularly important in my view where you are making convictions, or put it another way, where you are making innocence so difficult. It is particularly important where you are making innocence so difficult, that if some person got caught up in this system—because it is a system—they could be the person looking out on the block for when the police are coming. It is particularly important if some person gets caught up in this system, guilty though they may be, where they stand in the system and how they came to be convicted against the background of this legislation is a matter that should be left for the courts. I know that there are provisions in relation to young offenders and we have accepted young offenders, but I am not talking about that. I cannot accept that in every case someone, let us say at 30 or 35, who gets involved in the drug trade should necessarily face all of these penalties that are provided for in here. Happily we still have a free press so we are reading the newspaper all the time.

Do you think, and I ask rhetorically, that all of these foreign drug mules we see displayed in the media, do you think all of them really sat down and thought out: I know I am going to commit an act that is almost satanic, but I am going to do it anyway and I am fully aware of the fact that if I get caught I will get 75 years in jail? Do you think that is how people always commit crime? Of course not. There may be something in the circumstances of the offence in which they got drawn into something which does not necessarily mean at that level. The court should have no discretion in how to deal with people like that because we focus all the time on what we call the big men in the trade and of course, if you could guarantee me that we could bring all the big men in the trade under this legislation and give them 125, 195 years, I would not raise these philosophical questions.

What about all the people in the middle of this system and in the middle of this social problem? Do you think, Mr. President, I ask rhetorically, that we have a problem with hard drugs simply because some people want to sell them to make a profit? There are all kinds of social variables that are operating in the drug milieu not simply because a group of big people decide that this is an easy way to make money. There are all kinds of other variables that have to be taken into account and while I am prepared to swallow those provisions that deal with how you prove someone guilty or innocent, I am prepared to swallow those because we still have the ultimate safeguard of the magistrate or the jury to administer those provisions however stringent they are, but if you take away the sentencing discretion of the court then there is no check and balance.

I ask this finally. I am really trying against my natural inclination to raise these questions as coldly and undramatically as possible. Do you think when the world woke up this morning and heard that the Deputy Prime Minister of “Tigerland—“ and I draw Sen. Marshall’s attention to this because he thinks life in “Tigerland” is very good, that is something we always have an argument about. Do you think when the world woke up this morning and heard a Deputy Prime Minister of a “Tigerland” country who had had political differences with his leader got nine years for sodomy, that the world believed that? Of course not. They know perfectly well that there is another explanation for those nine years for alleged sodomy. I cannot think of any person, except possibly the adherence of, actually, I think it was a Finance Minister, Sen. Kuei Tung—did I specify that? So you see, we need to look at these precedents very carefully. *[Laughter]* I would not like you to have some disagreement outside of your field say, like telecommunications. Of course, if we accuse you of that offence the world would laugh in stereo, but that is another matter, but there we are. I do not know whether

Dangerous Drugs (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

the Deputy Prime Minister or Finance Minister of this country in “Tigerland” had a dispute with his leader over telecommunications. I hope not. So you could have laws and one could look at “Tigerland” and say they have no drugs there because they hang people and they do this and if you throw rubbish in the streets and so forth that is why there is no rubbish. But you have to look at the overall social conditions that are prevailing in those countries to understand why that will work; why a system like that will work and why that kind of extreme deterrent fits into a social fabric like that.

Mr. President, I sincerely ask the Government, let us continue to have unanimity and pass this Bill without section 19 so that we do not remove one of the checks and balances in the system which is the ultimate sentencing discretion of the court. We can make the penalties as high as we like in order to indicate to the court what we expect them to do, but I have a difficulty with this and I tried to explain it as calmly as I can and without anything other than hypothetical examples such as the head of a house for battered women who might be set up by a policeman whose wife seeks refuge there. We live in the real world. Or God forbid, finance ministers who may have disputes with their bosses over things not in their fields, such as the paving of parks or telecommunications or anything else, nine years for such a dispute is really quite a lot to contemplate. It is certainly a vehicle for making you hush your mouth and therefore that is why we have to look at all draconian laws very carefully.

Thank you very much.

Mr. President: We will break for lunch at this stage. The sitting is now suspended until 1.45 p.m.

12.43 p.m.: *Sitting suspended.*

1.45 p.m.: *Sitting resumed.*

Sen. Prof. Julian Kenny: Mr. President, I am quite surprised to join the debate at such an early moment. Anyway, Sir, it goes without saying that I will give support to the legislation. However, I think that we have to take into account this rather strong statement regarding our institutions. I would support the spirit of the legislation but, again, I have reservations concerning the Interpretation Act.

Mr. President, there is something which confused me a little about the Bill, in particular clause 7. Now, I wonder whether a distinction might not be made between those who deal wholesale with drugs as opposed to the poor unfortunate who is trying to make a dollar. In the terminology of trafficking, if a person is

caught with 20 grams of heroin or 10 grams of cocaine, that is considered trafficking. I think there is a profound difference between someone who is doing this sort of thing, the minimal thing, and the broker or the real dealer who is dealing wholesale with tonnes of the stuff. I wonder whether a distinction might not be made. To me it is rather like dealing with a commodity, whether it be food or transport vehicles. There is the person who is dealing with it in volume then there is the retailer at the end of it. I wonder if there is not a distinction to be made.

There are two concerns I had with the Bill but I also would like to make a few comments about drugs and the drug culture. I go along with the Government that we must do something about correcting the problem but, Mr. President, drugs have been part of human society from the dawn of civilization. Drugs were processed from mainly natural products. Whether it is from alcohol, herbs of one kind or another, whether it is the sap of a plant or whether it is a mushroom, all cultures have taken natural products and incorporated these into their cultures. I wonder whether the issue of dealing with the drug culture might not be looked at in a rather broader perspective than simply, as Sen. Daly says, interdiction, trying to stop it.

There is no way that the use of drugs in any human society is going to be stopped, and the distinction between the use of legal and illegal drugs is really quite negligible. Alcohol is a product of fermentation and tobacco is plant material. It is not really all that different from marijuana and it does not matter what is done, one will have to deal with this problem surrounding those parts of the society that become addicted. Mr. President, these natural products have physiological effects on brain chemistry and, as I said, whether it is alcohol, tobacco or marijuana, these are chemicals and natural products that enter in a variety of ways. They can go through the lungs, they can go through the intestinal lining and these things affect the brain. I wonder whether we are perhaps targeting one part of the problem and not the broader problem.

As Sen. Shabazz was pointing out, we must have a full, comprehensive educational programme. However, Mr. President, I assure you, it does not matter which generation is involved, a certain percentage is going to be susceptible to addiction. Many a person can ingest alcohol, tobacco or cocaine without becoming addicted; but there is a small proportion of the human population whose personality, history and environment are such that they become dependent. Once

Dangerous Drugs (Amdt.) Bill
[SEN. PROF. KENNY]

Tuesday, August 8, 2000

one starts sliding down that first slope of addiction, one becomes deeply addicted, and I wonder whether the problem might not be better handled if we looked at the broader picture.

Mr. President, not long ago there was a meeting of the Association of Chief Constables in the United Kingdom and they came to the conclusion that the billions of dollars being spent on interdictions were without effect. Many of them were in favour of legalization of drug use, assuming that a certain part of the population is going to become addicted and then, instead, spending the billions being spent on prevention and on treatment. [*Desk thumping*] I wonder whether we are doing this. One hears a little about a drug centre in Piparo and so on, but do we see the message permeating the society?

Mr. President, it is not the first time I am referring to this but I referred to the Queen's Park Savannah—not the paving but the signs that appear on the eastern *façade* of the Grand Stand. Now, having done research on the laws regarding the savannah, I will ignore the Town and Country Planning Ordinance and the State Lands Act, but I will take the Savannah Ordinance. It is a very old one. It is an offence to affix a sign to a fence or a building in the savannah. That is the law of the land. We are here all the time. We must uphold the law. Mr. President, the Government has all the authority to remove the signs from the Queen's Park Savannah promoting tobacco and alcohol, which cause as much damage as marijuana and cocaine.

My point here is that, in support of what Sen. Shabazz was saying, we do not see that component of management of the problem, that is, education and treatment. All we see is draconian law which, as Sen. Daly has pointed out and which my readings have suggested to me, despite all the millions and billions spent worldwide on drug interdiction, is not going to have very much effect. Even in countries where people are publicly beheaded on Friday after prayers—[*Laughter*] It happens—one finds more people going in daily with it. I do not know what the head count is in Saudi Arabia but it is probably getting on to about 100 for the year so far. So it is a very, very, very complicated programme and what I would like to see is legislation quite clearly aimed at the brokers and dealers, the few people who command the trade.

Now, Mr. President, a “fella”, as Sen. Shabazz tells us, in the back of Belmont or Laventille who is caught with 10 cocaine rocks, is trafficking in drugs in the sense that he is selling. Is he really, however, dealing with drugs the way a commodity dealer is dealing with wheat or futures in agricultural produce or

futures in oil or whatever? We hear talk of drug lords and I question whether the odd person who may be caught and executed, among other things, is a drug lord in the sense that he is handling an empire where he has command of unlimited sources of US dollars, which is apparently the currency of the business, and I do not know how many such people are actually operating in Trinidad. I cannot see somebody in the back of somewhere handling the movement of what literally are tonnes and tonnes of cocaine.

So, to get back to my original point, clause 7, I am not sure that this makes the proper distinction between trafficking and dealing with the bulk material. Dealing with the bulk material, one must have command of communications, unlimited supplies of US dollars and things like that. One must also have secure communications, whereas the “fella” in Laventille or Chaguanas who is caught with 10 cocaine rocks in his hand is just simply going to a middleman somewhere and either getting it on credit or something like this, then selling it and repaying his supplier and so on. That is trafficking but that is not really dealing, in my view.

How do we attack the few drug lords to whom Sen. Shabazz referred? How do we attack the international scene where whoever is operating in Trinidad is clearly in communication with the bulk suppliers in Colombia, or wherever else the traffic is going on? I would not say that I am unhappy, but I do not think that this convinces me that somebody caught with 10 grams of cocaine is trafficking and another person has a shipload of two tonnes of cocaine is merely also trafficking. I think a distinction might be made.

I go back to my point that the state must come forward with a comprehensive programme that is going to embrace methods or mechanisms for catching the people who are responsible for this, penalizing them, but at the same time recognizing that there are elements in our society that are weak and are going to be trapped into it and finding mechanisms for attending to them, preventing them from being hooked and once they are hooked finding the mechanisms for helping.

Now, Mr. President, the final point, of course, is what I referred to originally. I think Sen. Shabazz has also referred to it. Any anti-drug programme has to take into account not only the illegal drugs but also the legal ones that cause as much distress and damage to our society. Thank you, Mr. President.

2.00 p.m.

Sen. Joan Yuille-Williams: Mr. President, I would like to take this opportunity to make a few remarks on this Bill, the Dangerous Drugs (Amdt.) Bill. At the outset, we wish to support any kind of legislation that would go

Dangerous Drugs (Amdt.) Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, August 8, 2000

towards curing this cancer in our society, because as we move around daily, we are appalled and saddened by the number of persons who have now turned to drugs. In fact, as I drive, I say to myself, another one bites the dust. Those of us who travel long distances, as we come to a traffic light, somebody comes to us and approaches us, and we really feel sad.

I am also appalled by the number of women who have become victims of this, therefore, we should do anything that we could as a government to assist, because we are going to lose the society if we do not do it with some haste. I want to compliment those who saw the other side of the legislation to assist, because legislation could do so much and no more. The scourge will continue if we do not look at the preventive side and see how we will want to attack it.

I want to take our minds back, because some people have now seen that as a niche market. I do not want to call them drug lords because they do not really look like drug lords. They have seen the weakness in our society in terms of getting what is necessary to educate our people.

We had an experience some years ago when I was invited to a meeting with a professional organization which was sponsoring a lecture on drugs. So many people try to sponsor lectures on drugs, just because they know it is necessary, but some of them do not even have the theory or the support that they need to do such a thing, or the technical help, but they try. In fact, most of what is done nowadays in Trinidad and Tobago is done by the non-governmental organizations trying to assist.

We were invited to this lecture by a professional organization. It was held at the South Chamber in San Fernando. It was not sponsored by the South Chamber. In fact, I think the South Chamber gave the building because they, too, wanted to do whatever they could to assist. A number of people went there and it was aimed at professional people. This lecture was supposed to be delivered by a Catholic priest—I want to put “Catholic” in inverted commas, lest I offend. One will see why. He was delivering this lecture. They gave his name, they gave his background, they said he was a very experienced person, he had travelled all over the world and had been doing this in many countries.

We went there that evening and the priest was introduced, as we would expect. He was dressed in his attire and he started to tell us the work he had been doing, not only in Trinidad, but in other Caribbean countries. He said he is from Columbia and he travelled several times to Trinidad and around the country. He talked about, particularly, the work he was doing in Marabella on the line, because he knew most of us were from south and were familiar with that area.

What struck me while he was talking was that he was able to go into all that was necessary to produce the drug. He could tell from the beginning to end. He could tell the ingredients which were used. He could also tell about substitute ingredients. He also thought our people were very creative in doing it. That was what he was telling us about; what was happening there.

Of course, he told us we were going to soon lose a large number of persons in our society, but somehow or the other, I found he was a little too well educated in this thing. I listened when everybody listened, and many questions were asked, because people were now “learned” from the drug education he was giving.

When I heard the Attorney General here this evening talk about chemical precursors, my mind went back to what this priest told us. He also told us he worked in a number of communities in Trinidad and that he would be in and out of the country, but that afternoon, it struck me that something was strange about the gentleman. However, nobody else said anything, and I just left it at that. I should also say he visited a number of churches in Trinidad, which we found out afterwards; not necessarily Catholic churches. He did some work with some evangelical churches, and so forth.

A few months later, we read on the newspaper where there was a priest in Jamaica fighting an extradition order. One of the grounds on which he was fighting this order was that he was married about a week or two before and, therefore, he was using this as the reason he should not be extradited from Jamaica. Through conversations and people calling, we recognized it was the same “Roman Catholic” priest who was in Trinidad. From that, we found out that this was the way he was working and doing this trade. He was not, as they would say, a drug lord. He went around trying, as he would say, to educate persons. He was using the garb of a priest.

I do not know how he was able to come into Trinidad and leave so often and go into all these countries and set up all these communes. What we recognized was that he was setting up people where those coming after could now bring in the ingredients, and these little manufacturing centres were set up and the work was being done; not only here, but throughout the Caribbean.

Normally, he would not be classified as a drug lord, and we wondered how we could stop these people, because this thing is not only on the surface. This is very deep. He was able to get to the professional, respected organizations. He was even able to get to some churches. As I was saying when I spoke of a niche market, these non-governmental organizations and churches recognize that they probably do

Dangerous Drugs (Amdt.) Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, August 8, 2000

not have the people trained to talk or to educate. So, when they hear about somebody from an international organization or somebody from outside coming to Trinidad, they jump at it. They give the facilities, extend all the courtesies to whoever these speakers are, who claim they are coming to help, and at the other end of the spectrum, they are just destroying us.

I think we need to look at how we could stop it. I am sure he is not the only one. I am sure there are large numbers of persons coming here doing that. If he was not caught in Jamaica, we would not have recognized that. Probably he might have still been visiting us and moving from community to community, getting our people involved, teaching and then getting the material in and manufacturing. Again, we would have lost the generations.

I am saying that we are looking at legislation, but we have to also look at this whole question of the drug. We have to have everybody on board and we have to look at all the facets. That is why I say, yes, I compliment the non-governmental organizations for trying, and probably it was a non-governmental organization—I do not think they invited him, but he would have been able to convince that organization that he had something to offer us. Clearly, if we do not take it in such a way that we can help and train our people, then we are going to lose them.

He probably thought he was a trainer, and that organization said that here was education. What I think he was doing was surrounding himself so that nobody would notice his activities in Trinidad. I do not think he really wanted to give us anything. I think he wanted to cover himself. So, I do not know if he was going under an evangelical licence or whatever he was using. His main thing was that he talked to the best people, knew the best people and he was respected, while on the other hand, he was doing his underground work.

I think we need to look at it on all sides. I do not know how—probably this is one for the Minister of National Security—but I am just raising it because these people operate in such a way that they try to outsmart everybody, and as I said before, this is a market for them. We do not have real programmes here, so that our people will jump to anybody they feel has something to offer, because we are all so scared to the extent at which this whole scourge will go.

As I speak about the lack of training, I also want to go back to another experience I had. In fact, I should say quite clearly that when I was a teacher, we had a teachers' convention and we invited the police to do something on drugs during that weekend. What I saw was that the police came in and they brought many marijuana trees and all the equipment, and we spent about two hours going

through, looking at it, seeing how it is preserved, talking about it, and we spent a lot of time on that.

As a teacher, at the end of the day, I asked myself, what have we learned that we could pass on to our children which will prevent them from getting involved in this? I did not want to tell them what this tree is like, how it grows, what happens to the tree, but that is what we got. I am wondering if the training, therefore, was not focussed on where the real problem was. So, we might be doing something, we might have people coming out with all the specimens, but I am still asking what is the nature of the training we are giving?

We learned about it and we could recognize it if we saw it, but I do not think it was enough for us as teachers to go back to a classroom or to help the young people. We need to look at that. That is why I say that men like this priest, as he called himself, would get away, because at the end of the day, we would have felt that what we got from this person—it was a Commissioner in any case, so I can say that—would not have satisfied us. Yes, we became a lot more inquisitive, and yes we knew all the things, the equipment and so on. Beyond that, we were not able to assist our children, except to tell them do not use the drugs. We could not even tell them some of things that would happen and how we could prevent it.

That is what I am talking about at this time. I am saying that the education is so important, we have to spend money to really train trainers here who will go out and assist. My daughter told me once that she learned more about the drug from school. She knew everything about it, not from the students, but from all those who came in teaching them, telling them how that is done and how this is not done.

I am not blaming those who tried to train us. This is what they knew. I am saying that we have to look at this whole thing in a different way, because probably the information we are passing on is not the information that is going to help to move them from where they are to another stage. Probably they are looking more at the chemical and the technical side of it, and that social side which will help to turn their minds from it, we are not focussing on that.

We ask ourselves, who should do it? We have the National Alcohol and Drug Abuse Prevention Programme (NADAPP) and the Ministry of Community and Social Development trying to help, but I think we have passed that stage now where we need to come out with a—and I agree with Sen. Prof. Kenny and a few others—comprehensive programme where we spend money each year in training in special programmes, because this is going a lot too far. It is affecting our children

Dangerous Drugs (Amdt.) Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, August 8, 2000

in schools. We see so many school children in it. It is affecting our family life and affecting entire families, and we need to give more priority to it. Legislation is one part of it, but even far greater than legislation, we have to ask ourselves what we are doing really for the society.

Yes, the legislation is to punish those who have found themselves involved, but we want that when these people come around, we can have a society that will turn their backs and say no. We tell the children to say no to drugs, but what are we giving them so they will know why they are saying no? They should be built up in such a way that they know why they are refusing it. That is the area we need to focus on a lot more; a well-structured programme heavily financed by the Government. We cannot leave it all to the NGOs. If we have NGOs out there who are willing to get involved, they should have the benefit of training education so that they could move on into it. Whatever is happening in our schools and the programmes we have in schools, this is not extra curricula; this is co-curricula now. This is an important aspect of the programme. If we do not handle it like that, we are going to lose a lot more of the children and our people.

Anyone in Trinidad who walks around will see what is happening. I know the San Fernando City Corporation started the centre to keep the vagrants off the street. They are doing it on their own. As Sen. Shabazz said, most of those vagrants are drug addicts. I was speaking to the manager of the centre just last week, and he was telling me that he has so much money to go so far. They come in there—it is like a halfway house—they spend three months, he sends them to be “cleaned”, they come back to him, and after that, he has no money. Last week he put two or three of them out on the street because he could not keep them anymore. There are so many people in there, he does not know what to do, the others are coming in, they had that chance to be cleaned and he had to turn them out. He did not want to turn them out but he had nothing else he could do with them. There was no programme where he could fit them into a job and they could move on. He tried.

2.15 p.m.

Therefore, I think that is why we should try to spend some of the money we have—we have a lot of money in Trinidad and Tobago. Nobody could say we do not have money. We have a lot of money in this country but, probably, the priorities are not right. We have much to show physically but, at the end of the day, we are going to lose our people because the core, the things that keep us from developing, we are not attending to that.

I would like to hear when we have a budget or something like that, how much money is going to be put into this whole business of drugs, not only intervention in terms of the legislation but support systems, education, programmes in the schools, [*Desk thumping*] programmes about homes for these people, jobs for these people. Where are we going to put them at the end of it? I think we need to look at that because if we do not, we are going to be spending a lot of money and we are all going to be sorry at the end of the day.

This morning Sen. Daly raised a point on the sentencing discretion of the court and I know that in the Lower House my colleagues all supported it, but when he raised it, it did strike a bell. I want to tell you of an experience I had with a young man with whom I worked and whom I considered to be a good young fellow. He was working at a steady job and he was going to the United States of America. I was glad when he got his visa, a 10-year visa. What I am telling you about here now is what I learnt afterwards.

He had that visa for about three months while he was waiting to leave. During that time, he suddenly got a number of friends and he would go all around with them—dancing, at the video clubs. They became very close friends. In fact, we wondered where he got those sudden friends three months before he left. We wished him well and had a little send off for him. He was supposed to be a nice guy.

I was called the very night to hear that he was taken off the plane—well, you can imagine how I felt—because somewhere they had discovered that he had drugs. He was held the very night and it so happened I went to his sister's house and asked, "How could that have happened?" The sister said, "Well, one of his friends brought him a bag to take abroad." I said, "You know you were supposed to search it", and she said, "We searched it." But, the bag was made with the drugs. Apparently, it was stitched into it and that is what happened.

Well, people would say sometimes that is a normal excuse and that was where I got worried because that had happened on several occasions when people probably deliberately did something like that and said they did not know. We believed him. We discovered later that there was a little ring of persons like that who know when people are travelling and that is how they operate. They made good friends with him. He believed them as his friends so when they brought this bag, they took out the stuff and the sister searched the bag and he went like that.

Of course, he stayed about three months without bail until we were able to raise the bail for him but everybody, including the police, had something good to say about the young man. We believe that he was really set up. He went to the

Dangerous Drugs (Amdt.) Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, August 8, 2000

Police Complaints Authority to see what could be done in terms of getting the people who handed him the bag arrested. I do not know if that could have been done. Nothing was done. He had his letters and everything. Eventually, he was found guilty.

Well, I am sure at that point the magistrate had a credibility problem because what else could you say. It was found in his possession on the plane and I think she used her discretion. From all the letters, it was his first offence if even he did not do it, but we could not tell her she was wrong and she used her discretion in the type of penalty he had to pay. I am saying he was given that opportunity, if not, if we had used the law here, it would have been very hard for him to recover at all after a time.

I am not saying that there are people who will use the same excuse because one of the things I think the magistrate had to take into account is that so many times you hear that same type of excuse, you do not know which way, and she had to make a judgment whether she felt that this time the person was really innocent or whether he was set up, therefore, she thought, "Okay. I brought you in guilty but I will give you a chance to make good your life."

Therefore, one wonders whether or not, with the legislation as it is, whether that opportunity will be given to anybody. I am using this as a real example of somebody whom I know and from all that we have seen and know of the young man, he is somebody whom we had trusted, somebody who had worked very well; his employers and everybody rallied to the cause and she had to use her own discretion. Yes, she brought him in guilty but in terms of sentencing, we are quite sure that she used her discretion. Had it been this legislation there, he would not have had a chance to make good his life which we think he deserved to have, those of us who worked with him.

I do not know if this was overlooked or whatever, but when I sat here, I recognized what it was about and I am going to think about it. I think we need to look at it. If that is the case where that discretion is removed from the magistrate, I think that we seriously need to look at it because there are so many times when people want to be very wicked and one can be easily set up. We travel in taxis every day; people come to our homes. There are too many cases where we feel that the magistrate needs to have that discretion.

Also, I heard the hon. Attorney General talking about the occupiers of premises are criminally liable. That is why I think the magistrate needs to have

that discretion. I think we need to give that opportunity because too many things happen.

I notice in some of these apartment buildings and high-rises—I do not know how you treat with that. Those are state buildings and there may be a whole nest there. I do not know to whom you go, who are the persons in charge there. I might be interpreting the whole thing wrongly but you can have in some of those buildings, a whole nest of these people on the premises who, as you try to walk up the steps, you see a whole number of them involved in this drug trade, whether they are smoking, selling or whatever it is. I do not know who you will find responsible at that point in time.

What I am saying is, whereas we really want to support any legislation that comes to this Parliament to see what we can do to remove this scourge from the land, I do not know how far we can go with removing it, but we also have to look at measures other than the legislation. We also have to look at how much money we put into the education of our people; how much money we put into the training for those trainers; how much money we put into the support systems and support homes for them; how much money we put into employment for some of these people so that when they are, as we say, clean and come back out, they are not frustrated outside again by not having somewhere to go or something to do.

This has to be a really massive programme if we want to attack it. Particularly, how do we look at those people who encourage our young ones to go off into drug activities? I have heard people talk about the cigarettes, the alcohol and all those aspects of it which, I think, we all need to look at, at the same time because I remember at one time we started not having alcohol sold on school premises. Those were little things that we tried to do to see if we could remove that from the consciousness of our children, which we applaud at this time.

I am saying that we need a concerted effort. I am saying we need to see this not in a small way. I do not know if we need to set up an entire section much bigger than the National Alcohol and Drug Abuse Prevention Programme (NADAPP) or anything like that where we look at it; where ministries come together to work it out; where we budget in a large way. What is education going to do? What are we going to do with the schools? What is the health ministry going to do? What is national security going to do? What was agriculture going to do? In every area, I think we need to focus now in a large way in terms of helping. The churches—how far were the churches going to go?

Dangerous Drugs (Amdt.) Bill
[SEN. YUILLE-WILLIAMS]

Tuesday, August 8, 2000

I was speaking to a friend from Nigeria over the emancipation holiday and I was telling her what I had heard about the AIDS scourge in Nigeria and that they were going to lose the entire country to AIDS. I asked her what they were doing and she said to me that the churches were doing the most. I must say she said the Pentecostal churches were now doing the most for AIDS because they were getting them to go to those churches and the churches on the whole were talking about, not only safe sex, but sex before marriage. They were using a different approach. She said a number of people were now going to the churches and that was helping more than anything else. So it was not just the medicine and the drugs; the churches were doing the most for AIDS in Nigeria.

We have not heard that on the other side. We have not heard of the work of the churches out there. This is what she said; also, that because of the numbers going into the churches, she felt that could be a strong influence on the lives of people. Therefore, we know that we have to influence the lives of people in several ways. We have a number of churches here. How much do we do to help by giving them money to help with programmes for the young people, or for whatever. We need to give them money. Probably, we do not think about giving churches money in that way. We just have the stipends coming through but if we have a big scourge like we have here, we would probably have to think about giving churches that money to help with the programmes, preparing and helping them with it. Wherever we have these people coming in, we have to do it.

What I say this afternoon is, as we look at this Bill, we need to recognize as a country that this is a big problem. We are still not handling it in the way that we need to handle it. Yes, we are bringing the legislation which is one aspect of it, but if you are going to stop certain aspects of it, you know when you put a fire here, another one starts there. We could fill the prisons with all these people and confiscate their property. That is one way but we will still have the others coming in. They will not stop. How could our people be in such a position to resist the temptation? They say, "Get thee behind me Satan". How could we get them in such a way to resist the temptation and move on.

I thank you, Mr. President.

Sen. Rev. Daniel Teelucksingh: Mr. President, just a brief intervention on some concerns I share.

First of all, basically, I identify with the main burden and the concerns of this Bill which affect all of us in this nation. The use of dangerous drugs and illegal drugs has been one of our serious social problems. Recently, it was like a plea of

desperation coming from Arima. I am sure you must have heard it, Mr. President. People from Arima have been saying over and over, that the borough has been almost overrun by pushers, users and traders in dangerous drugs and I am very concerned. I wish that we would hear from not only Arima, but Port of Spain, San Fernando, Siparia, Chaguanas and all the other places. There is this very loud, vociferous, national call. It is a call of desperation because of the widespread use of illegal drugs.

Mr. President, it was only a few years ago when the great concern about debates over drugs was that Trinidad and Tobago was a transshipment point and a conduit for drugs from maybe South and Central America going up North. I hope we realize that within the space of eight years, we are more than a transshipment point and a conduit. We are more than that. We are now users. We are not conduits only, but consumers and it is a very serious problem.

We have to deal with the fact that we are being used as a channel for the shipment of illegal drugs to the North and to Europe, but how much of it would be staying here among our people, maybe over the last decade? I identify with the basic concern of this piece of legislation, the Dangerous Drugs (Amdt.) Bill, the amendment to the Dangerous Drugs Act of 1991.

Mr. President, I want to raise some concerns about clause 5 which says at new subsection (3A):

"A person who cultivates, gathers or produces any opium poppy, or coca plant..."

2.30 p.m.

I would like to ask the hon. Attorney General if this is a provision in anticipation of, in advance of, if we are "taking in front". Do we have any evidence?—is the question I would ask. Do we have any evidence so far that attempts have been made, any attempts whatsoever, to cultivate the opium poppy or the coca plant in Trinidad and Tobago?

I ask this question because as late as on Emancipation Day, that is when we had a day off, the Organized Crime and Narcotics Unit cleared up a fully grown marijuana field with 200,000 plants. This is amazing. I understand and somebody told me that it was a very small field. Previous exercises that included maybe this unit and the Weed-eater helpers we have had from the United States and others, have destroyed a field with 500,000 and 300,000 fully grown marijuana plants, and on Emancipation Day, in addition to this, 50,000 seedlings.

Dangerous Drugs (Amdt.) Bill
[SEN. REV. TEELUCKSINGH]

Tuesday, August 8, 2000

These fellows must be real agriculturists; I was sharing this with Prof. Spence. They must love agriculture and love the soil. They must be very skilled in this business, to spend so much time to also defend the plants, to defend their fields with the trap guns; they build camps out there in the forest; they destroyed part of the Charuma Forest; 200,000 fully grown marijuana plants, 50,000 seedlings, 10 pounds of seeds.

Could you imagine, Mr. President, if we put that kind of effort and interest in agriculture to plant tomatoes, carrots and so forth in this country what would happen? If we could harness that type of interest in agriculture? I know, of course, that it is a bigger profit; the patience and the daring to plant marijuana. We have a serious problem here. I hardly hear anything about Jamaica being the marijuana garden of the Caribbean. We might be the marijuana garden of the Southern Caribbean. We are growing it for ourselves; we do not need to depend on anybody else.

Mr. President, this is the reason I asked the question about the cultivation of the opium poppy or the coca plant. If our people are so ingenious and concerned about going into the deepest parts of the Charuma Forest and the forests in the Northern Range or wherever, to do that kind of gardening, is it possible that now they are experimenting with some of the other drugs, hence the reason for clause 5(3)(a)? It is a question to the hon. Attorney General. I am very worried about this one. You do not put it past a Trinidadian, he would find a way of doing it.

I am very happy that Sen. Shabazz raised the question dealing with clause 5(3)(a) about marijuana. We are focussing on the cultivation, gathering and the production of marijuana. What about the word "promotion"? I want to add promotion to clause 5. What about the promotion of the use of marijuana, not only the cultivation, gathering and the production, but the promotion of? Sen. Shabazz spoke about the types of songs and music on the airways that promote the use of marijuana.

Mr. President, what about our parties? There are some radio stations if you switched them on right now you are going to get that special song. There is a clause which talks about those who possibly trade in marijuana near to any school; in fact, dangerous drugs and substances. You should not be found near to any school premises possibly within 500 metres thereof.

You see these young people walking down the road and they are getting it right there in their ears within the earphones. The types of songs and music which promote and celebrate the use of drugs, I believe that is an omission from the Bill.

It is not only those who plant, but those who sell in this way. I am glad that Sen. Muhammad Shabazz raised the question of music. What are we doing? I really feel it is an offence to sell the drugs in this way to the young people. You are closer than 500 metres; you are right in their ears.

We talk about freedom of expression and so forth, what about those local and foreign artistes who come to our parties and public shows and they actually sell the product in their songs and in partying? I feel that such items, these party performances on our airwaves, we need legislation to prohibit and outlaw those activities. I believe we need it. It goes a long way in selling it, I could tell you that.

Mr. President, this is not a very easy Bill for me to vote on, because of the philosophical position as outlined by my colleague, Sen. Daly. It is a very strong argument indeed. Personally, I never thought about it as he did. It is a very, very strong and persuasive argument. Maybe it might be a good thing, hon. Attorney General, through you, Mr. President, to reconsider. We have done this with other bills before, bills of a serious nature as this and even more serious. I know that the hon. Attorney General has been extremely generous over the last few years when it comes to the presentation of legislation; I have seen him pull back in the middle of a bill, pull back legislation for a few days to reconsider.

Personally, I studied this Bill. I know that we have a drug problem in Trinidad and Tobago; it is very serious problem. Arima is saying it and more towns, more boroughs, the cities and the villages are going to say it as loud as Arima said it yesterday and within the last two weeks. If the Attorney General or the Government will give all those who have a chance to say something, then I think there is need to look again at this Bill in the light of the contributions I have heard.

I would love to support this Bill. I fully identify with the burden of this Bill, the seriousness of this Bill and I would like to see it passed. I would like to see it in our law books, but with certain amendments, based on very serious and important considerations aired here today.

Mr. President, I thank you.

Sen. Winston John: Thank you, Mr. President. Members of the Senate, when the Attorney General presented this Bill I was very happy with the mood in which he did it, because normally he always presents his Bills in a very explicit way, and hence, it lends room for more dialogue and for Members to express themselves in the way they see fit.

Dangerous Drugs (Amdt.) Bill
[SEN. W. JOHN]

Tuesday, August 8, 2000

I read some years ago that England fought 10 opium wars against China. What they did was to pump opium into China, demoralized about three-fifths of the population before they attacked China and overran the country.

I recognize that drugs are not only for the use of people, but it is a major weapon in wars, and maybe a small country like Trinidad and Tobago and others of the Caribbean only stand on the side while these wars are being fought by these big countries. However, we cannot just sit by and look at what is happening and say that we cannot do anything about it, hence the Government has to pass relevant laws, as we see fit, to deal with those situations.

We as the Senate, however, have to recognize the role we have to play here, that is, to make laws that will govern the country in a holistic way, because whatever laws we produce here go to each and every one of us.

I have seen in the past some of the Bills that this Government has produced in the short time I have been here. When I look at it collectively I recognize that most of the legislation has been set in a way that moves toward curtailing a certain deviant behaviour, especially in relation to our kids.

When you look, for example, at the education situation in the recent sitting, in the past years, Mr. President, many of our children did not have the opportunity to go behind the walls of a secondary school. That in itself made those children left behind, feeling "This society has no need for us; we are really the victims." Then the majority of them turn to one side, and when we look at it, it is "liming" on the block and the normal scene as I would hear Sprangalang say, "Try it, you would like it". That is the normal situation and hence many children would try it and like it.

Some years ago, a youth about my age was travelling in a bus and he told me, "Man John, you know I on this thing, if Christmas pass and I ain't get over it, I cyar get over it again," and he started to cry. Within me I recognized that the guy was looking for help, but I could not help him. What could I tell him?

If you remember quite clearly the history of Trinidad and Tobago, it would have been rather strange to see a man with my hairstyle get up in the Senate and talk about drugs, because the whole mode in our society was that once you were a Rastaman drugs are your life. I hope that we have recognized that this situation has changed over the years.

When you listened to the radio stations years ago, you could not hear reggae music, and as quite rightly said the radio stations today pump reggae music; almost every radio station, except 97.1 FM. We recognize that the society moved from stage to stage, and as we developed certain problems developed with us. We have to put legislation in place, regardless of the outcome, to deal with them; we must try, and this is what this Government has been doing.

This Government has more guts than any government past to make efforts to put legislation in place to deal with the situations that are before us. If we do not take that line, the children who are our future are going to be lost. We want to make sure that more children feel comfortable to say, "We went to that high school." We want to make sure that more of our children will say, "No," and in order for them to do that we have to be able to tell them the truth, nothing but the truth. We have to look at history and what is happening all over the world.

We know as has been said by Sen. Shabazz that a poor man cannot bring cocaine into this country, and many times we may even say that some of the rich men in this country cannot bring cocaine into this country either. It has to be an international organization outside our region that would have the power and influence to do those sorts of things. So when we have to fight, it is not only our people we have to fight, we have to fight with the international agencies. I would not want to say more with respect to some of those international agencies, because as Sen. Yuille-Williams explained with this so-called minister, that is how things normally enter countries, into our gates, into our islands without gates.

Talking about islands without gates, my little island Tobago is a specific example. The coastguard cannot patrol Tobago waters; we need small pirogues or maybe we may have to go back to the era where we had the marine police. I spoke to Sen. Brig. Theodore on that and he really did agree that this is necessary and even explained there are three boats set aside to introduce that situation in Tobago, whereby our islands, our indented shores could be protected and that is necessary.

Tobago is not so hard hit as Trinidad with respect to drugs, and I think that in light of that situation we should collectively pay great consideration to keeping it as it is, or even developing it in a clear-minded sort of way whereby our children would not think that being high is the way.

Dangerous Drugs (Amdt.) Bill
[SEN. W. JOHN]

Tuesday, August 8, 2000

2.45 p.m.

We look at carnival, we look at almost every holiday or festive season in our country and every one of those festive situations tends to lead to the intake of drugs, alcohol or whatever. The piousness we had in respect of our preachers, our teachers, and policemen are on the side.

Recently I had an interview in Tobago while I was on the air; a guy who was listening came to me as soon as I stepped out of the radio station. He said to me: "Brother John, let me show you something." I went with him and he showed me 18 homeless children who came from places where their fathers and mothers are on drugs or there is some problem of abuse and I was shocked to know that really existed. When I saw this Bill was being debated today, I was glad to have an opportunity to express this sentiment.

There is also another example of an experience which I had recently. I went to church, the Ethiopian Orthodox Church where I have noticed over the years many rasta men tend to gather and I was told quite clearly that there is a policy in the church where you have to cut your "dread" to take communion. I told the guy I have a problem with that because I know all the hair on my head is what God put there, and secondly, I like to make decisions. Since that happened my children ask me if we are going back to that church, we must not go back to that church and that brought to my mind that when you have use for people and then you put stumbling blocks in front of them they tend to move otherwise and maybe that is the reason many of our children turn to drugs.

As is rightly said, the time you start taking drugs and experimenting with cigarettes is around 9—15 years and if the value system we have would have expressed in the mind of these youths that that way is so wrong, they will not do it because children normally are very innocent and their innocence tends to lead them to do the things that are right. But as soon as they start to get mixed up with other people and influences then they start to get negative and more negative and they are lost. So it is necessary collectively, not only as Senators, but as people, that we look at the problems before us and decide as a nation to deal with it regardless of the outcome. People would normally go against changes, harsh laws and rules that are put down for their protection and you will find in the homes if you tell your children that you are going to ban them from doing something, they will object to it even though they will not tell you personally, but you will see. As long as you are not going to deal with it in a realistic way, that is the way to go; drugs.

If we do not provide enough sporting facilities for our children, hard ball courts, football fields, tennis courts that will allow the youths to exert their energies in a particular way, they must find means of utilizing their time, and as the Bible says the devil finds work for idle hands.

Mr. President, over the years I have noticed that our religious system has failed us. There is more war among the religious societies. The schooling system has failed us, security has failed us, almost everything has failed us. Please let us not let this Senate fail us. When we are dealing with our legislation, let us not only come here to score marks, let us make our point fearlessly and if we feel that this clause is not right, let us go down the normal way of the amendments in the committee stage and let us fix it for the benefit of all of us.

Thank you, very much.

Sen. Mahadeo Jagmohan: Mr. President, I thank you very much for this opportunity to speak. It is for weeks now I have not addressed this honourable Chamber and it is my turn now to take the opportunity to compliment the two new Senators who have been appointed: Sen. Carlos John of the Queen's Paved Savannah fame and Sen. Job of Tobago. I hope their tenure will be successful.

Mr. President, just before I go further, I beg to disagree with the hon. Sen. Winston John that the religious system, the security system and the school system have failed us. If we are in any place of good standing, the security system, the school system and the religious system have protected us and created an avenue for advancement.

When the Attorney General presented this Bill and he made reference to the Vienna Convention I was waiting with bated breath to hear him say that he has made arrangements for a copy of it to be distributed to hon. Senators of this Parliament. I remember this Senate almost broke up in chaos when an hon. Minister made reference to regulations in a Bill but did not submit copies of the regulations and Senate ended at 11.00 a.m on that day. I am wondering if it is not too late for us to get a copy of the Vienna Convention to which the Attorney General referred. There must be something in it that would help us.

Mr. President, and hon. Senators, we all know that cigarettes as well as alcoholic drinks cause speech to become incoherent as well as aggressive and senseless. Today we are talking about dangerous drugs only being named as the ones the Bill is taking care of. We are all Trinidadians and Tobagonians and there are many people who live in certain communities and they surely have an idea what is "dhatoor" and what is "bhang" —there must be—an English equivalent or

Dangerous Drugs (Amdt.) Bill
[SEN. JAGMOHAN]

Tuesday, August 8, 2000

coined phrases to include them in the legislation. They are not here and we have all the ingredients that can create “dhatoor” and “bhang” in Trinidad and Tobago. I wonder if taking a cue from Sen. Rev. Teelucksingh the hon. Attorney General will not consider taking back this Bill and include some of those things. Perhaps he can use coined phrases. “Dhatoor” and “bhang” are words of another language, possibly they are Hindi words, or Bhojpuri words. I am not sure and I am not pretending to know everything.

I want to take up the position that the formal systems in Trinidad and Tobago, be it church, Government, or non-governmental organizations in my opinion are not the ones who are encouraging or who have encouraged the question of importing drugs, trading, using, or distributing drugs, the formal system *per se*, but there are persons from the informal system who I reasonably believe have “an excess” with the formal system who are in the business we are talking about. That is a view that I share.

Mr. President, sometimes it is disadvantageous to speak in the Senate when some learned Senators who speak before have the same ideas as those who speak after. It is purely coincidental when Sen. Daly spoke this morning, he, a distinguished attorney and I, a layman, observed that he took up all the points I had noted and marked in the Bill and to worsen the matter, when Sen. Rev. Teelucksingh spoke, he “went to town” on it as well. So my address to this Chamber is now much shorter.

The clause that talks about one being presumed to be not guilty unless proven otherwise is a very important clause. Globally, the thoughts coined in that clause have problems. Recently, I was looking at an Indian movie with Hindi dialogue on television and the identical things referred to here happened in that movie. This young man was dealing in drugs and using his fiancée or girlfriend as the mule or the carrier and this girl was desperate to locate her father whom she had never seen. She had information that he was practising law in Hong Kong and this young man was accompanying her to Hong Kong to locate her father, but the young man fooled her. She had never travelled before and when they were at the airport waiting to board he found an excuse to send her away and she had an overnight bag which he was holding. He opened it and put something that was illegal or dangerous drugs and the girl did not know. When she was checking out it was found. She did everything in the world to say she did not know about that, and she did not put it there, but no one believed her and she was sent to jail. Her

father, being a competent attorney argued something about the law. The dialogue was in Hindi and I am not claiming that I know the language so well and that I understood every single thing, but he was able to get her off.

The clause that deals with that situation is a clause that should be coined differently because my learned friend Sen. Yuille-Williams made reference to the authority, jurisdiction and power of magistrates and I am contending that something in the law should say that someone should be vested with authority to go out of the jurisdiction of the court to do certain kinds of investigation. That is a view.

3.00 p.m.

I am talking about page 10, clause 6 subclause (7), Sir. Permit me to read:

“A person other than a person referred to in subsection (2) found in possession of a dangerous drug or a substance other than a dangerous drug which he represents or holds out to be a dangerous drug, on any school premises or within five hundred metres thereof is deemed to have the dangerous drug or substance for the purpose of trafficking...”

It is known throughout Trinidad and elsewhere that some dealers, traders or pushers manage to get schoolchildren to take certain parcels to school and hold those parcels until they are lurking around to retrieve them from that schoolchild. So they do not even go in with it. They have their business set up in the school. I am wondering what in this Bill, Mr. President, will take care of such a situation to apprehend the traders. I could not say more than my two colleagues on the Opposition Benches have said about training or education to prevent youngsters from using drugs.

One of the things in Trinidad, perhaps, Mr. President—I say perhaps and I say it cautiously—is that a number of people earn handsome wages and salaries or experience large profits from their businesses where they do not work hard. In other words, some people have successful jobs and businesses where they are not required to put in any long hours in order to be successful, and many, many people have nothing to do. I am arguing in this Senate that a number of people who are idle and have nothing to do are quite prone to experimenting, and if suggestions are made to them about experimenting with some kind of intoxicant or dangerous drug, they can fall prey because they have the time for it.

Dangerous Drugs (Amdt.) Bill
[SEN. JAGMOHAN]

Tuesday, August 8, 2000

I read here in one of the sections—I wish I could identify it to you at this time. I do not know why the law is put in that kind of language—that if a person is found with some substance and he admits that it is a dangerous drug—somebody might “ups an” tell me what section that is—and he is being charged or held in custody or being prosecuted, the onus of proof is on the person who admitted that it is a dangerous drug. That is a contrary thing. It is the person who apprehends him or charges him or imprisons him who must accept the onus to prove that the man, woman or child is in possession of dangerous drugs. That is the situation with regard to one of the sections.

I think one distinguished Senator made it clear that, as a matter of his own policy, he will not support the Bill because certain rights are being taken away from magistrates or presiding judges with respect to sentencing. That is a reasonable area with which to have contention. If a person is in a position to be an independent judge, at the level of the magistracy or the Judiciary, and a maximum and minimum ceiling is set in the legislation, but if in his discretion, upon examination of witnesses—well the judge may not examine the witness, attorneys will examine witnesses or persons charged—the judge has that gut feeling, but it is being established on the basis of evidence and the judge or the magistrate, as we say, wants to go in a particular direction, some sections here debar that judge or that magistrate from moving in that direction.

Mr. President, drug dealers, if there are any in Trinidad or its surroundings, who know that this Bill is being debated today, I believe by tonight they might get certain information—how they will get it I do not know—and they would make a study of what was said and what is being said. We all know drug dealers are ruthless, vicious and without compassion and have no mercy for anybody or anything so long as money is involved, but magistrates and judges must be given the independence to decide certain things.

I have another problem. My two colleagues here alluded to the fact that the medical profession in Trinidad is on good footing, Mr. President. In Trinidad we have some of the best medical people. They are best by world standards and comparable to the top people in the world. It is true that medical doctors, and especially medical doctors in private practice or even in the public service, have much work to do in order to make money and so on, but I also, like the others who went before me, have a reasonable feeling and belief that for users of dangerous drugs or users of cigarettes and intoxicating drinks, be it wine, whisky or rum, but they are all intoxicants, if the real bad effects of these things are continuously explained to patients who go to medical doctors on a one-to-one

basis, or some kind of prepared literature is given to all patients by medical doctors, it is my belief that it will help. It is my sincere belief that it will create consciousness.

You see, Mr. President, the teacher in the classroom or all teachers from the university level to pre-school to kindergarten and going through the whole system, students have a way of adoring, respecting, loving and believing in their teachers. Recently a foreign diplomat—he and his wife hold qualifications to the level of a master's degree—had a little five-year-old who was going to a primary school and they were tutoring the child at home. They are foreigners but they are following the school curriculum and the child told both the father and mother, “No, not so. Miss say is so”. The point I am trying to establish here is that young people will listen to their teachers in most cases and if in the school system there is an impressive programme that has integrity, that programme must not be extra-curricular activity, it must be part of the school curriculum. [*Desk thumping*] Then a lot of attention would be paid to the dangers of drugs.

This clause 17, Mr. President—the Attorney General and the other attorneys in the Chamber might be saying, “Like this man playing lawyer or something. He referring to clauses and all of that”. This is a dangerous clause to my mind that should be put in other legislation. This clause provides where, if one of the accused agrees to turn state witness he will be eased up. I am putting it in layman's language because I represent the layman here and the poorest of the poor and I am arguing that this clause should be taken out because many people would be accessories to that crime of drug dealing or drug trading or whatever, and if they know they would get some protection under this section they would certainly want to go that way.

May I state that the Bill is dealing strictly—somebody might ask, “Well, what Bill he is on?” I have heard that statement made here before. The Bill is talking about hard or dangerous drugs and whether it is opium, coca, cocaine, marijuana or whatever, there was a time in Trinidad and Tobago when there was no law restricting the use of marijuana but I read in one of the sections here that one commits a criminal offence—if this Bill is passed of course—if one is found cultivating, gathering or producing marijuana. I cannot pin down the Attorney General to answer this, but has the Government or its advisers advised the Attorney General that in time to come the Government would license people to grow marijuana? A section in the Bill here alludes to that kind of thinking. I am bothered, Mr. President. What is going to happen if that is the case?

Dangerous Drugs (Amdt.) Bill
[SEN. JAGMOHAN]

Tuesday, August 8, 2000

So I urge that this Bill—remember what my colleague said and I am saying the same thing at this stage. We are not opposing the principle of this Bill. We are supporting the principle and regardless—[*Interruption*]. I do not want to hear that kind of talk, Mr. President, with due respect, about party support. We are supporting too. We are part of the party, but we are saying that certain measures in this Bill could be improved. [*Interruption*] Mr. President, sometimes I feel very sorry for the Leader of Government Business that he cannot contain himself and listen to a good debate; [*Desk thumping*] listen to a speech that has substance and would be something good on the books for posterity. [*Desk thumping*] Mr. President, I thank you very much. [*Desk thumping*]

3.15 p.m.

Sen. Prof. Kenneth Ramchand: Mr. President, I agree that the problems of drug abuse and drug trafficking have to be dealt with wherever and whenever they occur, even if the particular eruptions tend to be only surface manifestations of deeper problems in the society. It is with a sense of the limitation of any kind of law in dealing with drug abuse that I nevertheless, in principle, support the present legislation.

Mr. President, I think that first of all we have to recognize that there are other things in society that work like drugs. We talk about workaholics; we understand sexual obsessions and sexual addictions; we understand the exercise of power; we understand religious fanaticism and certain kinds of fundamentalism in the society. There are many ills in society and in the psyche that lead people to seek relief in various ways, but we tend to focus on drugs and drug abuse. I am not saying we should not, but we should realize that we are dealing with a very deep set of problems.

Of course, we know a lot about drug abuse now. We have seen how it has affected families. We have seen how it works and operates in the schools and what it does to our young people. We know what happens or can happen at parties. We know about the role of the music in getting people attuned to a drug culture. We are aware of other institutions and activities where people gather, more or less innocently to have fun, but where the known drugs and the unknown and up-and-coming drugs are circulating.

Mr. President, I know that this is not a Bill about the drug problem in Trinidad and Tobago—this is a very specific piece of legislation—but I cannot resist saying I am supporting those other speakers who have called for a more comprehensive approach to the drug problem. That approach would have to be

research-based on the one hand. We really have to find out what are the drug problems of the society. What are the drugs used here. We also have to do something technical and medical that will end up in clarification of terms.

We have to know what we mean by drug dependence. We have to know what we mean when we speak about a drug habit. Is a drug habit the same as drug dependence? Perhaps we can break a drug habit, but we cannot break drug dependence. We have to know about recreational drugs. There are things like ecstasy, synthetic drugs which give one a high, make one feel good and one gets carried away. People say it does no harm. What is wrong with ecstasy?

Sen. Prof. Kenny: Pregnancy.

Sen. Prof. K. Ramchand: Indeed, ecstasy always, I think, leads to pregnancy. *[Laughter]* Ecstasy is probably already here, Mr. President. Although it is not addictive, it can lead to reckless behaviours and it can, if one takes an overdose, lead to death.

Mr. President, Sen. Kenny was telling me about a kind of woodpecker called the yellow-bellied sapsucker which attacks silver birch trees in spring when the sap is rising. It just taps on the bark and gets the sap to rise. It then waits a little for the sap to ferment and comes back later to have a good time on the sap. At the foot of these birch trees there are whole gangs of these woodpeckers with their feet up in the air and their wings spread out. As they used to say in Cedros, these “fellas” “colay”? *[Laughter]*

I suppose if those woodpeckers could talk, they would say they are not really abusing drugs or that they are not addicted, but these are the kinds of things we have to explore. People have a right to have a good time, but we have to ask at what point does having a good time with any kind of substance lead to what we might call an addiction or to antisocial behaviour.

Mr. President, to deal with the problem at root, we have to do what the Government says it is doing. We have to look at education; we have to look at the alleviation of poverty; we have to look at the reduction of unemployment; we have to think about health education, to let people understand what long-term harm these substances can do to them; we have to carry out an educational task that Sen. Valere spoke about a few weeks ago; the task of cultivating emotional intelligence so people will not settle for the transient and dangerous satisfactions and will understand that there are emotions to be satisfied, there are feelings that

Dangerous Drugs (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, August 8, 2000

need to be fulfilled, there are pleasures that we seek, but that there are different kinds of pleasures. We might need to educate them—I have used this line before—to understand what is meant when we say it is better to be Socrates discontented than a pig satisfied.

We have much work to do, Mr. President, developing sport, providing greater options for leisure activities, completing the building of libraries and museums, recreating a sense of a sustaining community and getting people to live together and helping out one another. Very often somebody has so many problems and nobody to talk to. There is no family, no community group, no group at the workplace that he can relate to, and in loneliness, he takes the desperate shortcut of using drugs to help alleviate the pressure.

Mr. President, in other words, we can only—perhaps we will never do it, but we can bite into this problem—solve the deeper sides of this problem if all of us work towards creating a society that is more fulfilling and satisfying to individuals. Perhaps this is an ultimate aim, and one may even say it is an ideal one, but I will not accept it if by “ideal” we mean it is not capable of being realized. I think we have to know that we can realize the creation of a better society and, ultimately, will be the best thing we can do to deal with our drug problems.

I am not certain about this, but I have problems when people speak about addictive substances. I do not know if a substance is addictive *per se*. I am wondering whether an addiction comes about when a susceptible person comes into contact with a certain kind of substance that has chemically addictive properties. I have not tried cocaine as yet, but I feel I cannot be addicted to cocaine. I can take one and I will not feel that tomorrow I have to have another one. I might be wrong. There might be something that that dose might release in me that will make me want it tomorrow; I do not know. I am not going to try it, but whether there is *per se* an addictive substance, we have to recognize that there are people who are susceptible to addiction and that is what we can work with, that is what we can work on, the people who are susceptible to addiction.

Mr. President, law is only scratching at the surface, but law can help. If I speak out against some aspects of the laws that are being proposed, it is not that I am always against draconian legislation. I supported the anti-pitbull legislation. That was pretty draconian, but I do not believe that the draconian legislation that we supported in respect of pitbulls eroded any fundamental principles in the law or any fundamental human rights. Therefore, I could bring myself to support that kind of legislation.

I think that no penalty can be too severe against international traffickers and wholesale distributors of drugs. I really would not be worried about the severity of the punishment. If I believe in capital punishment in all cases, I would say that international drug traffickers and wholesale drug dealers should be liable to capital punishment.

Mr. President, there are certain aspects of the legislation about which I am worried. Before Sen. Daly spoke, I had intended to express my misgivings about the section dealing with what I call the presumption of guilt where one is presumed guilty and one has to prove one's innocence. In my layman's way, I feel that this is turning law upside down. This is turning justice upside down. This is turning a traditional—and not only traditional, but a fundamental—principle upside down.

We are accustomed to saying that one is innocent until proven guilty, because I understand that behind that, we do not want to take the chance of an innocent person being convicted, therefore, one is innocent until proven guilty. When I look at this piece of legislation, it is doing the opposite. One is guilty until one is proven innocent. I used to do that with my children. I assumed they were guilty and I made them prove their innocence. One can do that in a little domestic regime where if the law does not work, one can beat. *[Laughter]* That is a joke, Sen. Mahabir-Wyatt. I know she did not laugh, but it is a joke. *[Laughter]*

I hope the Attorney General can respond to what Sen. Daly said on this point and explain to me that he is not really saying here that one is guilty until proven innocent. In his winding up I would look forward to an explanation.

The other point about which I was worried, Mr. President, has to do with the definition of possession. When I read the new or proposed definition of possession on page 9, “for the purposes of this Act, possession of a thing shall include control of a thing which is in the custody of another”, I said to him, well, Sparrow knows about that. Sparrow sang a calypso called “Who She Go Cry For”. One man gave the lady the ring, but the lady's heart belonged to somebody else. So, who she go cry for?

I do not know if “Who She Go Cry For” is a good basis for establishing a definition of possession. I do not know how the law would interpret this, Mr. President. All I know is that this definition of possession, as supported in other places in the Bill, will make it possible for people to be framed, or for people to look as if they are guilty. Then, we put the burden of proof on them to prove they are innocent. I find it is a very hard definition and one that has implications that I would like the Attorney General to look at.

3.30 p.m.

Mr. President, there are some details I would like to look at on page 14 in support of some of what I have been saying. On page 14, clause 13 which deals with new Part IVA says at new section 29B(c):

“if a dangerous drug or device, article or apparatus designed or generally used for the administration or consumption of a dangerous drug, is found in any premises, those premises shall be presumed, until the contrary is proven, to be used for the purpose of the administration...”

What I take this to mean, Mr. President, is that you do not have to actually find the drug there, you can find a device. Again, I feel that makes people vulnerable. Somebody could plant a device in my house, tip off the police and the police can come and find the device. I may not even have the drugs. I would like to know why not insist on finding a dangerous drug as well? Why the possibility of your being accused simply because the device is found?

Then, on page 15, new section 29B(d) says:

“a person who is found to have had in his custody...”

And subsection (e) speaks about the same thing:

“a person who is found to have had...”

So, if I am to “have had”, it means I no longer have, so how can you find me to have had unless somebody told you I had it day before yesterday. It seems to me that these two subsections make a person susceptible to hearsay. Somebody can just say, “Ramchand had it yesterday”, and I would say, “No. I did not have it.” Can anybody say I was found to have had and if they say, “Well, we believe the senior police; we do not believe you”, it cannot be said then that I am found to have had. The police lied on me and it was believed, so I find that a bit dangerous.

In the same section on page 16, subsection (i), I do not know if it is usually the case that in matters like this you need an expert witness because it says:

“evidence by a police officer above the rank of Sergeant...that any device, article or apparatus is for use in the consumption of a dangerous drug...”

I wonder if a policeman came and found a contraption that I have invented there, whether he is technically qualified to say that it is a device used for the administration or consumption of drugs. I need a little clarification on that, Mr. President.

I would like the Attorney General to explain something in clause 17 on page 18, new section 53E(2). When I read that, I understood that if a company with which a person is connected by being an agent:

“...commits an offence under this Act, any officer, director or agent...who directed, authorised, assented to, acquiesced in or participated in the commission...is a party to...”

That is okay. He is a party to.

“...and guilty of the offence...”

What is it that makes him or her guilty of the offence? It goes on to say:

“...is liable on conviction to the punishment provided for the offence, whether or not the company has been prosecuted or convicted.”

Why is he guilty? If you are saying the person can be prosecuted separately from the company, that is okay, but I feel that to say he or she is guilty if the company is not prosecuted or convicted and he or she is not prosecuted or convicted, I wonder if that is a mistake in the writing up of the legislation, Mr. President.

As I said, I was going to raise those matters and I got worried that after I raised them, I would be “brambled” with some kind of legal thing about that is how we do it in the law; we are not really doing it that way; that is only a piece of legal terminology—but after Sen. Daly's contribution, I really have to believe that the definition of “possession” and the question of the presumption of guilt, those two are very important matters on which further thought needs to be given. I had not noticed what Sen. Daly also noticed and I look forward to hearing the Attorney General's reply to it.

From what Sen. Daly said and from my subsequent reading of the Interpretation Act, I understand that the court has the power to impose fines and sentences, that legislation may suggest a range but the legislation cannot make it mandatory that you stick to the minimum—the minimum is a guideline—you can go below the minimum. I do not know why it is necessary to make it mandatory to take away that jurisdiction from the court. It seems to me to be a technical point but it may have other kinds of ramifications and I am sure the Attorney General would seek to address that in his reply.

Finally, Mr. President, I am very glad to see that the legislation makes a distinction between what you do to somebody who is involved with marijuana and somebody who is involved with cocaine. I mean, roughly if it is marijuana, it is

Dangerous Drugs (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, August 8, 2000

\$50,000 and ten years and if it is cocaine it is \$100,000 and 25 years, so that it seems to me that the Government is saying that maybe marijuana is not as bad as cocaine, which really brings me to the question of marijuana because I believe there is a thing called the abuse of a substance and there is the use of a substance. Certainly, in the case of marijuana, I am sure there are very legitimate, pleasurable and healthy uses of marijuana and I do not know yet what is marijuana abuse. There may well be marijuana abuse.

I have seen people who may have a dependency upon marijuana. Somebody may feel that he cannot live his day without it, but I feel that our drug legislation should not be entirely determined by our wish, our need, or our agreement to cooperate with other countries. We cannot see drugs in the way America or Canada sees drugs. As Sen. Jagmohan was saying, we have “dhatu”. I grow “dhatu” in my yard. There is “bhang”—well, I do not have “bhang”; I wish I had.

Mr. President, let me tell you, I lived in Jamaica from 1969—1975 and at the end of a day, I could just as easily put up my feet and smoke a marijuana cigarette as drink a beer or a glass of sherry.

Sen. Daly: Did you inhale?

Sen. Prof. K. Ramchand: I inhaled. Of course. [*Laughter*] Mr. President, there was never any day in all my years in Jamaica when I smoked more than one marijuana cigarette. It is true—natural high. There was never any week when I did it more than twice. I did not become addicted to marijuana; I did not need marijuana; but at the end of the days when I put up my feet and puffed the thing, I used to feel nice. [*Laughter*] When my children had flu and wheezing on the chest, I gave them marijuana tea.

Sen. Kuei Tung: A “spliff” or what?

Sen. Prof. K. Ramchand: Ordinary size. I gave them marijuana tea, Mr. President. We used to make marijuana soup. My wife used to make marijuana cookies. We would give it to friends when they came by. [*Interruption*] I was living in Jamaica, not here, Senator.

Sen. Kuei Tung: And you brought none back home?

Sen. Daly: Do not answer that one.

Sen. Prof. K. Ramchand: I could tell you that once at a gas station, a guy came to me and said, “Hold these tomato plants for meh. Ah going in the back.” I said, “Eh, eh.” [*Laughter*]

Mr. President, I have said it before in the Senate, during the indenture period, the indentured Indians, at the end of the day used to gather with the “chillum” pipe, pass it around, reminisce about India, talk about the hard days, talk about their family. These were not addicted people; this was a social gathering; they sat and passed the “chillum” pipe and they corrupted the Rasta men in Jamaica, too. That is where the Rasta men found out about the “chillum” pipe and those are the men who say peace and love—authentic Rastas who smoke marijuana are not violent or addicted people; they are peace and love people.

There is medical research about all the good things that marijuana can do for you and I have heard economic arguments, which Sen. Shabazz was hinting at. He said when America was ready, it was going to de-criminalize marijuana and then it would control the market. Well, all those marijuana fields we are burning now, we should seize them, compress the marijuana, start to process it and since we have to do what America says, when they de-criminalize, “buss” the market, Mr. President.

Sen. Yuille-Williams: What about the opium and the Chinese?

Sen. Prof. K. Ramchand: Well, I do not know about the opium. I am staying in my crease. I am talking about what I have consumed and what I know about.

Mr. President, I am not the kind of man who goes about suggesting the proliferation of tourists and I do not want to see the country fall into the hands—I am not a great supporter of the tourism thrust. I like people to say, “Well, there is a culture in Trinidad and Tobago and we heard about it. It is a wonderful human experiment and we are coming there.” I like visitors; I do not want tourists and I want my government to develop my country to make me and my fellow citizens happy and if we are happy, other people will hear about us and they will come here, too.

If the way we are going is to set up things for tourists, the de-criminalizing of marijuana will give us the opportunity to set up safe marijuana smoking places. *[Laughter]* A tourist will come; we give him an all-inclusive package; he comes to this place; we have doctors on hand in case he makes himself sick; we control the amount we give him; he sits there; the police cannot lock him up; no bad John can come to beat him up; nobody will pick his pocket; he sits there; we will make sure he eats before he smokes. *[Laughter]*

Mr. President, I am saying that I am very happy to notice that the Government has made a tiny step in the direction of recognizing that marijuana is not as dangerous as some other drugs. I would also like it to be recognized that there is

Dangerous Drugs (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, August 8, 2000

evidence of the medicinal properties of marijuana, that marijuana also is not addictive and that if I had a choice of a drug of choice, I would take marijuana before alcohol or tobacco any day because I would live longer with my marijuana.

3.45 p.m.

Incidentally, Mr. President, even when I was a little boy, little children used to be sent to the ganja shop by their parents to buy ganja. There were licensed ganja shops and these shops were only closed down when the colonial government decided that the Indians were consumers and they needed revenue from them, so they would divert them to alcohol, where there is duty on alcohol, so let them drink alcohol and let us get some revenue from them.

Concerning this whole question of marijuana, I feel we should give serious consideration to the decriminalizing of marijuana and this is part and parcel of a larger issue, that we should take a closer look at our environment, our herbs, the kinds of things people do for their health and their well-being and that our drug legislation should be based upon this kind of knowledge, research and sense of people and place.

Thank you, Mr. President.

Sen. Diana Mahabir-Wyatt: Thank you, Mr. President. That is a hard act to follow. There are a few points I would like to make about this Bill and I have some questions that I would like to ask the hon. Attorney General. I need some reassurance on some of the points that have been raised earlier.

I, for many years, was an executive member of a drug rehabilitation non-governmental organization in Trinidad and Tobago, specifically a drug rehab for younger people, and I have seen drug consumption in all kinds of manifestations and what it does and does not do to people. I come across it fairly frequently because of my involvement in domestic violence and problems like that. I think I have a reasonably balanced view of the various problems that arise because of the use of drugs.

I think, perhaps, Sen. John was not aware that the original Dangerous Drugs Act came in 1991, I was very pleased when it came in, and when the 1994 amendment came in as well. We have had various amendments since, as the Attorney General has pointed out, which have served to strengthen the original Act. I know that, like the rest of us, he is very concerned about the whole question of drugs and the effects that drugs have had on the economy, and on the society, politically and in various other ways.

Insofar as that is concerned, I think that what we have done in relation to money laundering has been excellent. I do not think that it has been carried out quite the way in which the Minister would have hoped that it would, but as I said, there are various other aspects of this particular legislation that I would like to get some reassurance on.

There are four main aspects. One has to do with a point which was raised by Sen. Prof. Ramchand which has to do with not being innocent until one is proven guilty. If I could just quote to the Attorney General the words that he actually used, because I got them from *Hansard* since I had missed his opening statement. He said:

“We have a situation in law in which it is said that if a person does not know that the stuff is in his property, the prosecution will have to prove actual knowledge that he knew about those matters.”

That is innocent until proven guilty.

“What we have tried to do is reform the law of possession in criminal law in these matters in such a way as to put some onus on the person in order to show that he did not know of the possession of these drugs.”

I am trying to put myself into the scenario, because—and I will talk a little bit more about possession—I am not sure how you prove a negative. This is proving that you did not know, and in logic it is extremely difficult to prove a negative. I do not know whether I am being too technical, but, perhaps, the Attorney General can address that a little bit later on, because, like Sen. Ramchand, it is a point that did worry me.

While I agree with him that we have to ensure that guilty persons do not escape—which is one of the points he put forward—I think it is also important that we do not punish the innocent along with the guilty, because they all get swept up in the same net.

The second point, which other people have spoken about, has to do with possession, and once again I am concerned. Let me start with clause 5(3); this is the one where you talk about cultivation. There are two points here which I would like to take up, one which I would like to take up from what Sen. Ramchand said about the difference between marijuana, opium, heroin, and so forth.

If I have an estate of about 60 acres in Sangre Grande, or 100 acres, and for some reason I have offended certain people in this country, because let us just say I am a rabid environmentalist and I want to make sure that a port does not get

Dangerous Drugs (Amdt.) Bill
[SEN. MAHABIR-WYATT]

Tuesday, August 8, 2000

built where it is going to destroy the environment; and I do not go up to my estate all that often, or if I do, I go up from time to time, but I certainly do not patrol the whole thing. How difficult would it be for someone to plow a little patch, plant a little marijuana, and report me for the cultivation of marijuana?

I gathered from Sen. Prof. Spence that marijuana was originally a wild plant and, therefore, it is not difficult to grow. You just throw some seeds and it will grow and it is very resistant to insects—for those of you who do not know, I just learnt this at lunch time. It is very resistant to insects and to various kinds of fungus and that kind of thing; in other words, it grows easily. I am worried—because we are a small country and we all know that people do wicked things to each other in order to control their behaviour—how I would prove a negative, namely, that I did not know that this was happening, that the cultivation was going on, because I could go to jail for five years.

Sen. Daly: Five, or 25 years?

Sen. D. Mahabir-Wyatt: Or for 25 years, or I could be fined \$25,000 or more; that is question one.

When we get to the question of possession—and I am not going to repeat what people have said before me, but once again, I am concerned about the question of possession. Let me make it quite clear before I start that I believe that marijuana should be decriminalized. Like Sen. Shabazz and Sen. Prof. Ramchand, I think that marijuana is a plant which not just culturally—and I appreciate the cultural points that Sen. Ramchand has brought up. I can remember when I was 19 years, watching my mother-in-law's great aunt sit on a verandah in Mayaro, rocking back and forth, disapproving of me because I wore shorts on the beach, while she was smoking a chillum. This was a normal part of the culture, and elderly people up to now use marijuana.

I know it is a different substance, but using marijuana, for elderly people, is a great help, they tell me, in helping with rheumatoid arthritis. I had one elderly woman come to me and say that she was told by her doctor that she should obtain some for cataracts, because it does ease the pressure of ocular fluid, or something, on the retina. Now, she asked, “Where do I get marijuana?” Well having been involved in drug rehabilitation with young people—this was some time ago, but at that time, and it was not that long ago—I knew that every school had its sources of supply and that most school children would know where these were.

I know that the parent Act says that under section 11(1):

“A medical practitioner who—

(a) prescribes, administers, gives, sells or furnishes a dangerous drug to any person; or

(b) signs any prescription or order for a dangerous drug,

is guilty of an offence unless that dangerous drug is required for medicinal purposes...”

How many pharmacists in Trinidad keep a supply of marijuana? I am not talking about cocaine and heroin, because as far as I am concerned the manufactured drugs should be punished much more strongly. But insofar as the medicinal uses of marijuana, which is a traditional, cultural thing, not just for marijuana tea, for fever for children, but for period cramps, for migraine headaches, for paraplegics with certain nervous diseases, and certainly in the use of chemotherapy when you are throwing up violently, when you have cancer, because of the use of chemotherapy many people have been told by their doctors that if you smoke marijuana it would get rid of the nausea. But they cannot do it, so they suffer through it.

Where are doctors going to prescribe? If they do prescribe, where are people going to go, to the pusher on St. Vincent Street, or the one on Nelson Street or the one on Pembroke Street? They present a prescription to whom? Doctors and pharmacists are far too frightened of the dangerous drug law, as they should be, to be able to prescribe what is regarded as harmless in many other countries. The British Medical Association, the American Medical Association and the Canadian Medical Association, all commended the medicinal properties of marijuana. I think that we are going backward instead of forward here.

Going back to my point about possession, I have concerns, again, partly because of the point about Article 19, which I will come to, but also because of the way in which it is couched. For example, let us just say I am one of these pesky journalists who is critical, or maybe I have written an article which got some police officer demoted because of dereliction of duty of one kind or another; sleeping on duty; accepting a bribe, whatever it is, or writing something about how the police were just looking on in 1990 while certain events took place around the Red House. Suppose I decided that I was going to get even because

Dangerous Drugs (Amdt.) Bill
[SEN. MAHABIR-WYATT]

Tuesday, August 8, 2000

you wrote that and one of my "batchies" was demoted or punished? Suppose I decide to arrest you; stop you for dangerous driving and just put marijuana, cocaine or whatever it is in your car?

Cocaine is not easy to get, I understand, unless you go where the rats go—*[Laughter]*—but marijuana is very easy to come by because people grow it. I have seen it; I did not even know what it was. I saw it growing in a vacant yard and it got taller and taller, and when I asked somebody, they said, "What is the matter, you do not even know what marijuana looks like?" It grows like a weed. It is easy to get and easy to plant, and that one worries me.

Sen. Daly asked, "Well, suppose you are talking in relation to section 4, suppose it is planted on me" and it is quite true,—he did not say, me; he did not mention me by name. I think he said people who work in shelters, people who do social work; it would be quite easy to do it. I think there are many people who would like to get me out of the place for five years or so. How can I prove a negative, that I did not know it was there? We may have somebody in the shelter who has a drug problem, but we thought she did not have drugs on her. If a husband who wants to be vindictive, wants to report her, it is quite easy to do.

Secondly, just think of it the other way around. There are many women who would like to make sure that their husbands are removed for a period of time from the domestic premises, and going through all the problems they go through in trying to get a protection order, they could do the same thing.

Sen. Dr. St. Cyr: They would not. Nice ladies would not.

Sen. D. Mahabir-Wyatt: Sen. Prof. St. Cyr, I am so glad you think nice ladies would not. I am sure nice ladies would not, but women will.

4.00 p.m.

There could be other reasons why this happens. We see a lot in dealing with domestic violence problems that arise, where one side accuses the other side of infidelity and the planting of small amounts of drugs and reporting them, or to get rid of a rival or somebody you believe has wronged you. I am just worried about this and I would like to know if there is some way we could guard against this.

I am not worried when it comes to the cultural point. As far as I know, heroin is something that is brought in from the United States of America, we import it, it is not a substance as far as I know for medicinal uses but certainly I would like to think of deepening that distinction between marijuana, heroin, cocaine and especially those manufactured drugs which throw people's entire chemical balance off.

My last point has to do with section 19 and I am very much in support of Sen. Daly's words about that section and I ask the Attorney General to consider that particular clause. It is not just because of the points that Sen. Daly mentioned but I am thinking also of trying to protect people who have no money or legal expertise to defend themselves. I am trying to help them defend their own innocence and there would always be cases that fall through the protective devices that are there to try to prevent abuse of the Act. I think that it is worth our while being very cautious. I know that we do not pass laws for exceptions, we pass laws for abuse for a majority of applications, but that particular clause I think is something which we owe it to ourselves to be very careful about and these are the points I wanted to make. These are the ones which I had serious doubts about which I hope the Attorney General can help me with.

One of the problems is not just young offenders. I appreciate the Attorney General's point that there is a clause in the Act, clause 19A which gives special protection to young offenders, but so many people in prison are women who are used as mules and I am all for putting the people who are the controllers in, but so often women and young persons end up in prison because they are the ones who are used as mules. Women may be over 21 years who are used as mules and I do not know why they do it. They do it for love, for money, to support their children, out of fear, whatever reason for which they do it, it is not usually because they are hardened criminals. It is because if you want to support your children and you have three children and are all alone supporting them you can plant carrots for as long as you want but you are not going to be able to pay for one set of school books for one child going into secondary school with all the carrots you can grow in season plus support them. Whereas very often if you are alone and on your own you would take the chance because somebody who has more experience and perhaps education persuades you that you can get away with it. You end up in jail, but they never do. As far as I know they never do and it is to protect people like that that I ask the Attorney General to consider looking again at clause 19 and once again to agree with Sen. Prof. Ramchand to make that distinction between marijuana, heroin and cocaine.

Thank you.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I wish to state at the beginning that it is totally inaccurate that this Bill in any way takes away the rights of anyone without due process of law and there has been misinformation, I am not saying deliberate, but there has been misinformation about this Bill.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

As a matter of fact, the principles in this Bill are contained in legislation in civilized countries and countries which have a commitment to the rule of law and to ensure that those who peddle cocaine and other dangerous drugs and kill the future children of the world are punished in accordance with due process of law. I do not know where the notion has come that this is a draconian measure. I also do not know how it is that it has become relevant in this debate to talk about other alleged draconian measures. I believe that today in this Parliament legislators have a solemn duty and this is something in which I would ask them not to play politics, not to play with emotions not to regard personalities, but to think about the children of this country, of the world and the region who are being poisoned because of the lack of adequate legal infrastructure.

The Government has a firm position on the policy contained in this Bill and this has been supported by the elected persons in the other House, the Opposition of this country and it is up to the Opposition and the Independent Senators. Nobody can compel them how to vote, it will be up to them to determine on a measure which implements the Vienna Convention on drugs to which this country is a signatory if they want to vote against it, where elected representatives in the other place have voted for it.

Mr. President, I make no apologies for being firm in this matter. This has nothing to do with whether in some countries governments are corrupt, they are on the take, we all know that. As to whether the consumption of alcohol should also be prohibited, whether cigarettes should become unlawful, those are red herrings. With the greatest respect, it has nothing to do with what is contained in this Bill.

When I opened the debate on this Bill I made it quite clear that this was a measure that was introduced in 1991 in which there was a commencement of the implementation of the Vienna Convention on drugs. I said that in 1994 the Parliament voted against certain measures contained in that Vienna Convention and I said that this measure is a third step and there is a fourth step before the Parliament and the Opposition could vote against that too if it wants and the fourth step is to deal with money laundering. Mr. President, I say that those who live in this country and who want to be accurate about their information would recognize that over a period of time there has been a lot of dissatisfaction with respect to some of the sentences which have been passed by the courts in drug cases and that is not singular to Trinidad and Tobago, that happens in many countries and the international community decided that there would be certain principles as to how to deal with that.

If a man can strap to his waist 2,800 kilos of cocaine and board an aircraft or come out of an aircraft and there is a law that when it goes to the court it gives two, three and four years imprisonment when the maximum is 25 years, 30 years or life, that is what societies have to deal with, that is what the people out there are asking the elected representatives to deal with, that is what we have to deal with. Legislation is not passed for an individual person, it is passed for a problem and we can jump high, we can jump low, we can sit on a step, we can do what we want, but we cannot get away from the fact that those of us who go outside would see the killing effect of dangerous drugs in this country. If you do not have harsh laws, the people who are trafficking in it—I am not saying it is the only measure to take in order to deal with the problem.

I made it quite clear that this is not the only measure. As a matter of fact, it has to be a holistic approach, I agree with that and I also said that the Government of Trinidad and Tobago has been complimented, and congratulated by the international agencies for taking a holistic approach. The Attorney General of the United States of America recently paid tribute to the Government of Trinidad and Tobago for being a leader in the region and in the world. *[Desk thumping]* The International Narcotic Strategy report has said that, so where is the evidence? How has this become relevant? Nobody has come here and said “x”, “y” and “z”. We have heard in this honourable Senate month after month on the radio and the television, the Ministers have talked about the Government’s programme, community policing, all the other educational programmes, but are we prepared to take the side of the drug lords, the drug traffickers, or are we prepared to take the side of the innocent people of Trinidad and Tobago and the children who are being poisoned? Take your side; Mr. President, they have to take sides.

Sen. Daly said he is involved in politics, politics is the food we eat and the air we breathe and I agree with him. When he met with Mr. Hinds from the Opposition this morning, I knew he was involved in politics because politics is the food he eats and the air he breathes and he has a duty in order to discuss matters with him, but we on this side are also involved in politics and we are involved in politics as a Government in dealing with the problems and if the PNM did not have the courage to bring this legislation, we have brought it. *[Desk thumping]* We have brought it and the Opposition supported it and now they want to play politics.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Mr. President, I do not know what stand the Opposition is taking. I do not know. As a matter of fact, one side is supporting and one side is not. I do not know. Nobody has come up from the Opposition. The Leader of the Opposition in the Senate has not participated in this debate, outside, inside, outside, inside. The hon. Sen. Shabazz—

Sen. Shabazz: Mr. President, the Attorney General is implying improper motives to say that we would not be supporting him when he does not know.

Hon. R. L. Maharaj: Mr. President, he got up now, but he would not get up and say he supports the Bill, he is saying we have not reached that. Look at the games he is playing. Children are being poisoned every day by people who we know.

Hon. Senator: Control yourself!

Mr. President: Attorney General, please deal with the response.

4.15 p.m.

Sen. Daly: On a point of order, Mr. President, insofar as the Attorney General has suggested that I consulted with Mr. Hinds on what I had to say about this Bill, he is misleading the Senate and I would like the remarks about my consultation with Mr. Hinds withdrawn. I consulted with Mr. Hinds to find out whether it was true that the Bill had been passed unanimously downstairs. So insofar as he is suggesting I consulted with Mr. Hinds about my contribution to this Bill, I would like those remarks withdrawn.

Hon. R. L. Maharaj: Mr. President, if the hon. Senator prefers to talk to Mr. Hinds about that rather than looking at the *Hansard*, he could have asked me so that I could pass a copy to him. If he said he did not talk to him about that, I have no problem with it. I withdraw it. The fact of the matter is that we have come here to debate—[*Interruption*]

Sen. Mohammed: On a point of order, I would also appreciate it if the hon. Attorney General would withdraw the remarks he made about the Leader of the Opposition business in the Senate because the innuendo he made is very obvious. [*Interruption*] Yes, but there is a certain implication in it, Mr. President, with all respect, and I am asking that he withdraw it.

Mr. President: I think he made a statement of fact.

Hon. R. L. Maharaj: Mr. President, there was much talk here today from hon. Senators on the other side, quite justifiably because they are entitled to make their contributions and they are entitled to make statements about minimum sentencing and giving courts the power to reduce the minimum which Parliament has passed. I would merely like to read some newspaper cuttings of some of the sentences that have been passed. I would just read about three in some of these matters. The first one is February 9, 1999 in the *Express*.

“Man, 61, gets 4 years for cocaine trafficking.

A 61-year-old Guyanese man residing in Canada was yesterday sentenced to four years’ hard labour”

At the Arima Magistrate’s Court, they quoted the name of the man.

“He had four packets of cocaine weighing 2.885-kilos valued at \$800,000 strapped to his stomach and legs as he attempted to board BW-608.”

He got four years for trafficking in cocaine. Mr. President, Thursday, March 19, 1998, the *Newsday*, page 13:

“Roger Knott charged with attempting to export more than 275 grammes of cocaine was sentenced to ten years in jail after being found guilty by a nine-member jury...”

“Athlete seeking quick money ...gets ...six years in jail.”

In *Newsday*, June 30, 1999:

“A Canadian athlete was yesterday sentenced to six years in jail, after he admitted to having \$2.5 million worth of cocaine for the purpose of trafficking, with the intention of earning quick money to train for the 2000 Olympics.”

Now, Mr. President, in my respectful view, if it is felt that legislation performs an important role in sending signals to lawbreakers, especially people who traffic in cocaine, any Parliament must be concerned if the policy is that traffickers must be severely punished and that you can yet give to the courts the power to frustrate the will of the people in the Parliament by giving short sentences. Therefore, the international community has recognized that there are certain categories of cases, and drug cases is one of those categories, in which it

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

has become necessary for governments to undertake to pass legislation in which sentences would be very severe. It is in that context where there are instances of a person having been found guilty; and I will come to it, Mr. President.

Nowhere in this Bill—we have heard about taking away the presumption of innocence, but we will come to that. This Bill does not take away the presumption of innocence, it merely shifts the burden in certain matters and that is different from taking away the presumption of innocence. Now, under the laws of Trinidad and Tobago, where a person is charged for receiving, there is a shift of the onus in that there is a presumption that the person has received the goods that were stolen, unlawfully obtained. That person has to explain if he wants the court to consider his explanation as to how he got the goods.

So this is not something new to the law and there are several other areas of the law, the criminal justice system, where the burden of proof has been shifted. That is different from saying that one is taking away the presumption of innocence. If I read it one would see that it merely shifts the burden but the person is given an opportunity to adduce, to give evidence, to call witnesses to prove and the court then has to decide. The court could be the magistrate, the jury, the Court of Appeal or the Privy Council. So it does not take away any due process of law.

Mr. President, you know, minimum sentences is a recognized feature of the law. In some countries they have passed the death penalty for trafficking in cocaine. The mandatory sentence is death. Does it mean that because a country has passed that law, that takes away the human rights and fundamental freedoms of people? I do not know if hon. Senators are really appreciating that this Bill does not take away anyone's rights. What it does is, in certain procedural matters, make it inconsistent with the full procedural rights, which are protected in the Constitution under sections 4 and 5. The Constitution gives the authority to Parliament to get a certain majority when passing law that is inconsistent with that provision. It has done that. I think in the 1994 amendment Act there was a specified majority.

Mr. President, quite recently in the United States of America, a law was passed in order to assist in dealing with the drug problem where, if persons were identified as drug lords, without even going to a court, the country, the government, the state could publish the names of the people. Now, I am not saying that we want to go that route in Trinidad and Tobago. *[Interruption]* But why refer to it? The hon. Sen. Daly referred to Malaysia, which is totally different from Trinidad and Tobago. *[Interruption]* Well, why refer to America?

Here it is a civilized country—some say it is not civilized—a democracy, passes that law to deal with the drug problem. We have not gone that route. That is why I believe that today in this Parliament, if I may say with the greatest respect, Sen. Daly probably allowed his emotions to have the better of him, and it is very unfortunate.

It is very unfortunate that Sen. Daly accused the Government of bringing draconian laws, and he referred to other matters that are before the Parliament. I do not plan to deal with the other matters. I plan to deal with these matters. He said that these laws are brought always in the name of dealing with some particular problem. Well, let me deal with this problem, this law. This law is brought here to deal with a particular problem and brought in the name of dealing with a particular problem. However, Mr. President, as I understand it, I gather from Sen. Daly's contribution that he is really concerned not about the presumptions—if I have it wrong I could be told that, Mr. President—he is concerned with the Interpretation Act. [*Interruption*]

Sen. Dr. St. Cyr: Clause 19.

Hon. R. L. Maharaj: Clause 19. Therefore, in fairness to him, there were other Senators who raised the presumption point, so the aspect of the Bill about which he is concerned is clause 19 with respect to the Interpretation Act.

Mr. President, I do not know how the talk of economic sanction or personal abuse came in, how the Equal Opportunity Bill came in or how the Constitution (Amdt.) Bill came in. Then he said, "It is better to have the devil you know than the devil you do not know", and he in effect inferred that there will be a time coming up now and talked about order, et cetera. I really do not know how that became important in this debate. If I may say with the greatest respect, I am disappointed. I am hurt! I am aggrieved! That does not mean to say, Mr. President, that Sen. Daly is not entitled to express his view, as bad as his view may be.

There is one aspect of Sen. Daly's contribution that I think I owe a duty to discuss apart from clause 19, and that is the issue of Singapore. I really do not see how the Singapore incident can be related to this Bill. Under this Bill, clause 19 merely deals with sentencing. Clause 19 does not deal with guilt, the proving of guilt or charging or prosecuting. Clause 19 merely deals with sentencing and therefore to link clause 19 with the contention that the Bill is draconian is really not fair. I think it is not fair to the Government and I owe a duty to say it is not fair, because all that clause 19 does is say that the Interpretation Act, in effect,

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

which gives the court the power to disregard the minimum sentence, to pass a minimum sentence, has nothing to do with finding a person guilty, not guilty or reviewing the case. As a matter of fact, the court proceeds on the basis that the person is guilty.

Mr. President, I have taken some notes here and I do not know how it can be said that the Government can be involved in prosecuting, be responsible for persons being convicted, the inference given that drugs can be planted and there could be political consideration. Mr. President, how does this system operate in Trinidad and Tobago? Any law which is passed in Trinidad and Tobago and it involves the criminal justice system, how does it operate? The Minister does not arrest anyone. The Cabinet does not arrest anyone. The Cabinet cannot give directions to the police to arrest anyone. The Cabinet cannot give direction to the DPP to arrest or to prosecute anyone. No Minister can give those instructions.

As a matter of fact, Mr. President, under the Constitution of Trinidad and Tobago the Director of Public Prosecutions, in the exercise of his prosecutorial function to prosecute or not to prosecute, is totally independent. He can exercise that function totally independently. Even if the police lay a charge, the DPP can discontinue those criminal proceedings. Apart from all that, assuming that someone is being prosecuted and the person goes to court, the person has an opportunity for redress, and that is due process of law. The person goes to court and has an opportunity of putting forward his evidence. Let us take one of the clauses here, for example. Let us take one of the presumptions in clause 29(d):

“A person who is found to have had in his custody or under his control anything containing a dangerous drug shall, until the contrary is proven, be deemed to have been in possession of such drug and shall, until the contrary is proven, be deemed to have known the nature of such drug.”

The person must first be found to have had in his custody or under his control anything containing a dangerous drug. He must have it under his custody and under his control.

4.30 p.m.

If he has under his custody and under his control, this glass or a box, and the box contains a dangerous drug, until the contrary is proved, he is deemed to have been in possession of such drug, and until the contrary is proven, be deemed to have known the nature of such drug. It does not say *ipso facto*. There is a presumption shifting that he is deemed, but it does not say he is found guilty on that presumption. What it says is he is deemed.

Just as for example, if tomorrow morning Mr. A is driving his motor car and the police stop the motor car and he is found with goods which have been stolen or suspected to be stolen, he is presumed to have received stolen goods. If he wants to adduce a defence, he must tell the court and show the court how the goods belong to him or how he did not know they were stolen or unlawfully obtained. That is law which happens in all of the Commonwealth jurisdictions. This law, these provisions are in Commonwealth countries.

Mr. President, I must confess, it must have been that hon. Senators have been misinformed or they misunderstood these provisions. Let us take the other one, (e):

“a person who is found to have had in his possession or under his control or subject to his order, any document of title relating to a dangerous drug shall, until the contrary is proven, be deemed to have known the nature of such drug;”

If Mr. A is found and he has title documents relating to a shipment of goods and those goods contain dangerous drugs, then there is a presumption that he knows, and then he could show that he got the document by mistake, somebody put a mistake in his name or he could adduce whatever evidence he wants.

Sen. Prof. Ramchand: Mr. President, I raised the question of the phrase “to have had” which is not a question about the law, so much as a question about the grammar. I was saying that “to have had” has the implication that he no longer has. I was wondering whether it would have been better to say “to have”?

Hon. R. L. Maharaj: Mr. President, the hon. Senator knows I am always very amenable to his suggestions with respect to correcting any grammar in the drafting. I wish to give him the assurance if that is the only problem he has, those matters will be considered. *[Laughter]* Then he has no problem at all.

Let us take the other one:

“If a dangerous drug is found to be concealed in a ship or aircraft it shall be presumed, until the contrary is proven, that the said drug is so concealed with the knowledge of the master of the ship or aircraft and has been imported or is to be exported in such ship or aircraft.”

For example, if an airplane has drugs, it is something that even administratively, one has to show certain reasons. What this means is that owners of ships and masters of ships will have to put mechanisms in place to check cargo which is coming on board. If they know this liability can arise, they would put it.

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

If, for example, as there are in cases, persons who have done some of these matters, what the master or the owner of the ship has to do is adduce all the evidence of the systems which were put in place in order to ensure that he would not know, he could not know. Therefore, on the evidence, if it is that it could not be that knowledge could be imputed to him, then the prosecution has not discharged its onus.

Mr. President, I will get for hon. Members some of the pieces of legislation, not only in this country, but in other countries which are like this, because I would want to assure hon. Senators that this is not unusual. If a dangerous drug is found to be concealed in any premises, it shall be presumed until the contrary is proven that the said drug is so concealed with the knowledge of the occupier of the premises. If drugs are found in somebody's premises and it is in a concealed part and there is an occupier, a person who occupies the premises, it does not mean to say he is guilty if it is found there. There is a presumption that he knows it is there.

If he does not know about it, then he adduces evidence to say where it is found, who goes into that room, how often he goes, who has access to that room, if other people have access, and the court and the totality of the evidence would consider the matter. It is not because he is presumed, he is guilty. I think that is the error, or if I may say with the greatest respect, the mistake in assessing these provisions. It must have been that it was thought that as soon as it is found, one is presumed guilty. One is presumed to have known about it and one is given an opportunity in order to disprove that, in order to show that one was not in possession of these matters.

If it is that hon. Senators are against this, then it must be that it will have to be against the law of receiving stolen goods, because it is the same principle. There are other areas of the criminal justice system which we have passed in this Parliament. When I say "we", I do not mean this administration. I mean other administrations.

Mr. President, when it comes to the shifting burdens of proof, it is not a replacement. It is not an abolition of the presumption of innocence. It merely says what it says: burden of proof and presumption. It is the burden of proof. There is a distinction and the burden of proof is normally on the prosecution to prove, but there is a shifting of that particular area in that the accused would have to show that he did not have that knowledge.

Sen. Yuille-Williams: Mr. President, although I wondered about that outburst at the beginning and the coming to conclusions before, we are very sincere in what we are saying. I did note this thing of section 19 and I ask the question and give an example; for us who are not legal minds, as I said before, what did it mean by the discretion being removed from the court?

Hon. R. L. Maharaj: I am coming to that.

Sen. Yuille-Williams: Oh, I am sorry. That is what I wanted explained.

Hon. R. L. Maharaj: Mr. President, I think that I made it quite clear also, because the impression has been got and has been given that if, for example, a person is sentenced in accordance with the minimum term of imprisonment, there is no hope for that person.

What is the policy in this Bill? It is that with respect to a person 21 years and under, the court does not have to follow the minimum sentence. So, for under 21 years of age, the court has that discretion, but we are dealing here with trafficking in dangerous drugs. It may be that we can consider whether the Interpretation Act should be relaxed for possession of drugs, and be kept for trafficking and precursor chemicals, and so forth, but we are dealing with people who traffic, because what we have done here is remove the threshold.

Remember, it used to be a small amount to say that persons would be presumed to be trafficking. What we did was balance the Act. We said that even if persons have above that amount—the larger quantities—the persons would not be presumed to be trafficking. They would, in effect, be in possession, but it does not prevent the police from saying that these people had these smaller amounts, but they were selling it, and it does not prevent them from being prosecuted for trafficking.

What I will be prepared to consider, and what the Government will be prepared to consider, is that yes, possession of dangerous drugs could be in a different category. What we did in the Bill is that we did not touch, if you notice at all, Mr. President, the provisions dealing with possession and dealing with the punishment in possession.

As a matter of fact, under section 5(1) of the Act of 1991, as amended in 1994, it says:

“a person who has in his possession any dangerous drug is guilty of an offence and is liable—

- (a) upon summary conviction to a fine of twenty-five thousand dollars and to imprisonment for five years;

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

(b) upon conviction on indictment to a fine of fifty thousand dollars and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years.”

This legislation makes a distinction between the possessor and the persons who are involved in the trade, because those are the people one wants to target, but from what I have said this morning, it also recognized that some people who are involved in the trade have the people who are behind them. Because the law was such that although they were in control of the person and the law, how it was drafted, they would not be in possession for the purposes of trafficking.

That is how we amended the Bill also. We amended the law so that for the possessor, we recognized that most of these persons have an addiction problem. It must be that most of them have an addiction problem. Therefore, one cannot treat them in the same way as one would treat traffickers; persons who have this drug for the purposes of killing other people.

Sen. Yuille-Williams: The example I gave of the young man I knew in whose bag it was discovered had drugs, which category is he in?

Hon. R. L. Maharaj: The illustration you gave showed that the magistrate, although he found the person guilty, imposed a section 71, which means that no conviction is recorded against the person. I am not expressing a view as to whether it is right. He convicted the person, but under section 71, which used to be section 68 of the Summary Courts Act, he does it in a way, unless it has been changed, so that no conviction is recorded. Be that as it may, he did not suffer; he got a fine.

There is where the law, as it is, provides a remedy for persons who feel that apart from that remedy, there is another kind of remedy for persons who are convicted and feel that having regard to the circumstances, they deserve mercy. What has happened under the existing measures is that one can go to the Mercy Committee, one can apply, and the Mercy Committee can take those matters into consideration, but there is a policy consideration to which we have to agree. That is to say, if it is that one is going to pass laws in which one is required as a government to take steps to ensure that offences are not only there, but punishment is meted out to those who breach the law, do you want to have a system in which, although it is, one can have not only minimum sentences, but disproportionate sentences?

As a matter of fact, Mr. President, I want to say here that since I have been at this Ministry, I have caused to be done an extensive sort of study on inconsistent sentencing and sentencing. One would be amazed to see how inconsistent sentencing and sentencing could undermine the criminal justice system. What other countries have done is find ways and means to improve that. It is not that a young person who is convicted, or an old person, is unable to have any recourse even to challenge that conviction. As a matter of fact, I see that there is a new procedure being used now under the Criminal Procedure Act that even when the person exhausts all his rights of appeal, one can go under the Criminal Procedure Act to make an application and get new evidence adduced.

The policy we have had to consider—and Mr. President, I mentioned this morning that this Bill has been on the drawing table for over three years. What the Law Commission has done, together with the Chief Parliamentary Counsel office, and a team of people from all of the Ministries which have a stake in this matter, is look at the legislation from all the countries, and it has gone through a lot of filtering processes. One will recall it was introduced, taken back, amended and all sorts of amendments were made.

Mr. President, under clause 19—I did deal with part of it, but I will deal with it in a frontal way—it says that the provisions of section 68(2) and 68(3) of the Interpretation Act shall not apply to the penalties prescribed under this Act.

4.45 p.m.

It is quite clear that what we are dealing with under clause 19 is penalties so I think we could get it clear one time that it has nothing to do with guilt; it has to do with penalties.

Under section 68(2) and (3) of the Interpretation Act, it states:

- "(2) Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for any fixed penalty or fine, as a punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be.
- (3) Where in any written law more than one penalty linked by the word 'and' is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively."

Dangerous Drugs (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

I think the operative part that we are dealing with is really in (2). What this says is where there is a law which says that there is a minimum penalty, there is a fixed penalty, the court could disregard that in particular cases and could impose a smaller fine or a shorter term of imprisonment—in other words, reduce the penalty.

What this clause 19 does, it says that in relation to the provisions of this Act, that is to say, in matters relating to offences under the Dangerous Drugs Act, the power of the courts would be taken away. The only rider to that, however, is that when you look at an amendment which was done, I think in the other place under clause 19A—and I am saying this because it shows that this matter was looked at. I do not want to use it as any influence but just as a matter of information, it was looked at. It says:

"Where a person under the age of twenty-one years appears before a court and is found guilty of an offence under this Act, the judge or magistrate may impose a lesser penalty on such person than that specified for the offence in this Act."

Sen. Dr. St. Cyr: But not 22; just 21.

Hon. R. L. Maharaj: Just 21. [*Interruption*] No. No. According to this, it applies to everybody.

Sen. Daly: Can I get a piece of information? I will ask you. I would not ask Mr. Hinds. First of all, does the Geneva Convention require us to pass clause 19 in the form in which it is? And, secondly, is that exception permitted by the Vienna Convention?

Hon. R. L. Maharaj: Mr. President, in respect of clause 19, we are required to pass laws in order to ensure that the penalty for drug trafficking offences would be very severe to all persons.

Sen. Dr. St. Cyr: Draconian.

Hon. R. L. Maharaj: I am glad you mentioned "draconian", because what the drug traffickers do is very draconian. As a matter of fact, they kill and, Mr. President, I looked at "draconian" and it did not come from "dragon". It was the name of a 7th Century Athenian legislator; very harsh or severe.

Sen. Daly: Do you believe in reincarnation? [*Laughter*]

Hon. R. L. Maharaj: I would not tell Sen. Daly what I believe in and I would ask him not to tempt me. [*Laughter*]

Mr. President, very harsh or severe and it is recognized that, at times government has to pass very harsh or severe laws but as to whether they are harsh or severe, that has to be balanced. It is a matter of judgment. There would be people in our society who would, obviously, believe—and I am not referring to hon. Senators here—that if we have a law which punishes people for marijuana, it is a severe law. I am not referring to anybody here. There are other people who believe, also, that the death penalty is a severe law but that does not mean to say that governments throughout the world have not passed those laws and that some people do not consider them as not to be severe and not to be draconian, having regard to the circumstances.

So that yes, as a matter of fact, if you want to say they are draconian and you believe they are draconian, I would also ask for you to put it on the social scale. On the one hand, there are people who are peddling cocaine, killing and poisoning young people.

Mr. President, I know there are a few Senators on that side, in particular, Sen. Mahabir-Wyatt, Sen. Dr. Mc Kenzie, Sen. Dr. St. Cyr, Sen. Prof. Spence and Sen. Rev. Teelucksingh, but I do not know others, with the greatest respect, because I do not know of much of their activities, but I know those of us who go into the towns and villages see what is happening and see how domestic violence is being caused—sex perversion and all sorts of things—see the destruction of people's lives and you could then say that when you put this on the social scale, that you have on one side of the scale these killers deliberately killing, making money out of it, knowing that they are killing, knowing that people are physically alive but dead to everything else and, on the other side, you have to say, well, you want to give a discretion to a magistrate in order to be able to deal with individual cases if the people are found guilty and not resort to what the Constitution provides for particular cases.

Mr. President: The speaking time of the hon. Member has expired.

Motion made, That the hon. Member's speaking time be extended by 15 minutes. [*Hon. W. Mark*]

Question put and agreed to.

Mr. President: I think it might be appropriate to break at this stage and the Attorney General will resume after tea. This sitting is now suspended until 5.30 p.m.

4.54 p.m.: *Sitting suspended.*

5.33 p.m.: *Sitting resumed.*

Hon. Ramesh Lawrence Maharaj: Mr. President, I just want to put on the record that the Vienna Convention on drugs did not make any exception for persons who are under 18 years or who are between 18 and 21 years. We in the Government decided, notwithstanding that, we could find a way to give to the court the discretion in respect of persons under the age of 21 years. We used the fact that it is in accordance with our constitutional procedures, so I wanted hon. Senators to know that I think the Government has done more than required, if I could put it that way, in that it recognized that there should be some mechanism that for persons under the age of 21 years the court should have a discretion.

The Convention as you know is in very general language, and it indicates that governments have a responsibility to ensure that where there is need for these matters, it must be done. I do not think that it could be disputed that in respect of the trafficking in drugs there should not be these severe measures.

Mr. President, I wanted to say that the Government, therefore, in pursuance of its obligation under the convention of the need to deter the commission of such offences and to ensure that the courts or other competent authorities are fully aware of the serious nature of these offences, in order to ensure that the non-punishment of these offences do not frustrate the law, the Government has decided that this should be a policy contained in the measure. There is another aspect of this debate which—[*Interruption*]

Sen. Dr. St. Cyr: Thank you for giving way, Mr. Attorney General. On clause 19, since there is concern about the Interpretation Act could not one allow the court the discretion, and where there is too light a sentence, appeal that sentence?

Hon. R. L. Maharaj: There is that possibility, but I think that one has to take into account what one is saying. I do not want to go into individual cases, but there are cases in which one sees that even with the appeal processes what happens by the time the case reaches the Court of Appeal. I do not know if Sen. Daly was here this morning, but Sen. Shabazz mentioned some of these matters where you have people being charged and they leave, they go; the courts do this and that.

The policy which Parliaments have to consider is whether they want in relation to matters like these, in which the parliamentarians are accountable to the people, that there should be certain minimum punishment in respect of offences like these; that is the hard question. The hard question which parliamentarians would have to decide is: do you want to give that to the courts in which you have instances in which the law is being frustrated?

There are many instances. Sen. Shabazz mentioned a few cases today, but the fact of the matter is, if you have an obligation—that is why it is said, it is being contended that if you take away the discretion of the court it may be that you are affecting fundamental rights. That is one of the points that had been raised and we as parliamentarians in the other place had to consider. It was decided that from a policy point of view this is what was needed in our country.

Therefore, the policy position which hon. Senators would have to decide is whether they would go along with the question of the minimum sentence being a sentence which Parliament would pass as representing the people, but also recognizing that with persons 21 years and under, you have a situation in which the court's power is not taken away. So you have situations in which people are either in possession, over the age of 21 years, or trafficking, that they will have to meet the full brunt of the law.

I mentioned when I was making my contribution just now that one of the matters that we could consider and discuss at the committee stage is whether in respect of possession we can see whether we can protect—if I can use that expression—in respect of persons with the possession, but not in respect of trafficking and so forth. That is something which I would be prepared to consider and I am sure Members of the Government would also be prepared to consider at the committee stage. I appreciate some of the difficulties Senators have, but I ask them also to look on both sides of the coin.

Strictly speaking I do not know whether the amendment of the Interpretation Act needed a special majority, I am not going to go into all that. The fact of the matter is that we have taken the position that there are certain matters here which can amount to it being inconsistent and we have decided to come with a special majority.

I think there is one aspect of the debate which I think that in fairness to the Ministry of National Security I should discuss without going into details. The National Alcohol and Drug Abuse Prevention Programme (NADAPP) was established by the Government to coordinate drug abuse prevention initiatives, and that programme has been ongoing. The Ministry of National Security has also the Strategic Services Agency and in collaboration with NADAPP has developed a national drug master plan. This is all to support the fact that it is not only legislation which the Government has introduced or is contemplating.

There is also the Drug Abuse Resistance Education (DARE) programme with the Trinidad and Tobago Police Service in conjunction with the Ministry of Education launched on January 31, 2000, which has been described as the single most widely used substance abuse prevention and safety promotion curriculum in the world. The objectives of the programme are: to provide the skills for recognizing and resisting social pressures; to experiment with tobacco, alcohol and drugs; to help enhance self-esteem; to teach positive alternatives to substance abuse; to develop skills in risk assessment and decision-making, and to build interpersonal and communication skills.

There are programmes both at the Ministry of National Security and with the Ministry of Social and Community Development which are to complete the holistic plan of the Government in dealing with the illegal drug trade.

Mr. President, I believe that I should put on the record that I had a discussion with Sen. Nafeesa Mohammed and she indicated to me certain reasons why she was not in the Senate. I was not aware of those reasons which affected her personally being here, and I think I would like to put on record. I am very sorry, but I did not know that she had other reasons for not being in the Senate.

I also would like to say that in respect of Sen. Shabazz who, having said some of these things, I think I would be failing in my duty if I did not really say something in response, without going into details. He raised all sorts of issues and was trying to give the impression that the Government has been incompetent and inefficient and has, in effect, been allowing the "big boys" in the drug trade to go free. I think I want to put on the record that this also is inaccurate information. The facts of the Government's performance have shown that this is not correct at all.

I did not want to introduce some of those kinds of politics, because I did not want to talk about the selling of a car to a drug lord. I did not want to talk about the lands that Dole Chadee occupied, I did not want to do all that. I do not know why in a debate like this matters have been introduced in which it was like a personal venom and attack against members of the Government in dealing with a serious issue like this. I want to put on record that what Sen. Shabazz has said is totally inaccurate as far as some of these allegations have been made. I want to say that I am very, very sorry that he has used a debate on such an important issue to descend to that level.

I know that this debate sometimes generated some emotions, but I want to give the assurance that notwithstanding those emotions the Government regards this as a very serious measure. It would be prepared to listen to what hon. Senators have to say in respect of this matter, even at the committee stage. I think that notwithstanding whatever emotions we have had, we are committed to the principle that we are here not for ourselves, but we are here for others, for the people. We are exercising power given to us on behalf of the people, and when we cast our vote we would want to ensure that our consciences are so clear that when we look at ourselves in the morning in the mirror, we would feel proud that we have done our duty. When we look at our loved ones, our brothers, our sisters, our sons, our daughters, we would feel that we have done our duty to the people of Trinidad and Tobago.

Mr. President, this is a serious measure. It is a measure which would send serious signals to the drug people to stop poisoning our children, and I ask hon. Senators to support the Government in these measures.

Mr. President, I beg to move.

5.45 p.m.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Clauses 1 to 4 ordered to stand part of the Bill.

Clause 5.

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

Sen. Mohammed: Mr. Chairman, in terms of the possession in trafficking and the age limit, I am wondering if it is clause 5 or 6?

Mr. Maharaj: I could give you the undertaking we could consider that in clause 19, it could be amended to suit.

Sen. Mohammed: Okay.

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clauses 6 to 13 ordered to stand part of the Bill.

Clause 5 recommitted.

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

Sen. Mahabir-Wyatt: Mr. Chairman, I wonder if the Attorney General could help me with this. In section 29B (d) and (e) are two possession clauses and I had raised the instance of somebody planting marijuana on your land for spite. Strange things do happen in agriculture. That was really under an earlier clause, but I was wondering if this would be carried under (d) or would that be counted as possession?

Mr. Maharaj: Which clause are we on?

Sen. Mahabir-Wyatt: Clause 5, section 3A. This is where you are cultivating. When somebody cultivates marijuana on your property and reports you because they want to get you out of the way. Would that be possession because it is on your property?

Mr. Maharaj: No, because under cultivation of marijuana, is the person who cultivates it.

Sen. Mahabir-Wyatt: If somebody throws marijuana seeds on my property and I do not go around there every month, I am the one who is going to jail for it because it is my land that will be under possession.

Mr. Chairman: What clause are we on?

Sen. Mahabir-Wyatt: I thought we could take it up to 29B (b) which states:

“a person, until the contrary is proven, shall be deemed to be the occupier of premises, if he has, or appears to have, the care, control or management of such premises;”

I presume that is land as well, or if you have in your custody anything in your possession or control.

Mr. Maharaj: Anything would not be land. It is not intended for that.

Sen. Mahabir-Wyatt: Is there anyway we can deal with it?

Mr. Maharaj: Mr. Chairman, I think the point the hon. Senator is making is really under clause 5. Am I correct?

Sen. Mahabir-Wyatt: Mr. Chairman, could we have permission to return to clause 5 to discuss this? Clause 5 subclause (3A) which says:

“A person who cultivates, gathers or produces any opium poppy, or coca plant, except where he does so under a licence granted under section 4 or where he is acting under the supervision of a person...”

So any person who cultivates, gathers or produces any marijuana commits an offence and is liable. If somebody else plants on your land and you think it is a tomato plant, or you do not know what it is, but out of that or in order to control or manipulate you, or whatever, they want to get you out of the way, they will point to you and the police can go without you being aware of it and you can be imprisoned for a minimum of five years, or fined twenty five thousand dollars.

Mr. Maharaj: This is really for the person who cultivates so a person who commits this offence will be the person who cultivates.

Sen. Mahabir-Wyatt: How would the police know it is my land and I have not been cultivating it?

Mr. Maharaj: The police cannot do anything if the police do not see you cultivating the land. If you have marijuana on the land, the police would have to investigate, they would have to see who is cultivating because it could be your land but other people cultivating it. So the offender is the person who cultivates.

Sen. Mahabir-Wyatt: So they have to actually know who is the person that is cultivating it?

Mr. Maharaj: In other words, when you create an offence, for the police to prove that offence, they have to have evidence, so where it says the person who cultivates, an ingredient of the offence is the person cultivating.

Sen. Mahabir-Wyatt: So the marijuana is not the evidence, but the person who is cultivating?

Mr. Maharaj: Yes, except where he does so under licence or is acting under supervision, he commits an offence.

Sen. Prof. Spence: If it is on your land it would not be possession? If it is being cultivated and cured and it is there on your land, you would not be guilty of being in possession?

Mr. Maharaj: I do not think so because the law specifies for cultivating and it must recognize. For example, if it is your land and you are living on the land, obviously you are in immediate control. If a man has an abandoned estate in Brasso, or even if he does not go to see it sometimes but people are cultivating, the police cannot go just like that and say they are charging you for that because the offence is cultivating or possession and you have to be in possession or in control. The reason it is not ownership of the land, in criminal law, it is not ownership, it is possession and control.

Sen. Prof. Ramchand: Mr. Chairman, I doubt that anything could be done about this, but I have actually had the experience about ten years ago of finding that a garden of mine had a few marijuana trees and I rooted them up. If I have a gardener living on the premises in his own room and at the back of his room he plants marijuana and I do not see it and it is found, do I become liable?

Mr. Maharaj: I would not say that you become liable. In other words, if you are in possession of land, occupying a house spot, you are living there then obviously the presumption would be that you know about it. If the police comes and you tell him you do not know about it and it is the gardener who is living there, at the end of the day, it is the police who has to prove this offence beyond a reasonable doubt and if the police lays a false charge based on unreasonable and improper grounds, the state would be liable to damages. One knows there can be a basis, but obviously one has to recognize that you have to have a law that you would not as an owner allow the gardener to cultivate and he could have an excuse. There are many instances in Trinidad and Tobago now where people have land and other people cultivate the marijuana and they are not prosecuted. The police has to go, look out to see what is happening, they will put a party, hide, see who are coming on the land so the evidence would be that they saw the person come with cutlasses to work on so and so day, they dug, then they came back so there is evidence to show they are involved in the cultivation.

6.00 p.m.

Sen. Prof. Ramchand: Mr. Chairman, I did have a little question about “to have had”, it is clause 13, 29B (d) and (e), where I think we really mean “to have”, because “to have had” implies that one had it day before yesterday. So I would be happier to say, “a person who is found to have in his custody” in both cases, (d) and (e).

Mr. Maharaj: The intention is to cover a situation where, when one is being prosecuted, one would have had in one’s possession.

Sen. Prof. Ramchand: Well then, why did you not say in (f), “if a dangerous drug is found to have been concealed”?

Mr. Maharaj: Well it is a different situation. This is where it is a document of title. This is “a person who is found to have had in his possession”.

Sen. Prof. Ramchand: All right, supposing I have it in my possession on Monday and by Thursday I have passed it on to somebody else, can I then be charged? Because I would have had. When the person who got it is found with it, they say to him, “Listen, where you get that?” He says, “Well, Sen. Ramchand gave it to me”.

Mr. Maharaj: Well then what would normally happen in the course of events, let us say Mr. A has this document in his possession and he had it and he passed it.

Sen. Prof. Ramchand: No, he says he got it from somebody else three days ago.

Mr. Maharaj: All right, let us say he had it then he passed it to somebody else, to Mr. B, then the police came to Mr. B, found him with it and he says Mr. A gave it to him. If the nature of the document is such that the document shows that it is title to these things, then the police would have to come to you and you would have to give an explanation as to where you got this document from, because if it links you with knowledge of this thing then it is something that could implicate you. These are documents relating to the title of things in which drugs are being concealed.

Let us say it is a container of goods shipped from Miami and you took delivery and for some reason the customs officer did not see and you passed the container to somebody else, you sell it to someone else, then obviously the fact that you have this could be a presumption but it does not mean to say that you are guilty because if the police do not do proper investigation, all that you have to say if you are charged is, “Well I have got this. Another person gave it to me. I did not know anything about it”. So the police would have to do investigation in order to show that you had this document, you were responsible for it, you knew about it. And it says so, you know.

“a person who is found to have had in his possession or under his control...”

So he must have it in his possession or under his control.

Sen. Prof. Ramchand: All right, well I suppose once you—well, I still think “to have had” implies past tense.

Mr. Maharaj: And it says “until the contrary is proven, be deemed”. So if you tell the policeman something else which could be supported, that means to say that you cannot lawfully be deemed.

Sen. Prof. Ramchand: I was talking about another case. If police came to search my place, I knew they were coming and I threw it out the window and they did not find it in my yard, I am cool. I thought so, because they did not find me with the thing.

Mr. Maharaj: No, no, no. That is bush law, if I may say so.

Sen. Mahabir-Wyatt: Mr. Chairman, could I just ask one more question about the legal interpretation of words about which I am not quite sure? Under 29B (b), what does it mean by “the care, control or management of such premises”? Would that be the owner or the person who is living on it?

Mr. Maharaj: It says:

“a person, until the contrary is proven, shall be deemed to be the occupier of the premises, if he has, or appears to have, the care, control or management of such premises;”

Sen. Mahabir-Wyatt: Even if I have a house there but I do not live on it, and I have the proverbial caretaker who is growing marijuana for profit in the back and he lives on the premises but I do not, who has the care, control and management of the premises? Is it me, the owner, because I have a house there?

Mr. Maharaj: No.

Sen. Mahabir-Wyatt: Or is it the person who is there all the time?

Mr. Maharaj: Yes. It has nothing to do with ownership. If you notice, in criminal law it is drafted in such a way that in respect of only certain offences the owner is really liable when there is some crime committed. In these matters it is really the occupier because it must be recognized that one may have other persons occupying one’s property, occupying one’s house, occupying other things. So it is the occupier if he has or appears to have had the care, control or management of such premises.

Sen. Mahabir-Wyatt: So I would not be liable?

Mr. Maharaj: No. On the other hand, if the person who is the occupier is also involved in the trade, let us say the person gives him instructions to plant it on his behalf, then that is a different matter.

Sen. Mahabir-Wyatt: Okay, thank you.

Sen. Prof. Kenny: On that same issue, Mr. Chairman, I am a little worried about “appears to have the care”. This seems to me rather vague. I mean, a person either has the care, control and management of such premises or a person does not. “Appears to have” seems to be rather subjective; and, Mr. Chairman, appears to whom?

Mr. Maharaj: You must have “appears” because, suppose the occupier is saying he does not live there, it is the owner who lives there? It might be the occupier who appears to have control and then when he goes to the owner, the owner would say, “I do not live there”.

Sen. Prof. Kenny: Oh, I see.

Sen. Daly: Mr. Chairman, having regard to Government’s attitude, I do not know whether I should contribute at all but I do have a problem with “appears” as well. Surely the purpose of this—I mean, this legislation has very, very serious consequences. It could destroy people’s entire lives if they are wrongly convicted. So I think we really should look at it in that light. It seems to me 29B (b) deals with a person and a person is the object of the charge and a person shall be deemed to be something, never mind what is the something for the minute. If one is going to deem a person to be something under certain conditions, one is deeming him to be the occupier, leave out “appears” if he has care, control or management of the premises. If what the Attorney General is saying is right, that ownership is not relevant, then it is a simple question of fact whether the person that one is deeming the occupier has care, control or management of the premises. What has the appearance of care, control or management to do with it? If he has the appearance of control but does not have control in reality, then how can he be guilty of anything?

Mr. Maharaj: But Mr. Chairman, Sen. Daly would know it is not that only. “A person, until the contrary is proven, shall be deemed to be the occupier of premises, if he has, or appears”. So if, for example, in property A there is an occupier who is not the owner but he is occupying the premises and he obviously appears to have control of it; suppose when the police confront him he says, “Well I really do not live here you know. It is the owner who really lives here”. So we have a situation where it is not as if the person who appears to have the care, control or management, and that is the end of the matter. He appears but until the contrary is proven. So the person to whom it is directed would have an opportunity to show that he is not in control.

Sen. Prof. Spence: Mr. Chairman, I see the point but then it seems that “if he has” should be omitted. It cannot be both.

Mr. Maharaj: If what?

Sen. Prof. Spence: If we were to go the way you are suggesting, and I could see the course of your argument, then “if he has” should be removed.

Sen. Daly: If he is being arrested on the basis of his appearance and control and we say that the purpose of the “appearance” provision is that he can dislodge the appearance or disprove the appearance, then I agree, “if he has” is not appropriate. It cannot be both. So if it is to dislodge an appearance, then it is sufficient to have, “if he appears to have”. “A person shall be deemed until the contrary is proven to be the occupier if he appears to have care and control”. It cannot be both.

Mr. Maharaj: But it is “if he has, or appears to have, the care, control or management of such premises”.

Sen. Prof. Spence: Yes, but with all that you have said, you can disprove it.

Mr. Maharaj: If he has he is definitely an occupier.

Sen. Prof. Spence: How can you disprove it if he has? If he has you cannot disprove it. The phrase before says, “until proven otherwise”. If he has you cannot prove it otherwise. You cannot disprove it.

Mr. Maharaj: If he has, he cannot disprove that he has, then he is an occupier. But suppose we have a situation in which he is there and he appears to have it, and he tells the policeman that it is the owner who is the occupier?

Sen. Prof. Ramchand: Mr. Chairman, if he has it he will appear to have it. Therefore if you say he appears to have it, “appears to have it” will cover the two instances of him having it and appearing to have it.

Sen. Prof. Spence: I do not suppose it matters really in the law but if the law is to be logical it is really a question of logic and language.

Sen. Prof. Ramchand: Mr. Chairman, I think it is a minor point really. This is playing it safe. “If he has or appears to have”, if the “fella gallerying” and acting as if he owns the place, you know—*[Interruption]*

Sen. Prof. Spence: It does not matter, really.

Mr. Maharaj: Because in any event one has to prove the care, control and management.

Sen. Prof. Ramchand: Mr. Chairman, I am not arguing and I do not want to appear insistent, I just want to go back to (d) and (e) and say I would be happier if we had said, following (c), “who is found to have or to have had”, because you are envisaging a situation where he had it a few days ago as well as a situation where you catch him with it “franko-men” at the time.

Sen. Prof. Spence: It should be both, really, but it does not matter. I do not think it really makes much difference, going back to his point where he says it should be “to have” or to have had”, but it does not matter really. I do not think it matters. To be absolutely careful we should say “to have or to have had”. I do not think it is critical. There are more important issues, Mr. Chairman, that you should get on to.

Mr. Chairman: Sen. Ramchand, are you finished?

Sen. Prof. Ramchand: Yes, I was just stating—*[Interruption]*

Question put and agreed to.

Clause 5 ordered to stand part of the Bill.

Clauses 14 to 16 ordered to stand part of the Bill.

Clause 17.

Question proposed, That clause 17 stand part of the Bill.

Sen. Prof. Ramchand: Mr. Chairman, remember I had a little difficulty with clause 17. I was wondering whether in 17 we would have preferred to say “participated in the commission of the offence is a party to and commits an offence”. He cannot be guilty of it. He has committed an offence and is liable on conviction.

6.15 p.m.

Mr. Maharaj: What line are we on?

Sen. Prof. Ramchand: Line six: “that this officer is a party to, and has committed an offence and is liable on conviction”. It is one thing to say he has committed the offence; another to say he is guilty of the offence.

Sen. Mahabir-Wyatt: Mr. Chairman, while the drafters are looking at it, could you just look at the fourth line from the bottom, between “offence” and “is liable”? It should be “is liable on conviction”, not “and is liable”. It is a typographical error. It should not be there. If you put “and is liable” it does not read.

Sen. Prof. Ramchand: What we are really arguing for, Mr. Chairman, is the removal of “guilty”.

Mr. Chairman: Hon. Senators, there is a procedural motion to be made and the Senate has to resume.

Senate resumed.

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, on a procedural motion, I beg to move that the Senate continues to sit until the conclusion of Bills Nos. 1, 2, 3, 4 and 5. *[Laughter]*

Question put and agreed to.

DANGEROUS DRUGS (AMDT.) BILL

Mr. Chairman: I suspect the ayes have it from the numbers. Nobody has called for a division.

Committee resumed

Mr. Maharaj: Mr. Chairman, clause 17 is saying that where the company commits an offence, the officer, director or agent of the company who directed the show, participated in it and is a party to it is guilty of an offence.

Sen. Prof. Ramchand: He is not guilty until he is convicted.

Mr. Maharaj: I am indebted to the hon. Senators. Delete “and guilty of the” and it should be “commits the offence”

Question put and agreed to.

Clause 17, as amended, ordered to stand part of the Bill.

Clause 18 ordered to stand part of the Bill.

Clause 19.

Question proposed, That clause 19 stand part of Bill.

Sen. Prof. Spence: Mr. Chairman, this is my preferred position, but the Attorney General did suggest an alternative—

Mr. Maharaj: Which I was about to deal with. Mr. Chairman, in an effort to try to see if we could get consensus in this matter, I am prepared to amend clause 19 to the following effect: after “Interpretation Act shall”, after the word “shall”, I will substitute “apply only to the penalties prescribed for possession of dangerous

drugs”. So, it should read: “The provisions of section 68(2) and (3) of the Interpretation Act shall apply only to the penalties prescribed for possession of dangerous drugs”.

Sen. Mahabir-Wyatt: Mr. Chairman, I was wondering if it would not be a little simpler if we did not just say after “apply to the penalties prescribed under this Act for trafficking”?

Mr. Maharaj: But you have other things like the precursor chemicals and manufacture and money laundering. Remember, this is an amendment to the Act which has other things like money laundering, and so forth.

Sen. Prof. Spence: Could we hear your words again please, Sir?

Mr. Maharaj: “The provisions of section 68(2) and (3) of the Interpretation Act shall apply only to the penalties prescribed for possession of dangerous drugs”. In other words, it is only in respect of the other—*[Desk thumping by Sen. Yuille-Williams]*. I want to say that Sen. Yuille-Williams, Sen. McKenzie and Sen. Dr. St. Cyr are really—

Mr. Chairman: Sen. Daly, what is the position with your proposal?

Sen. Daly: Mr. President, an amendment has been proposed and I am just flicking through the Act to see what is the effect of it. I am not withdrawing mine “just so”, as we say. I would like a few minutes, if you do not mind, Sir. I would not want to detain Members any longer than is necessary. Normally we would have settled these matters behind the Chair. *[Laughter]*

What I do not understand is normally, I would be listened to more carefully. I said at the beginning that I had no problem with the liability provisions in the Act and I had a problem with the penalty section and I explained why. I do not know what it means, I am not quite attracted to the suggestion that one abandons the Interpretation Act only in relation to trafficking.

The whole thrust of the contributions from the Independent Senators, as I remember it, was that we wanted to have laws of severe import in order to get the people who drove the trade, and I assumed that the people who drive the trade are the traffickers. If it is necessary to suspend the operation or abandon the operation of the Interpretation Act, we should be looking at the big offences, not just possession.

I appreciate that there are provisions about money laundering, so maybe we can make a list. That is why I am thinking about it, that maybe we can say that the Interpretation Act will not operate in the cases of trafficking, money laundering;

Dangerous Drugs (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

we could specify the big offences and the ones that deal with the big people. There is a certain amount of understanding that people who are not big people can get drawn into this in circumstances that may not justify them going to prison for a mandatory period. So, maybe we can pick out the offences for which we want to abandon the Interpretation Act. I accept money laundering and trafficking. I do not know what the precursor chemical offences are.

Mr. Maharaj: Manufacture of chemicals. The use of chemicals in the manufacture of drugs. Mr. Chairman, I think that what we have done is a major concession which is to say that we are saying it is limited to the possession of drugs. It means that we are saying that we recognize possessors are mostly people who have addiction problems, and therefore, in respect of that, we have made a major concession. I would appeal to hon. Senators to go along that route, and if there is any problem, I give the undertaking that we will come back if it is necessary. Having regard to the nature of this measure, I would ask hon. Senators.

Sen. Daly: We have got on our tables today, a Bill for a Sentencing Commission. If the Government has a difficulty with inconsistency with the sentences in the courts, then the purpose of this Sentencing Commission is to fix that. I have not read the Bill. I see some kind of advisory body. If we are going to deal with the problem—this is my point all of the time. If the problem is the inconsistency in the sentencing and we have a plan to deal with the inconsistency in the sentencing, let us deal with that problem rather than do it this way.

Mr. Maharaj: Mr. Chairman, I do not think I want to go into what that Bill does, but if one reads the Bill, one would see that that is a kind of long-term situation. We have immediate problems. These measures were really supposed to be put into place shortly before 1988. We have gone the route in order to show a genuine basis in order to try to get consensus, and I really think they will be asking too much of Government at this stage to postpone this measure in order to get a list, when the policy of the Bill really is to recognize a distinction between the possessors and the other people who are involved in the manufacture of drugs and in money laundering and things like that. It is only a matter of style, really.

Sen. Prof. Ramchand: There are two kinds of possessors. There are those who possess more than a certain amount, and those who possess less than a certain amount.

Mr. Maharaj: That is the reason we are saying possession, and possession for the purposes of trafficking will be different. We have put in the Bill a higher amount if one is found in possession. In other words, the threshold has been

increased. I explained, if one has possession of a small quantity but one is in trafficking, one is in a different boat. If one is in possession of a higher amount than the threshold, one will be in possession for the purposes of trafficking.

6.30 p.m.

If you are in possession of a certain amount which is a high threshold, you would be in possession for the purposes of trafficking and that quantum was decided upon after extensive study with the police and everybody involved. I do not think that the Government can do very much more on this matter.

Sen. Daly: I withdraw my amendment in light of the concession.

Mr. Chairman: Sen. Daly's amendment is withdrawn. I shall now put the new proposed amendment to the Committee.

The question is that clause 19 be amended as follows:

Delete the words from line 2, "not apply to the penalties prescribed under this Act." and substitute therefor "apply only to the penalties prescribed for possession of dangerous drugs."

Sen. Prof. Ramchand: Under this Act?

Sen. Daly: Why are we not saying "the penalties prescribed for possession under this Act."

Mr. Maharaj: Okay.

Mr. Chairman: The proposed amendment would be "apply only to the penalties prescribed for possession of dangerous drugs under this Act."

Question, on amendment, put and agreed to.

Clause 19, as amended, ordered to stand part of the Bill.

Clauses 20 and 21 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendment.

Question put, That the Bill be now read the third time.

Dangerous Drugs (Amdt.) Bill

Tuesday, August 8, 2000

Mr. President: This is a Bill, the passing of which requires a majority of three-fifths, so a division has to be taken. I ask the Clerk to take the division.

The Senate voted: Ayes 29

AYES

Mark, Hon. W.
Kuei Tung, Hon. B.
Theodore, Hon. Brig. J.
Baksh, Hon. S.
Phillips, Hon. Dr. D.
Gillette, Hon. L.
Gangar, Hon. F.
John, Hon. C.
Tota-Maharaj, Hon. V.
Baksh, N.
Hamel-Smith, P.
John, S.
Gray-Burke, Rev. B.
John, W.
John, J.
Mohammed, N.
Jagmohan, M.
Shabazz, M.
Yuille-Williams, J.
Job, E.
Spence, Prof. J.
Mahabir-Wyatt, D.
Teelucksingh, Rev. D.
Daly, M.
St. Cyr, Dr. E.
Mc Kenzie, Dr. E.
Kenny, Prof. J.
Ramchand, Prof. K.
Marshall, P.

Question agreed to. [Desk thumping]

Bill accordingly read the third time and passed.

Sen. Prof. John Spence: Before we go on to the next Bill, may I say something.

Mr. President: Yes.

Sen. Prof. J. Spence: I really think to take Bill No. 2 at this stage would not be doing justice to the Bill, nor do I think it is fair to the people of Trinidad and Tobago that we should address a bill of that nature at this stage. [*Desk thumping*] I would like to propose that we do Bills Nos. 3, 4, 5 and 6 and leave Bill No. 2 for the next occasion.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I did, in fact, inform all Senators last week when we met, the order of Government Business and I did, in fact, indicate to them earlier on that we shall be proceeding with those Bills in the order as outlined on the Order Paper. I am fine with the suggestion, but the Government would like to proceed with those Bills at this time.

Sen. Prof. Spence: Mr. President, may I say something again, please? This is my last comment. When we made that suggestion a week ago, five years ago or whatever it was, we were not aware of the length of time that the first Bill would take and I really think it is not a question of whether we set it out in a certain order to begin with, it is a question of whether we are in a correct state to address this Bill. I, certainly, at this stage, am very tired and I would not like to address the Bill at this stage. I will, of course, if I have to, but I do not think it is fair to the citizens of Trinidad and Tobago and fair to the Bill to have it done.

Mr. President: Mr. Leader, do you intend to move on to Bill No. 2?

Sen. The Hon. W. Mark: Yes.

CONSTITUTION (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Constitution of Trinidad and Tobago, be now read a second time.

The Bill that is before us is a Bill to give to the Service Commissions the power to summarily dismiss an officer where the officer is convicted of a criminal offence or where an order under section 71 of the Summary Courts Act had been made and the time allotted for an appeal has elapsed.

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Mr. President, if the officer has appealed and the appeal process has been completed, then the commission would be able to dismiss the officer without the full disciplinary process which now exists. Under the present system, if an officer is charged for a criminal offence and the officer comes under the jurisdiction of the service of one of the Service Commissions, the commission has the power to suspend the officer pending determination of the charge before the court. The commission also has the power to withhold part of the salary of the officer pending the determination of the charge.

If the officer is convicted in the court and the commission wants to take steps against the officer to discipline the officer, apart from suspension, it is not automatic. What has to happen is that the head of the department has to go through the full process of appointing an officer to investigate the matter and to give a report, and the report is then given to the head of the department who then sends it to the commission. The commission would then have to consider the matter and if the commission decides that charges should be formulated, the charges are then formulated and the commission then has to appoint a tribunal to determine the charges and the person will have an opportunity of being heard again.

There is a situation that where, although the regulations anticipate that a person who is convicted of a criminal offence can be suspended even though courts decide that the person has committed the offence, the commission still has to go through this process. The end result is that what happens is that you have situations where persons who are convicted of criminal offences are in the service employed by service commissions even though they have these convictions.

Mr. President, this has been a matter which has been engaging the attention of government. I should say that the attention of governments has been drawn to this problem and in several reports of the Public Service Commission, the Chairman of the Commission has requested that these laws be changed in order to permit this process to occur in the way we have put it in the Bill. The Bill says that notwithstanding:

"Section 129 of the Constitution is amended..."

And it says it quite clearly that:

“Notwithstanding subsection (4), where an officer is convicted of a criminal charge in any court and the time allotted for an appeal has elapsed or, if the officer has appealed, the appeal process has been completed or an order has been made in the matter under section 71 of the Summary Courts Act, a

Service Commission may consider the relevant proceedings on such charge and if it is of opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the conduct which led to his conviction on the criminal charge or to the making of the order, the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings.”

Disciplinary proceedings there refer to the full disciplinary proceedings. The Bill goes on:

“In furtherance of subsection (5)—

- (a) a certificate of conviction issued by the court shall be sufficient evidence of an officer's conviction for an offence;”

Bearing in mind that a criminal conviction is misconduct, where the court has made an order that the person is convicted, the certificate of conviction is sufficient evidence of an officer's conviction and:

- “(b) a certified copy of an order made under section 71 of the Summary Courts Act shall be sufficient evidence of the commission by the officer of the offence for which he was charged.”

Now, section 71 of the Summary Courts Act was mentioned this morning and what section 71 says is that the summary courts, the magistrates' courts have the power—even though it is found and proven that the offence has been committed, having regard to age, antecedents and character of the individual—to make an order under section 71 where a conviction is not recorded but bearing in mind that the offence has been established.

So that in the law you can recognize that a criminal offence has occurred, the person has been found guilty but for the purposes of the records as to whether a conviction is recorded against him, the court has that power. What they are saying is even where the court makes a section 71 order, the fact of the matter is that the courts have recognized that the misconduct has occurred and it may, in criminal law, not give him a term of imprisonment, but that it is completely different as to whether you should be a police officer or a teacher because, for example, there are cases where persons have been found guilty of trafficking in cocaine and possession of cocaine—public officers—and the courts have recorded section 71 orders and the persons are still in the public service, the teaching service or the police service.

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

6.45 p.m.

What we are saying is that under section 71 of the Summary Courts Order even though an order has been made, the fact of the matter is that, jurisprudentially, legally, the offence has been proven beyond a reasonable doubt. We go further and say “an officer referred to in subsection 5”; in other words what we are doing is that, even though a person is convicted, the commission will still be given the opportunity to hear what he has to say before it decides that he or she should be dismissed from office.

Clause 3(7) states:

“An officer referred to in subsection (5) shall be entitled to show cause why he should not be dismissed from office.”

What it means is that if a person is convicted of a criminal offence, it does not mean that the commission will act “just like that”. The commission, obviously, would give him an opportunity to be heard as to why he should not be dismissed. What it is doing is actually giving him, even at that stage, an opportunity to be heard, but not in the full disciplinary process, to say that you have to appoint a committee or you have to go through that full process.

I think I should mention here, I have a duty to say this, that in the public service regulations, I think it is regulation 53—[*Interruption*] In the public service regulations this same principle was in the original regulations, that is to say, you have—it is either regulation 53 or—I would get it before I complete my submission; I had it here, but I cannot find it—there was a similar provision, but it was found that that provision could not be put in regulation, it had to be put in substantive law, like an act of Parliament. [*Interruption*] It is contained in the regulations.

Sen. Marshall: Is it regulation 113?

Hon. R. L. Maharaj: It is regulation 113. That regulation was as a result of all the discussions with government, the unions, and the service commissions. That regulation is really, in substance, what we have put here in order to say that when a person is convicted of a criminal offence he or she does not have to go through the long process. What happened, however, was that it was not supported by a parliamentary law, in the sense of primary legislation, therefore, the regulation was considered to be *ultra vires* and nothing was done with that in order to bring it into primary law. What we are doing here, as part of what we are reforming, is to ensure that that process forms part of the primary law by amending section 129.

Really and truly, Mr. President, as far as that aspect of the matter is concerned—[*Interruption*]

Sen. Prof. Spence: Mr. President, could I just ask the Attorney General if the way it is worded means that the commission has to give some form of punishment? That is what it seems to me. Could it be that the commission decides that it would give no punishment?

Hon. R. L. Maharaj: No, a person who is convicted of a criminal offence would obviously be asked, “Could you show cause why you should not be dismissed from the public service?”

Sen. Prof. Spence: I was reading clause 3(5) which says:

“...the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings.”

Is it obligatory that they do so, or does the “may” mean that they may not do so if they feel that they should not give the punishment?

Hon. R. L. Maharaj: The word “may” is used.

Sen. Prof. Spence: So they need not?

Hon. R. L. Maharaj: No, with “may” it is a discretion. If you had “shall” that is mandatory.

Mr. President, the next aspect of this amendment is something that is known as the ouster clause, and under section 129(3) of the Constitution it says words to the effect that whether a service commission has validly performed any function vested in it by the commission, and the matters which a service commission has to do in the exercise of its function. It says, as to whether it has validly performed such a function, may not be questioned in any court of law.

Mr. President, the way I want to deal with this is in this way. Shortly after the war in 1945 in the United Kingdom, there were many tribunals set up when the welfare state developed. There were many administrative tribunals being set up. For example, there was a land tribunal, a national insurance tribunal, a national health service tribunal, an independent schools tribunal, a pension appeals tribunal, medical appeals tribunal and many more.

It became apparent that the decision-makers on these tribunals were making many errors. Therefore, what occurred was that there was legislation to say that their actions would be final, that is, these decisions of the tribunals would be final,

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

in order to prevent the courts from interfering with these decisions. What happened in 1958 was that the English Parliament decided that it would pass legislation to remove those ouster clauses.

Again, in a paper written by Justice Persaud in 1971, of which I was not aware, called “The Trinidad and Tobago Constitution—The Ouster Clause and Consultation”, *The Lawyer*, of July 1989, Justice Guya Persaud referred to the Tribunal and Enquiries Act. Section 14 provides that:

“...any provision in an Act passed before 1st August, 1958 that any order or determination shall not be called into question in any court, or any provision in such an Act which by similar words excludes any of the powers of the High Court, shall not have effect so as to prevent the removal of the proceedings into the High Court by order of certiorari or to prejudice the powers of the High Court to make orders of mandamus...”

These ouster clauses became obsolete and outdated in the United Kingdom since 1958. It was thought that when countries were gaining independence, that would also act waywardly, and the tribunals would also make many errors of law. The United Nations in many of the constitutions of the Commonwealth put these ouster clauses in the constitution; not in another law, but in the constitution itself.

I will give you some examples of the countries which have some of these ouster clauses: Barbados, Guyana, Jamaica, Dominica and St. Kitts. What has happened is that although you have these ouster clauses, the courts have found limited ways and means to try to overcome it. There is the famous case of *Anisminic*—you would probably hear more of that later on—in which the principle is that the court would investigate if the tribunal acted without jurisdiction, in breach of the rules of natural justice or that the court acted unreasonably. This has developed, so you can have judicial review of these actions.

What has happened with these ouster clauses is that the review of the courts is very limited and it is confined, if I may say so, to cases where the court will have the discretion where it appears that the tribunal acted without jurisdiction, has exceeded its jurisdiction, where there is an error on the face of the record, or where there is failure to comply with the rules of natural justice.

Mr. President, the history in this jurisdiction has shown that in respect of the ouster clause, although some of the high courts have reviewed these decisions, for some of the matters that reached the Court of Appeal the position has been taken that the courts cannot review these matters and they confine it to matters of the

breach of the rules of natural justice. There are situations now in Trinidad and Tobago where High Court judges are trying to be more liberal in trying to review their actions, and when it reaches the Court of Appeal you have a different view being taken. There are also situations where some of the matters are going to the Privy Council.

The policy of this administration is that these commissions should be open and transparent, the court should have full power to review these decisions and these decisions should not be limited. We have a situation where we believe that the decisions of these commissions, whether you want to put it by judicial review or a constitutional motion, whatever these commissions do in the exercise of their functions, in appointments, promotion, discipline, and whatever other functions they do, that the courts should have the power to review them.

This is very, very important, because we believe that the best way to have the actions of these commissions scrutinized is to give that scrutiny to the courts. I do not think anybody could complain that the courts are independent. People can then appeal to the Judicial Committee of the Privy Council. When the time comes and we have a Caribbean Court of Justice, people can go there instead. For example, if a public officer who is suspended and believes that he has been treated unfairly, he should not be met with situations in which the court would say, "I recognize an injustice, but I cannot correct it, because you have this ouster clause." We want to free up the system in such a way that the courts would have full powers to review these matters.

Mr. President, it has been said by the Opposition in one contribution which has been made against this measure, that this would affect the independence of these commissions. May I say that that is only an excuse for commissions not to be accountable. If it is being contended that commissions in the exercise of their powers, if they have to be accountable to the court, that that would affect their independence, then those who advocate that would be saying that there should be inequality of treatment. The rule of law in Trinidad and Tobago demands that no commission should be above the law or above scrutiny. Therefore, whether the commission appoints magistrates, judges, police officers, teaching officers, or public officers, they should be fully answerable to the courts.

As a matter of fact, constitutional law has developed to the extent that no one, no public authority, is above scrutiny by the court, and that any law—
[*Interruption*]

Sen. Dr. St. Cyr: Mr. President, would we not have a problem with the Judicial and Legal Service Commission, for the court to be reviewing that particular commission?

Hon. R. L. Maharaj: No, Mr. President, as it is now, when there are decisions of the commission—we had the famous or infamous case of the Crane matter, you have the court reviewing that—you have the court reviewing matters of the Judicial and Legal Service Commission. So the position is that the commission is not a court; the commission is the appointing body. There may be a misconception that the Judicial and Legal Service Commission is a court; the commission is not a court. The commission consists of persons who perform executive and administrative functions; administrative functions in the sense that they appoint and discipline, and, therefore, they should be amenable to the supervision of the court.

We have had situations where it was even thought at one time that although there were these service commissions amenable to parliamentary committees, and the Judicial and Legal Service Commission amenable to parliamentary committees, in many Commonwealth countries, it was thought, even here, when a certain measure came that they should not be accountable to the Parliament. This is not being accountable to the Opposition, the Government or the Parliament, it is being accountable to the courts; the same people who decide the rights of the little person in Trinidad and Tobago.

7.00 p.m.

Sen. Prof. Spence: Mr. President, I wonder if the hon. Attorney General could tell us what has happened to that legislation that deals with parliamentary committees because I think it is directly relevant to this discussion.

Hon. R. L. Maharaj: The legislation is being implemented. There is a committee of Cabinet preparing Standing Orders and there are other matters to put the system in place and that committee ought to report shortly. I am glad you said it is relevant. Yes, it is relevant insofar as the service commissions are accountable to Parliament in respect of certain matters, but in terms of ordinary poor people who receive injustice every day in respect of these service commissions they have been turned away from the seat of justice and there is inequality of law being promoted in Trinidad and Tobago by an ouster clause which prevents the courts from granting redress to individuals.

Mr. President, I would reserve some of the matters depending on what hon. Senators have to say, but may I say that we have had support for these measures and even the Trinidad and Tobago teachers union has been making representations for this ouster clause to be removed. In the other place I put on record the contents of that letter, but I also recognize and the Government recognizes that there is reluctance by certain sections of the community to allow these service commissions to be scrutinized by the court. We would only say that in accordance with the policy of openness and transparency which is required in the day-to-day affairs of governance and the principles of good governance that this Bill is one to be supported and I strongly ask hon. Senators to support Government in these measures.

Mr. President, I beg to move.

Question proposed.

Sen. Eudine Job: Mr. President, I first agree with Sen. Prof. Spence that this debate should not have taken place at this time, however, given the fact that the honourable Senate has decided to proceed, we do not have a choice.

Mr. President, our Constitution as far as I am concerned, I have had to look at the reason these clauses were included for the protection of the service commissions and in researching some information, I found that in our Constitution these independent service commissions were entrusted the power to appoint, transfer, promote and discipline persons in the public service. The Constitution intended that these public officers should be insulated from direct political influence and thus protected they would be free to serve any political administration with equal dedication.

Mr. President, in reference to the ouster clause, I personally believe that the hon. Attorney General was correct in having it deleted, but what I would like to find out—we hear these superficial reasons—is what is the deeper motive for removing the clause. If it is to give the public servants more leverage in terms of justice for unsatisfactory decisions by the service commissions I could understand and agree with that. If, however—and I am not a lawyer, and would not want to lock horns at all with the Attorney General because I will come out the loser—on removing this clause gives way later to some sort of political interference, then we should probably have another look at it. At this point in time I really cannot say, but I hope that the Attorney General will provide this House with the deeper motive for removing the clause.

Constitution (Amdt.) Bill
[SEN. JOB]

Tuesday, August 8, 2000

On the question of the service commissions, I think that clause gives them absolute power and there is truth in the saying that sometimes absolute power, corrupts absolutely. I am not saying by any means that the service commissions are corrupt, I am just saying that sometimes they may misuse or abuse the authority vested in them and given that, I can agree that the clause be taken out of the Constitution. However, since I have been in this honourable Senate, the Bills I have seen coming through, or the amendments, have been to my layman's mind *ad hoc* and piecemeal and I hope that the hon. Attorney General in bringing these Bills will try to create some sort of synergy, because when you just take one piece of legislation, Bill or Act and bring it for amendment without considering all the implications, then we can be in for some problems. In terms of the service commissions—and I heard the hon. Attorney General mention the regulations—maybe the time has come to review the operations of, or the regulations governing the commissions, which were established because, and I quote from page 58 of the *Report of the Constitution Commission 1987*.

“The Public Service Commission which gave rise also the Police Service Commission and the Teaching Service Commission came about as a result of the post-war colonial policy of the British Government in its attempt to prepare all its territories for independence...”

Mr. President: Have you identified the document from which you are reading?

Sen. E. Job: Yes Sir, I said the *Report of the Constitution Commission 1987* page 58, Chapter 13. One wonders whether the *raison d'être* of these commissions still holds true. Maybe not. I want to use as an example the Police Service Commission where we want to look at reviewing the regulations or operations of service commissions. It is my understanding that there is a Delegation of Powers Order which has conferred on the Commissioner of Police the authority to promote officers in second division.

Now one of the recommendations here was that quite apart from the fact that the Police Service Commission Regulations are in need of amendment, there is the need for greater participation by the Commissioner of Police and more senior officers in the administration of the police service itself to remedy these problems.

In 1995, the then Prime Minister agreed with a system of promotion for the police service. That agreement was in conjunction with the Police Service Association and the commission. That system included a weighting average on which officers can be promoted and we know what obtains right now is really

archaic because public officers are promoted based on seniority. Many public officers get themselves trained, they go to university, acquire tertiary education but that in itself presents no basis for promotion and we are looking at the regulation of the Public Service Commission in terms of promotion.

We are saying that the whole basis for promotion probably needs to be revised because the morale of the public servants comes into question and even if we remove the ouster clause and give public servants the leeway to appeal decisions one still has to deal with the fact that you are not being promoted even though you are qualified, and if you do not have 23 years service you cannot be promoted from a constable to a sergeant. How does that impact on the morale of public servants in general including the police? Right now, given what we were doing this morning in terms of the Dangerous Drugs Bill, we know that the police are really essential in this country at this point.

Mr. President, the Police Service Commission rescinded the system of promotion on its own, unilaterally, without any discussion and as it stands now, these officers have reverted to the seniority system. Is that fair? Given the fact that the hon. Attorney General has seen it fit to remove this clause from the Constitution, had it been 1997, then I guess the Police Service Association or whoever, would have had some recourse, but then that was not the case. So what is happening is that throughout the whole service, I think people are just operating because they have to, particularly officers who are willing to give of their best service par excellence and are not at all being compensated either in promotion or financially.

7.15 p.m.

Mr. President, while I will agree with the hon. Attorney General in removing the clause, I would also want to say that we need to look holistically at all systems that are put in place for more mutually beneficial operations our country, as well as our public servants.

On the question of the dismissal of public servants under section 71 of the Summary Courts Act, again I would agree with the hon. Attorney General that if a public officer is convicted then, of course, the Service Commission should have the right to dismiss that person without even going through another tribunal and the long, onerous process. However, what I have some concern about is the fact that the amendment to this Bill indicates that it intends to empower the Service Commission to summarily dismiss an officer who has been convicted on a criminal charge or against whom an order under section 71 of the Summary Courts Act is made.

Constitution (Amdt.) Bill
[SEN. JOB]

Tuesday, August 8, 2000

Mr. President, it is my understanding that an order stops short of a conviction, subject to correction. If, according to section 71, the magistrate who would have given that order would have taken into consideration the circumstances regarding whatever offence was committed, and I want to quote here some of the elements that would be taken into consideration. The section says, and I quote from the Summary Courts Act, section 71:

“Where any person is charged before a Court with an offence punishable by the Court, and the Court thinks that the charge is proved, but is of opinion that having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, the Court may, without proceeding to conviction, make an order either—

- (a) dismissing the complaint or charge; or
- (b) discharging the offender...”

It goes on. Now, if a learned magistrate would have taken all these matters into consideration before making a ruling on an offender and this Bill is giving the Service Commission the power to veto, as it were, that ruling by the learned magistrate and, on its own, to dismiss the offender who would have already been excused or exonerated by the learned magistrate, Mr. President, this is open season for victimization and vendettas.

I want to refer to an example and I think “to err is human” is very real. Two years ago when the hon. Minister of National Security visited Tobago, he went to the Charlotteville Police Station and he saw that the conditions under which the police were operating were so deplorable he had to use obscenities.

Mr. President: Please, I ask that you withdraw that statement.

Sen. E. Job: Yes, Mr. President, withdrawn. He had to use strong language. Can I say that, Sir?

Mr. President: Go ahead.

Sen. E. Job: Yes, Sir. However, what I want to say hypothetically is, if the hon. Minister—[*Interruption*]

Sen. Brig. Theodore: On a point of correction, Mr. President, it seems as though we are getting some second-hand and third-hand opinions issued here. Nothing I said at the Charlottesville Police Station had anything to do with the conditions under which the police operated but rather the conditions under which they maintained the premises in which they were living. Thank you.

Sen. E. Job: Yes, Sir. If, however, the strong language used in that instance was used by a public servant and that public servant was charged with an offence, the learned magistrate would have taken section 71 into consideration, all these circumstances, and may have issued an order dismissing the offence. However, in that situation, given these amendments, that public servant could have been dismissed by the Service Commission.

I have no problems with somebody who is convicted of a criminal offence being dismissed, that is fine, but if the learned magistrate would have taken everything into consideration and then issued an order and then the hon. Attorney General is now bringing an amendment to this Senate saying that the Service Commission can veto that, then I say anything can happen in a situation like that. That is very unfair to the offender; it is unjust and I think we need to review it, simply because the hon. magistrate would have wanted to give that person another chance. If we are looking at giving people chances, we have to look very squarely at all the implications of this section and how this Bill would impact on people and people's lives, because to be dismissed for an outburst would have long-range implications, particularly to people who have families.

Mr. President, I would reiterate solidarity with the hon. Minister for empowering the commission to dismiss on conviction but I would not agree to dismiss an officer after a learned magistrate would have considered circumstances and ruled and then have the commission come in and rule again on that same issue. Thank you. [*Desk thumping*]

Sen. Martin Daly: Well, here we go again, Mr. President. I took the precaution, I think it was this morning—it was certainly light at the time, and I am not familiar with these premises in the dark—so as not to have to say the same thing twice, to delineate what I describe as my reasoned argument. It seems to have been—perhaps I did not say it often enough. I took the trouble this morning, Mr. President, to delineate what I describe as my reasoned argument on the role of the legislature when it is either considering what I chose to describe as draconian laws, structural changes with our fundamental laws or with things in the Constitution—I have my *Hansard* in front of me—because those are occasions on which I think we have to go very carefully.

Constitution (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

If we are debating whether to license bailiffs and things of that nature, that does not fall into the same category, in my view, as severe laws, structural changes or changes in the Constitution. That remains my position and, as I said this morning, whether I get bawled up or not I will do my duty and I will continue to do my duty and no amount of bawling up will stop me doing my duty. In fact, I have had the distinction to have been bawled at by three different Prime Ministers and I consider it a distinction. This is not the place to go into the occasions on which I was bawled up by three different Prime Ministers.

One concerned the legislation to amend the BWIA Act and I was bawled up at 10 past 9.00 one night when I was in the course of—I am not going into the details. I was bawled up at 10 past 9.00 one night in my private office when I was seeking, on my time, with the assistance of one of my partners who was also devoting free time, to try to produce an amendment to legislation which would be acceptable to everybody. Not only was I bawled up but on a subsequent occasion in my private home in Mayaro I received an uninvited guest who came to tell me that I was a most dangerous Independent Senator.

Those are at least two occasions on which I have been bawled up for doing my duty. What was so ironic was, the amendment which I was preparing, with the encouragement of Ministers of the Government who saw that there was a problem, was pretty much receiving the approval of the majority of the Cabinet at that time. There was a problem and they saw that the amendment that we were preparing was a way out but I got bawled up anyway and subsequently my house was stormed. I do not mean unpleasantly—I served drinks. Indeed, the drinks called for by the security who were accompanying my uninvited guests were of such a high order that I did not have some of them in stock, but that is another story. However, it tells you something about our country. I would not detain you this evening, Mr. President, on the other occasions on which I was bawled up for doing my duty. In fact, in the case of—*[Interruption]*

Sen. Brig. Theodore: By which one?

Sen. M. Daly: I said three different Prime Ministers. In fact, I am so frequently bawled up now, albeit not always in my hearing, but sometimes in my hearing—let me put it this way. One bawling up of which I was told—I was not present, of course, so this is, if you like, hearsay evidence—the way it was put to me was a high man in the Government—I cannot repeat the whole thing because some of it is not parliamentary—was complaining about the Independent Senators and whether they thought they knew everything. So I would not go into the bawlings up that take place out of my hearing because they are well-known to

most of the people sitting on the Government Benches because they hear them. Suffice it to say I have been bawled up in my hearing by three different Prime Ministers, basically because they did not agree with something I was doing, but it was in the course of my duty.

Now, I have two problems with this particular piece of legislation and I will try again, Mr. President, to speak as neutrally and as undramatically as I can. I have two problems with this piece of legislation. First of all, I believe that if there is dissatisfaction with the operation of Service Commissions, we are not going to solve that problem simply by making them “accountable” to the courts. That is the first problem.

7.30 p.m.

Therefore, what we are doing is taking out one piece of the Constitution—I am referring now to the ouster clause—which relates to the service commissions, but leaving the rest of it in place without any overall view of what we should be doing with the service commissions at this juncture in our history. Maybe the recent “bawler upper” who was complaining that the Independent Senators thought they knew everything, might not be careful to read the *Hansard* before he suggests these things.

I well remember when—let me speak only from my position—I am on record repeatedly as saying that in my view, the time for the service commissions to have jurisdiction, subject only to delegation, over everybody in the public service—and I am using the word broadly to mean all the people that they have jurisdiction over—of so many varying ranks is long gone. My position has been for a number of years, and in fact, when I took that position in the select committee with the support of some of the people who were then in opposition—anyway, that is another story. Let us stick to my position.

I would have thought that if there is a problem with the service commission and, “ordinary poor people are receiving injustice from these commissions”—and I quote from the Attorney General's presentation earlier—then we should be looking, and indeed, the Minister of Public Administration, because I think he still has that Ministry, should be coming to us with a contribution to explain what is the Government's policy with regard to the service commissions, and not simply about making them accountable to the courts.

That is my position, and I am sure that history would vindicate it. My position is that the Public Service Commission should be retained with all of its powers, but only for, I would use a general phrase, the top and possibly upper middle

Constitution (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

management of all the various services of the supervisory. The Judicial and Legal Service Commission, I will say something about separately, but for all the other commissions except the Judicial and Legal Service Commission, it has been my position that they should retain control with all of their powers, but only for the top and upper middle levels of management of the various services, because those are the experienced people against whom, one wants to insulate so-called political interference. Those are the people we need to insulate.

We are far too mature. I know of other countries in the Caribbean that when the government changes, right down to messengers in the state enterprises get touched. We have passed that stage, and part of our problem is that we are not looking at our evolution and our development, and there seems to be some upset that philosophically I saw a link with this and equal opportunities and various other things. Many things we are considering now, we have passed that stage.

As a people, we have shown much greater maturity. We have survived mutiny, attempted coup, fundamental changes in government, death of a Prime Minister in office, and we have survived these things and we have evolved. My philosophy is, why can we not leave some of these things to the evolution of our very sensible people? In relation to the service commissions, we have gone past the stage where in this country, any Minister could be so stupid as to think that he could get rid of a messenger or a clerk in his office because he did not like him politically.

We have lots of remedies available for that, regardless of whether the service commissions are there or not. We have evolved past that stage; the stage of our legal development and our political development when we first accepted the service commission type of arrangement was immature and undeveloped. We now have a reasonably well-developed media—of course they can improve—which throws light on these things. We have all of the developments that have taken place in public law and administrative law through which people can now get protection. Those avenues were not known or yet developed in those days. They are available now.

Sure we can get rid of the ouster clause. I know it is going to present a huge practical problem, and I will say what that is in a minute, but my first point is, we are amending the Constitution by taking out a little piece. It is like you pull a thread out of a tie or shirt and four more unravel. That is not the way one fixes things. I am sorry for such a homely example. However, I do not feel strongly about this as I did about clause 19 which, eventually after the bawling up, the Government was gracious enough to amend. I do not feel strongly about it

because first of all, I have to recognize, and I would invite Members to look at section 54 of the Constitution—we are always having a big argument about whether something needs a special majority.

Our Constitution framers at the time did not choose to protect section 129 by a special majority. That means that our founding fathers who got together in Marlborough House or wherever, probably anticipated that a time might come when the 129 arrangement would be looked at again. Of course, immediately, I see a prophetic signal that one day we might be looking at 129 and that was in the minds of the framers or our Constitution. They did not do this thing by guess.

I do not feel nearly as strongly about this as I felt about the previous clause or as I feel about some of the coming legislation which does not recognize where we are in our legal and political evolution. What I am disappointed in is that we just pulled this one thread and we are not looking to deal with the overall problem of the so-called injustices and delays in the service commissions.

Apart from anything else, in 1962 when this was first conceived—this is like having a problem of too many cars on the road—the overall population of the service commissions would have been relatively small. Now the number of people under their control has, I have no idea, quadrupled or is now ten times as many under their control. Is it possible anymore to funnel into one human resource organ of the state, all of these different workers? That is not possible.

Indeed, in many big companies, in modern industrial relations, and there are many persons here who know about these things, there is no longer one human resource department. The company is split up into exploration and drilling, corporate, and all these different things. Each section in the company has a human resource department, because it is recognized that one cannot funnel everybody into one human resource organization. We need to be looking at those things instead of just pulling one little thread.

I do not have a problem basically with the removal of the ouster clause, first of all, because it was not protected in the original Constitution, and secondly, if everybody wants to take their grouse about promotion to the courts, we will soon run into another problem with which we are going to have to deal.

As high an authority as Sprangalang has said that people in our society do not accept authority. If one says that one's car is parked there, as happened to me this morning, one gets abused. It happened to me this morning while coming here. I

Constitution (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

was trying to park and a man was trying to wriggle his car all over the road. I blew my horn at him and he uttered obscenities. I parked my car and walked in here. Regrettably, I was wearing my jacket and was coming into Parliament so I could not respond in kind. *[Laughter]*

That is a perfect example of the anti-authoritarian attitude. There is a big sign there, there is a big Red House here. Perhaps if I had a car of a certain standard, he might be more amenable to recognizing that I had a right to park there, but I cannot help that. That is the perfect example of anti-authority attitude, and I guarantee you that once you remove this ouster clause, every single person who has a matter with the service commission is going to the court. Every single one. Nobody is going to accept that X got promoted and Y did not.

I am not going to engage the Attorney General in a debate about history: I think the perspective he has given us about the origins of the ouster clause is all wrong. I do not think that is why we got an ouster clause. It is for a completely different reason than for which he said, but it is much too late for us to detain ourselves debating that. What is important is that the courts recognized in certain special circumstances that someone could complain to the court regardless of the ouster clause. He has recited what they are: breach of natural justice, excess of jurisdiction, bias and things of that nature.

What the ouster clause did not permit, and still does not permit, is that one could go to court if one does not like one's performance appraisal, or if one thinks that one should have been promoted instead of Mr. X. Every decision that the service commissions make now, apart from the serious ones like exceeding their jurisdiction, being biased, not giving someone a perfect hearing, there will be a situation where the service commissions, after observing due process down to the letter will have an administrative decision which they have made, challenged on the merits, and as widely as modern administrative law has expanded, the courts have never said, and the classic phrase is that they would substitute their judgment for the judgment of the administrator.

What they say is that if the administrator is unfair in arriving at the judgment, they will correct it, but provided that he has been fair and lawful procedurally in arriving at his judgment, they are not going into the merits. That is still the position in modern administrative law, ouster clause or not. The courts will not substitute their judgment on the merits for that of the decision-maker. One will remove this ouster clause and have a flood of people going to the court to have the merits of a fairly and lawfully arrived at administrative decision going to be examined.

That will not be my problem. That will be their problem in terms of resources, but even with the expansion of modern administrative law, the courts do not usually substitute their judgment for that of the decision-maker, provided a fair and lawful decision has been arrived at. If they are biased and these different things, then they will attack the process. Once one gets due process, they will not interfere.

As many Senators here will know, we have had this problem in the Industrial Court in relation to private sector employers, where people challenge their performance appraisals given by their managers, and the Industrial Court, by and large, has very sensibly taken the position that unless one can show outrageous things like bias or extraneous considerations, they will not interfere with the employer's judgment either.

I do not know how far this is going to get ordinary people who receive injustice from the commissions, but the point is that I do not feel strongly about it. If the Government wants to open up this area of the law further than it has been developed by the courts, that is their policy decision. I will not quarrel with it because it is not going to do any injustice. It will create a lot of practical problems.

I do not think this is what we should be doing. I think we should be coming up with a much more comprehensive—I dislike the word “holistic”—solution and many of us in the course of our public duty have suggested other solutions. We are not necessarily saying they are right, but we should have a proper debate about the future of the service commissions; not a one piece, one thread debate about the service commissions.

I have a problem with this because I do not think this is how we should approach structural arrangements in the Constitution. I can see it is not something to fuss over because the Constitution framers did not protect it, and insofar as I am concerned, the only bad that is going to come out of it is the practical problem with people going to court trying to invite the court to substitute their decisions for that of the decision-maker.

We will have a much more difficult problem with the Judicial and Legal Service Commission. Mr. President, I am on record. You see, I open my mouth. Do not mind I pay for it, but I open it, and when we had the last Constitution Commission, I said in the town hall—and that was in 1986 or 1987—that the Judicial and Legal Service Commission was too narrowly drawn and constituted. I hear everybody trumpeting this now. I said that in the town hall in 1987, and I said it was too narrowly drawn.

Constitution (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

The problem is now that one is going to have, and I am using the word generally, the Judicial and Legal Service Commission comprising a group of lawyers and their decisions now will be open to challenge in the courts before another group of lawyers. *[Laughter]* That has enormous difficulties. The service commissions are different because the people who comprise the service commissions come from one group of people, multi-disciplinary, and they are dealing with large groups of people who are not in the same club, for want of a better word.

There are going to be difficulties when there are people in the same club or profession trying to exercise reciprocal jurisdiction, because that is what it is going to become. In other words, the service commission might appoint Mr. X as a judge and Mr. X will have to sit in judgment on what the service commission which appointed him did, and I do not think that is a good thing. I do not think that any society, however mature—I mean, lawyers understand best of all how to manage these apparent conflicts of interests, but I do not think that is a good thing.

7.45 p.m.

Therefore, if we are going to do this, then we have to be considering whether or not the Judicial and Legal Service Commission should be more widely drawn so this idea of—and I am speaking in metaphors—people within the same club having reciprocal jurisdiction over each other would not arise, because if you have a more broadly drawn commission, then the focus would not be so narrow on lawyers deciding about substituting their judgment for other lawyers. That is not a good thing in my view.

Indeed, that is one of the reasons why we had such a terrible time trying to get a Caribbean Court of Appeal because the same worry runs through there that you are not going to have that degree of detachment. Detachment is what we are talking about. That is why we have not been able to get a Caribbean Court of Appeal, because whatever its faults, people still have some confidence in the Privy Council, especially after certain advocates persuaded them to resume hanging. People have confidence in the Privy Council that it has detachment and the difficulty with getting a Caribbean Court of Appeal is that people are worried about the lack of detachment.

There is going to be that suspicion about lack of detachment if you have the Judicial and Legal Service Commission, as presently drawn, able to be challenged on the merits of its decision, not if it is biased. Crane alleged certain things about

bias, natural justice and so forth and that was fine. That is why this is going to present practical problems and I particularly fear for the operation of the Judicial and Legal Service Commission because I do not think the country is going to accept one group of lawyers looking into another group of lawyers, any more than it will accept one group of policemen looking into another group of policemen. Who was telling me some time today that they had a complaint about a policeman, they were invited to go to a police station and how unsatisfactory it was found?

I do not think the country is going to accept it. I just think that we are doing something here that is really very limited and it is not going to serve the country well in any long-term way. I feel I am entitled to say so and I am entitled to invite the Government and the Opposition to come up with a sensible plan for the future of the service commissions which we can debate.

Mr. President, at the risk of detaining everybody at this late hour, that is my position on this. I do not feel strongly about it but I am just saying it is a mistake. I do not think this is the way to deal with the problem. I am entitled to say so and I am entitled to invite the Government and the Opposition to suggest that they come up with proposals for the future of the service commissions that we can debate sensibly.

Now, with regard to the other part of this, I certainly do not think even though it is not protected by section 54 that we should be debating an amendment of the Constitution at this hour of the evening, not only when we are tired, but when, traditionally, people are taking very little interest in the proceedings in Parliament because I am sure that they would be interested to know what we are saying about the service commissions, not only what we are saying about this Bill. This is completely the wrong time to be debating this but that is the Government's choice. It has the power. It can force us to debate it at this hour. That is also fine.

That kind of arrangement is not going to quench—we are all going to stay here—and is not going to stop us from taking part in the debate and what we say will be available in *Hansard* but I ask: Is it productive? Does it lead to sensible arrangements about these difficult matters? If we have to pass some legislation in a hurry, that is fine, but to stare us down and say, “You have to debate an amendment to the Constitution”, I think is inappropriate and I am entitled to say so and I am using the mildest possible language because the country would like to know: What are we saying about the future of the service commissions?

Constitution (Amdt.) Bill
[SEN. DALY]

Tuesday, August 8, 2000

Mr. President, at the risk of being tarnished by association, I mean, this is the absurd position at which we have arrived in this Parliament, the only thing I have ever said about Sen. Job was in this open forum when some inappropriate comparison was made to another Job and, at that time, the only thing I knew about her was visual but I was absolutely confident that I was saying the right thing when I said that the comparison was inappropriate. It so happens that she has made the point, the only point I wish to make, about the provision that the commissions can act where you had been before the criminal courts.

I have absolutely no problem if you are convicted in the criminal court, the commission has a discretion without going through a whole long palaver again to call for the papers and say, "We are looking for these papers and based on these papers, we are going to do X, Y and Z about your future." I have no problem with that, provided it is discretionary and it appears to me to be discretionary. But, may I say why discretion is important, because we seem to think "discretion" is a bad word.

Mr. President, if you look in any book on modern employment law, any one you like, from the highest legal text to the lowest handbook, the whole trend in modern employment law is that trouble with the police—let me put it neutrally—does not and ought not to interfere with your employment unless that trouble is directly related to your job. Insofar as this says any criminal offence could visit this penalty on you, we are again going backwards. I do not intend to cite law books here. I think I have enough credibility on the subject to say that if you look in any book, even if you are convicted of a criminal offence, the industrial tribunals say that is not sufficient grounds to dismiss unless what you are convicted of or what you have been involved in, has some relationship to your job and affects you in the performance of your job.

So that no one would conceive in the modern world—I do not know why we are going backwards—that if one gets convicted for careless driving because one broke a major road and one was fined \$240 that one should lose one's job as a Permanent Secretary. That is not only absurd but it is completely inconsistent with modern employment concepts, but if you want to put it, put it. I have confidence in the commission. It is not going to fire a Permanent Secretary if he breaks a major road, especially after staying in Parliament until 9.00 o'clock at night, because I know I come close to breaking them. In fact, when I want to be safe, if the President's driver passes me *en route*, I kind of stick behind him so that I do not get into any trouble. But some Permanent Secretary would totter out of here at 2.00 a.m. after a budget debate when he has had to listen to Mr. Hinds; he

is dead tired and, depending on the catering, not well satisfied; he breaks a major road; he gets fined \$240 and they fire him as a Permanent Secretary. That is absolutely absurd but if you want to put that, it is fine as long as the commission has a discretion.

If the circumstances are extenuating and the court gives him a discharge under section 71, I absolutely reject the idea that the commission can reopen that and I reject it on a much broader principle than Sen. Job has rejected it. It is double jeopardy. That is what it is. You commit what appears to be an offence; you go to court; you suffer the jeopardy of a trial; the court in its wisdom decides to give you a section 71 discharge; but, “baddam”, you could be put in jeopardy again. Why? Why do we want to do that? What is this beef we have with the courts that we cannot accept anything that emanates from the courts? I am not saying that sometimes it is not section 71 decisions that people do not particularly like, and there is a whole debate in the wider society about whether section 71 favours people of a certain echelon in the society, but that is a completely different debate.

I do not see why you should face double jeopardy and on that broader and much simpler principle, I agree that this legislation has what I consider adverse practical consequences, particularly for the Judicial and Legal Service Commission, but I would like to have that part of the section that talks about the making of an order under section 71 of the Summary Courts Act deleted. If I am tarnished by association, really, Mr. President, who cares? I will do my duty and I think section 71 should come out. That is my view and if somebody else shares that view with me, that is fine. If they do not share that view with me, equally fine, but I think it is quite wrong to subject people to double jeopardy.

I am alarmed about the consequences of the Judicial and Legal Service Commission but one advantage of having this debate at this hour of the night is that I am not going to bother to propose an amendment. The Judicial and Legal Service Commission will have to fend for itself on this occasion but, were we in different circumstances, I could have earnestly considered some kind of amendment to deal with the practical problem of the lack of detachment between the courts and the members of the Judicial and Legal Service Commission but, so be it, Mr. President.

Thank you very much.

Mr. President: I am just checking on the position as regards dinner.

Sen. Nafeesa Mohammed; but be prepared to be interrupted for dinner if it is ready.

Sen. Nafeesa Mohammed: Mr. President, at this very late hour in the night, I am prepared to be very brief especially when I know there is a little man waiting somewhere around the place whom I have not had the opportunity to see for the last few hours.

Sen. Martin Daly made mention a while ago of the fact that a Permanent Secretary could be leaving here at 2.00 o'clock, have some traffic offence committed and then some kind of disciplinary action could be taken against him. In the same vein, for example, this morning I was on my way into Port of Spain and I was involved in a motor vehicular accident where someone drove into the back of my car. Had that person been a civil servant, I assume, with the Bill that we are dealing with this evening that person could well find himself or herself in tremendous difficulties, if it is that the matter were to be determined in court and then some kind of disciplinary action were to be taken against him or her.

Mr. President, it is rather unfortunate. In fact, I would say it is very sad indeed that we are here at this hour of the night debating a Bill of this nature, a Bill that involves a whole debate on a particular aspect of constitutional law and yet, notwithstanding Sen. Prof. Spence's plea to the Government this afternoon, to defer this debate to another day, the Government chose to proceed with it at this very late hour of the night. It is very unfortunate.

I remember, as a student of law many, many years ago—I think it was around 1983 or 1984, thereabouts—having to do a course called “Constitutional Law” at the Cave Hill Campus of the University of the West Indies. In this course, a significant part of it was devoted to this issue of what is called the ouster clause. There has been so much jurisprudence, so many people have written articles, so many legal minds have looked at this issue in the context of constitutional reform and, indeed, the situation with our constitutions in the Caribbean. It is rather unfortunate that in this debate at this point in time that we would be unable to have the kind of debate that one would like to be engaged in with respect to this very fundamental issue.

When we look at the Explanatory Note to this Bill, it starts off by referring to the amendment to the Constitution whereby the Service Commissions would have that power to summarily dismiss an officer who has been convicted on a criminal charge, or against whom an order was made under section 71 of the Summary Courts Act.

Mr. President, when you look at the Bill itself which appears to be a short Bill, the most far-reaching part of the Bill really has to be with the removal of what is called the ouster clause and that part of the Bill has been glossed over. Even in the Attorney General's contribution, he seems to have just glossed over this issue and that is rather unfortunate.

8.00 p.m.

We are talking here about changing our Constitution. We are talking about making an amendment to our Constitution, and whilst it is a fact that the amendments that are being attempted may not fall under what is considered to be the entrenched provisions of the Constitution, the fact remains that the proposed amendments are likely to have very far-reaching consequences insofar as our Constitution is concerned. A matter of this magnitude is the kind of issue that we as Members of Parliament should really be talking about in relation to the citizens of the country, because our Constitution is a written constitution.

If we are talking about changing our Constitution, we are talking about constitutional reform and, therefore, these are matters that we really need to have a tremendous amount of discussion, dialogue and debate about. I did not hear the hon. Attorney General making any reference to the kind of consultation that has taken place with respect to the proposed amendments here, particularly as it relates to the ouster clause. I did not hear him indicate to this Chamber that there were discussions and consultation with the major players or institutions involved in this exercise, particularly our service commissions and the Judiciary of our country, and *moreso* with the citizens of our country.

It is regrettable that the Government is attempting to interfere with our Constitution, at this point in time, on the eve of the general elections in our country. Mr. President, if we want to tamper with our Constitution and we want to bring about change, I am not aware that the UNC in their manifesto from 1995 indicated that they were planning or intended to amend the Constitution to remove the ouster clause.

A matter of this nature is one that they could have appropriately brought up on the political platforms. In the next few months the whole country is going to be in some real intense discussions all over. This would have been an ideal opportunity to say to the citizens of this country that we intend—be it the UNC, the National Alliance for Reconstruction or the People's National Movement—to effect constitutional reform and in that context we would like to do X, Y and Z, including the removal of the ouster clause.

Constitution (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, August 8, 2000

If the people of this country agree to have such reform, then by all means. The results of the election would give you that mandate. That means you would have gotten a mandate from the people, the citizens of the country, to interfere, change or tamper with our Constitution, which, in my view, is a very sacred document. We have a written Constitution and we should not just be tampering. We should not allow any government to be just tampering with our Constitution in this willy-nilly fashion.

We have to make changes, and we acknowledge that there are problems and that within some of our institutions there is a need to have reform and what have you, but let us go to the people; let us get that mandate in order to change that Constitution. Under the laws of our land, our Constitution is supreme. It is not like in England where there is a different concept that exists, where it says that Parliament is supreme; we have a written Constitution.

I think this is a concept—with all due respect to the hon. Attorney General—that he seems to have very little regard for and, perhaps, it is because of his obsession. There was a time when his view used to be that only British trained lawyers were good lawyers. There have been newspaper articles and so forth where that kind of sentiment has been expressed. In places where you have a written constitution, like in our country, we have to tread carefully, and we have to be very careful in the way we deal with changes to the Constitution.

Whilst it is that section 129(2) of the Constitution is being affected—for the record I will just read it:

“At any meeting of a Service Commission three members shall constitute a quorum.

(3) The question whether—

- (a) a Service Commission has validly performed any function vested in it by this Constitution;
- (b) a member of a Service Commission or any other person has validly performed any function delegated to that member or person under section 127;
- (c) a member of a Service Commission or any other person or authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in paragraph (b).

may not be enquired into in any court.

That is expressly provided for in the Constitution.

What this Bill is seeking to do—that particular clause is what is commonly referred to as the ouster clause. This Bill is seeking in a very—if I may use this word—it is very deceptive the way in which they have slipped in this removal of the ouster clause in this Bill. I have to use the word. It is deception to the highest, because in the hon. Attorney General's presentation this evening I heard him say that this Bill is in response to a call that has been made by one of the service commissions, I believe it was. I think in the other place he had made reference to the report of the Police Service Commission 1995 to 1998.

When I looked at that report, what it specifically asks for in relation to those problems, the difficulties that are associated with disciplinary action against officers, particularly with respect to the police service and so forth—page 34 of the *Report of the Police Service Commission 1995—1998* specifically states:

- “(i) that Regulation 163(2)(q) referred to above be amended along the lines of Regulation 149(2)(j) of the Civil Service (Amendment) Regulations 1990, in order that disciplinary action could be proceeded with, not on the basis of a conviction, but on a charge having been proven;
- (ii) that Section 129(4) of the Constitution be amended to allow for summary dismissal of a public officer, where a criminal charge has been proved against him or where it is impracticable to hold a hearing that may result in the dismissal of the officer. The Commission has been awaiting a decision on the matter.”

The point I am trying to make is that in this particular report, a call had been made to amend section 129(4) of the Constitution which says that no penalty may be imposed on any public officer except as a result of disciplinary proceedings and so forth.

If this Bill was seeking to be a response to the call of this commission here, in terms of amending section 129(4), then by all means we would say fine, no problem; it would be a pretty straightforward amendment. What is very, very deceptive is how in a Bill of this type that is seeking to amend section 129(4) of the Constitution, the Member has slipped that very radical change to section 129(3) involving the ouster clause. It is rather unfortunate, because that removal of the ouster clause ought properly to have been the subject matter of a separate debate altogether. In fact, it could have been in a separate piece of legislation.

Constitution (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, August 8, 2000

Hon. Attorney General, all I am saying is that on the eve of a general election, this removal of the ouster clause is an issue that could have been taken to the people.

Hon. R. L. Maharaj: Hinds supported it!

Sen. N. Mohammed: With all due respect to what the hon. Attorney General is saying, I cannot recall that Mr. Hinds spoke in the other place in the course of this debate. In terms of the discussion and so forth, may I for the record indicate to this honourable Chamber that Mr. Fitzgerald Hinds, the Member of Parliament for Laventille East/Morvant, is a person who is very versed, very experienced and very knowledgeable in the realm of judicial review and constitutional law. I heard him when he spoke on the television, and his views were, indeed, very solid and substantive.

At the end of the day, we are aware of the fact that there are problems; nobody is denying that there are problems; there are problems in the system. All we are saying is that if they want to change the system, then do it properly. When it comes to the Constitution, this Government has established a track record of tampering with our Constitution and interfering with our rights, freedoms and what have you, over the last four and a half years of this administration, in a manner that is unprecedented. It is a very *ad hoc* kind of approach and it is rather unfortunate.

The Government has the opportunity to take issues of this type to the people, and if they do get a mandate—do you know what is more unfortunate, Mr. President? When you look at the outcome of the results of 1995, the UNC did not have that kind of mandate. The way they are riding roughshod over people in this country, they did not get the majority of votes in the election, and that speaks volumes. So you see when it comes to changing our Constitution, all that we are saying is that if you wish to interfere, change or tamper with our Constitution, for God's sake, do it right, do it properly.

Mr. President: I think it is appropriate to break for dinner at this time. This sitting is now suspended until 9.00 p.m.

8.11 p.m.: *Sitting suspended.*

9.03 p.m.: *Sitting resumed.*

Sen. N. Mohammed: I assure Senators that I would not be very long. For the record, I would like to make reference to two cases that deal specifically with the ouster clause.

We have the case of *Kemrajh Harrikissoon v Attorney-General* and you can find the Privy Council decision in the *West Indian Reports Volume 31*. It is a 1979 case and at page 353 of this *West Indian Reports* for the records, I would like to refer to a part of the judgment that dealt with the ouster clause and to show how in this particular instance the court actually sought to avoid having to deal with it one way or the other. At that time it was section 102(4) of the 1962 Constitution. It refers to that particular section which says:

“The ouster of the courts jurisdiction effected by this section is in terms absolute. In their Lordships’ view it is clearly wide enough to deprive all courts of jurisdiction to entertain a challenge to the validity of an order of transfer on either of the grounds alleged by the appellant in the instant case; and that is sufficient to support the dismissal of the appellant’s claim on this ground also.

In all the judgments below, however, there is considerable discussion of recent English cases dealing with ‘ouster of jurisdiction clauses’ contained in Acts of Parliament. Section 102 (4) does not form part of an Act of Parliament; it is part of the Constitution itself. Their Lordships do not think that the instant appeal provides an appropriate occasion for considering whether section 102(4) of the Constitution, despite its unqualified language, is nevertheless subject to the same limited kind of implicit exception as was held by the House of Lords in *Anisminic Ltd. v. Foreign Compensation Commission* [1969] 1 All ER 208 to apply to an ouster of jurisdiction clause in very similar terms contained in an Act of Parliament. This question is best left to be decided in some future case if one should arise.”

Mr. President, later on you would find the case of *Thomas v the Attorney General*, that landmark case. It is very interesting to note that in that case, I remember looking at one of the judgments in that particular case and I believe the hon. Sen. Daly was, in fact, one of the attorneys who appeared in that case. On this question of the ouster clause, there is something here. The full doctrine laid down in *Smith v East Elloe Rural District Council* in *Volume 32 West Indian Reports 1981, Thomas v the Attorney General* at page 393 says:

“In exercising such jurisdiction the commission is clearly performing a function vested in it by the Constitution; and the question whether it has performed it validly by removing the plaintiff from the Police Service falls fairly and squarely within the language of section 102(4)(a) as a question into which by the Constitution itself the court is prohibited from inquiring. At the date when the Constitution was drafted the decision of the majority of the

Constitution (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, August 8, 2000

House of Lords in *Smith v East Elloe Rural District Council* [1956] AC 736 still held the field, upholding the complete ouster of the jurisdiction of the courts by a ‘no *certiorari*’ clause in similar terms to that contained in section 102(4). It was, no doubt, present to the mind of the draftsman of that section. Having granted to Government employees a security of tenure superintended by autonomous commissions it may well have been thought not to be in the interest of efficient Government if every appointment, promotion, transfer or termination of employment, made by the commission, or disciplinary penalty imposed by it, were left open to attack in a court of law with the delay in determining the status of individual officers within the public service that, as the instant case so dramatically illustrates, recourse to the courts would be likely to involve.

The full doctrine laid down in *Smith v East Elloe Rural District Council* as to the effectiveness of ‘no *certiorari*’ clauses has since fallen into disfavour and has been whittled down considerably in England after the 1962 Constitution of Trinidad and Tobago had been drafted; particularly by the decision of the House of Lords in *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 where one of the few remaining ‘no *certiorari*’ clauses that had survived the Tribunals and Inquiries Act 1958, was held to be insufficient to oust the jurisdiction of the High Court to set aside an order of an administrative tribunal that acted outside the limited jurisdiction conferred on it by Parliament because its decision had involved its posing and answering a question different from any of the only questions that it was empowered to decide. However, their Lordships do not find it necessary in the instant case to analyse the speeches in *Anisminic* and later English cases that have followed it, or to do more than say that it is plainly for the court and not for the commission to determine what, on the true construction of the Constitution, are the limits to the functions of the commission.”

So Mr. President, whilst there is that ouster clause that ousts the jurisdiction of the court to look into certain situations, there is still that limited situation when, in fact, the courts can exercise a jurisdiction or a discretion in certain limited instances when they can look into these kinds of matters. I think the hon. Attorney General made mention of those situations particularly when a decision may have involved a breach of natural justice principles.

Mr. President, I have made reference to these two judgments here because they are landmark cases that relate to this issue of the ouster clause, and a few minutes ago during the course of the dinner break—more recently in our country

there was a case that was filed in our courts not too long ago, the case of Deodath Rajkumar, a case that had been decided in the High Court of Trinidad and Tobago and the decision was appealed and the matter went to the Court of Appeal and from the information I just received I think leave has been granted for the judicial committee of the Privy Council to hear an appeal from the decision of our Court of Appeal in respect of that particular matter which involves a prison officer.

Mr. President, I make mention of this case because as far as I am aware in terms of our forces of law in our country, quite apart from the legislation we find in our statute books, we know that our court system is based on a hierarchical system whereby at the highest level the Privy Council is literally the highest court of our land. So that a decision from the Privy Council is one that is binding on all the courts of our jurisdiction and we know that whatever discussions may be taking place about setting up a Caribbean Court of Appeal we are not discussing that at this point in time. Our concern is that based on that hierarchical system it means that if a decision is given by the Privy Council it becomes binding on all our courts to an extent that a decision of the Privy Council is regarded as having the same force, the same weight and the same effect as laws passed in the form of legislation and that is an established principle in law in terms of our system.

So if a matter of this nature is pending before the judicial committee of the Privy Council, why can we not wait until that case is decided and determined in the Privy Council and depending on what the decision is when we look at the reform of our laws if you want to spell it out and make it so absolutely clear that you want to go so far to change what is in the Constitution—it is not just in an Act of Parliament, but it is in the Constitution.

Mr. President, all I am saying is that in this Bill which seeks to empower the service commissions to deal with officers who have been convicted of an offence, whilst you are looking to deal with that problem by bringing a Bill of this nature, all I am saying is, should we really be looking at removing the ouster clause in this Bill at this point in time, moreso knowing that a matter is now pending a decision from the Privy Council? Because if the Privy Council rules to say that the ouster clause would have no effect in a case where an unreasonable decision was given, well then it has the force of law and so be it. If it rules otherwise, then what do we do?

9.15 p.m.

I just wish, Mr. President, that in this particular Bill we did not rush into tampering with our Constitution by seeking to remove the effect of the ouster clause. You know, it makes one wonder what the mischief is and whether this

Constitution (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, August 8, 2000

legislation is really dealing with the mischief. If it is, the question is whether we are trying to deal with this mischief in the proper way, and this is the problem I have with this Bill.

We acknowledge the fact that there are problems in the system and that there is need for reform. We are not hiding the fact that there are legitimate cases out there where people within the public service, the teaching service or whichever of the service commissions may be involved in this matter, are affected by this kind of situation. If it is so, Mr. President, all we say is that if we have to do something like this, then let us try to do it right; do it the proper way. Seeking to remove the ouster clause is a drastic change in our laws. It is significant reform about which we are talking. It is the kind of reform that is going to have far-reaching consequences.

Sen. Daly elaborated on the likelihood of a floodgate of litigation opening up in this kind of situation. I do not wish to get into it but I agree with him that there is that real possibility that a whole floodgate can open up. If there are problems in the system, then let us see. Perhaps it may be necessary to look at how the commissions are functioning, whether they have all the resources and the wherewithal in order to get the job done in a timely and efficient way. However, we have to always bear in mind what the thinking was behind the establishment of these service commissions and the fact that the way they were provided for in the Constitution, the whole thrust was to insulate our service commissions from political interference; and we must not lose sight of that fact, Mr. President.

This is not the first time this Government has rushed into this Parliament and sought to interfere or to deal with these commissions. Mind you, Mr. President, I am not denying the fact that there are real problems existing. Our concern is the manner and procedure with which it is being dealt. So that in terms of this Bill, including that removal of the ouster clause, as a person involved in the legal profession I certainly have some very strong reservations and concerns about it. I wish that the hon. Attorney General would look at this in this light especially bearing in mind that a decision is expected in the case of Mr. Rajkumar and perhaps he can just "hold strain" and wait until that decision is handed down and then we will deal with the lawyer. If it comes before the elections then let us say that we are going to the people with it and let the Government tell the people we are going to change the ouster clause and get a mandate and do it if it becomes necessary.

Mr. President, with respect to the other issue about the power of the service commission to dismiss officers who have been convicted, I agree with those Senators who pointed out, as my colleague made mention of it and indeed Sen. Daly also made mention of the fact, that a simple traffic offence is regarded as a criminal matter, so that one can find oneself in a situation where one may have been convicted of a traffic offence and lo and behold the commission may have the power to dismiss someone simply on that basis.

This is moreso in light of the other point that Sen. Job made about the likelihood of conflict where, if section 71 of the Summary Courts Act is, in fact, invoked, an order made and the person discharged, or whatever the case may be, then there could be a situation where, after a matter is determined by the Magistrates' Court, we can now have that quasi-judicial tribunal in the form of a service commission having power to override that decision of a judicial body in our country. That, Mr. President, is clearly a collision that will be taking place. We know that under our court structure if one is dissatisfied with a decision of the Magistrates' Court there is the provision or the procedure to appeal the matter if one has to. However, we are being told that a quasi-judicial body in the form of a tribunal, or what have you, will now have that power to go above a decision of the Magistrates' Court.

Mr. President, that is a matter that really needs to be looked at. As I said before, in terms of the need, the call that has been made by members of the service commission, or whether it is the head of the Police Service Commission, is a call to allow the service commissions to deal with those officers who may have been convicted of offences. If that is the mischief that the Government is trying to remedy by bringing legislation, then by all means just simplify the legislation and deal with that issue and do not try to slip in other things so easily behind the scenes, matters that have such far-reaching consequences in terms of our constitutional law.

Mr. President, with these few words I want to thank you for the opportunity of allowing me to speak. I know it is very late so I shall take my seat. [*Desk thumping*]

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I rise to support the Attorney General and Minister of Legal Affairs on this very important Bill that we are debating tonight, the Constitution (Amdt.) Bill 2000. This Bill before us has its genesis in a number of representations that were made over the years by chairmen of the Public Service Commission. I have correspondence here which shows that in 1991 the chairman of the Public Service

Constitution (Amdt.) Bill
[HON. W. MARK]

Tuesday, August 8, 2000

Commission, who is Mr. Kenneth Lalla, had written to the then Prime Minister, appealing to him to amend section 129 of the Constitution in order to deal with very serious matters of discipline that were affecting the operations of the public service of the Republic of Trinidad and Tobago.

Mr. President, as you would know, there are many service commissions in this country. There is the Public Service Commission, the Teaching Service Commission, the Police Service Commission and the Judicial and Legal Service Commission. What has happened is that because of the difficulties the Public Service Commission encountered over the years in disciplining persons, the chairman sought to have one section of the Constitution amended, section 129.

Since becoming Minister of Public Administration, I have held regular meetings with the Public Service Commission, and whether it was the regime between 1986—1991, 1991—1995 or this current administration, the Public Service Commission chairman has made representation to amend that particular section of the Constitution and he has appealed to me on this matter. I referred the matter to the hon. Attorney General to have this matter addressed and it is not, for instance, as Sen. Daly was mentioning earlier, that we are totally dissatisfied or there is some dissatisfaction with the operations of the service commissions *per se*. That is another matter in terms of looking at it in a comprehensive way to deal with proper human resource management, functions or practices. We can deal with that.

This is a matter, Mr. President, in which many public officers who have been convicted on criminal charges and/or offences, be they police officers, prison officers, fire officers, even teachers or ordinary civil servants, the Public Service Commission, because of the tardy and cumbersome disciplinary proceedings that must be adopted in order to discipline a public officer, has been unable to deal with delinquent public officers. As such, the public service is being contaminated and polluted in the sense that there are people, using the same section to which Sen. Job made reference in terms of section 71 of the Summary Offences Act, I think, where for instance a person could be discharged but yet still be convicted by the magistrate, whether it is for cocaine, whether it is for fraud, and that person could still be in the public service of Trinidad and Tobago.

I know, and maybe the Attorney General will probably enlighten you a little later on, on this particular matter, where there are scores of police officers who are in the police service at this time and who have been convicted on criminal offences, drug charges included. They are in the police service today because the Public Service Commission does not have the power, under the current

arrangement, to deal with these matters in a very drastic way. This is why, for instance, the Public Service Commission chairman has been making appeals for us to address this particular matter. There are instances and the Attorney General could provide us with some information on that.

Sen. Prof. Spence: Mr. President, I wonder if the hon. Minister, before he winds up, will address these three issues. What did Chairman Lalla have to say about the ouster clause? Perhaps he would like to read his letter so we can actually see what indeed was the nature of the representation that he made. That is one. The other point is, if the hon. Minister is telling us that the disciplinary procedures in the service commission do not work, what efforts has he made as Minister of Public Administration to correct those? Because it does not only apply to criminal matters. If the disciplinary procedures do not work, there must be disciplinary matters which are not working as well, nothing to do with criminal procedures.

The third point I would be grateful if he would address, is, what mechanism will he use to inform the particular service commission that an officer has been convicted of a criminal act? Will the courts be mandated to transfer the information to the commissions as soon as the conviction is made, or will it be left to chance, for them to read it in the newspapers? Will it mean unfair treatment because one person will be reported and not another?

Sen. Shabazz: Mr. President, I heard the Minister say that there are scores of police officers who have been convicted for drug offences and who are still in the service. I wish he could just elaborate on that a little because that sounds so—and what are they doing in the service? Are they still working? What is the position?

Sen. The Hon. W. Mark: Mr. President, as I said, we are trying to address a very difficult problem in the public service and this is one of the ways and means by which we are attempting to address this question. Now, Prof. Spence, I want to tell you that for instance in terms of discipline, the Public Service Commission is an independent institution under the Constitution and, as you know, the Public Service Commission is responsible for appointing persons in the public service, for providing promotional opportunities for persons, for transferring officers and also for disciplining officers. So under the Constitution of Trinidad and Tobago they are responsible for formulating their own regulations, including disciplinary regulations.

Constitution (Amdt.) Bill
[HON. W. MARK]

Tuesday, August 8, 2000

I can sit with them, as I have done, and provide, for instance, legal advice through my legal advisory department and work with the Public Service Commission in an effort to deal with discipline, but at the end of the day it is the Public Service Commission that has to come up with its own regulations in terms of disciplinary matters.

Sen. Prof. Spence: Does the hon. Minister then say to the chairman of the commission, “What nonsense are you doing asking me to do this because you cannot discipline your people and you are not altering your procedures”? Because that is what I would say to him.

Sen. The Hon W. Mark: One of the things that the chairman has been asking for over the years, and we have in fact executed that particular arrangement, is to have a code of conduct for the entire public service. There is a code of conduct in the public service for teachers—*[Interruption]* Yes, a code of conduct is very important, Prof. Spence, and that can—a code of conduct also at least lays the basis for the development of proper disciplinary regulations as well and proceedings by the Public Service Commission.

9.30 p.m.

Mr. President, I would like to just bring to the attention of this honourable Senate a letter that was dated January 17, 1996 which was addressed to the Hon. Basdeo Panday, Prime Minister of the Republic of Trinidad and Tobago. I will just read sections of this letter so at least we could understand the gravity of the situation that is affecting the Public Service Commission in its inability to deal with disciplinary matters of a criminal type involving public officers. It states:

“Permit me to address you on the following areas which have been the cause of much concern to the Public Service Commission for some time now, but have become even more so in recent times in light of judgments of both the Court of Appeal and the Public Service Appeal Board.

One of the matters of concern to the Commission is the Commission's seeming inability, according to both the Court of Appeal and the Public Service Appeal Board to remove or dismiss a public officer from the public service when convicted of a criminal charge unless, and until, it obtains proof of the appellant's guilt of the criminal offence by means similar to or other than the fine of guilt by the court.”

Section 129(4) of the Constitution provides that no penalty may be imposed on any public officer except as a result of disciplinary proceedings. So, even though a public officer is convicted in a court of law, the Public Service

Commission cannot take disciplinary action against that person or dismiss that person on the evidence coming from the court unless it conducts its own disciplinary inquiry into the particular matter. That is what the Public Service Commission is saying. They are saying that once a court convicts a public officer, that should be sufficient evidence for them—that is the Public Service Commission—to take action to remove that particular person from the public service of Trinidad and Tobago.

Sen. Mahabir-Wyatt: Mr. President, I wonder while the Minister is pursuing this particular line of argument, if he could explain, therefore, why there is no attempt to remove subsection (4) in section 129? He has just finished saying that the ill he is trying to get rid of is the fact that no penalty may be imposed on any public officer except as a result of disciplinary proceedings, even if he has already been convicted in a court of law. But he is not trying to remove subsection (4) in section 129. He is only removing subsection (3), leaving in subsection (4) and then inserting after subsection (4), subsection (5). I do not understand the logic.

Sen. The Hon. W. Mark: The Attorney General is looking for that relevant section, Sen. Mahabir-Wyatt. I just want to go on in terms of what the chairman went on to explain. He said:

“As a consequence, it is not open to the Public Service Commission to remove or dismiss a public officer from the public service, although found guilty by the court, until notice of the charges of misconduct based on or arising out of his conviction has been served on him and an inquiry held to determine his removal in accordance with the rules of natural justice.

The other matter concerns the event of July 27, 1990 when several public officers had been suspended from duty as a result of their alleged or questionable association with person or persons who were directly or indirectly involved in the insurrection.

The suspension of the officers had to be lifted eventually for want of evidence to support the charges. However, what was revealed was that had the necessary evidence been forthcoming to sustain charges against the officers suspended, the Commission would have had to pursue disciplinary proceedings in these matters, and evidence of a sensitive nature affecting the security of the state would have had to be adduced in support of such charges before the tribunal.

Constitution (Amdt.) Bill
[HON. W. MARK]

Tuesday, August 8, 2000

In a letter dated May 27, 1991, this situation had been drawn to the attention of the then Prime Minister, and a request had been made to consider an amendment to the Constitution in terms similar to three exceptions contained in the proviso to article 311 of the Indian constitution, not only in respect of matters affecting the security of the state, but also convictions of criminal charges.”

The letter goes on to say, Mr. President:

“Two recent judgments have again brought home to the Public Service Commission the need for an amendment to the Constitution, and also the Civil Service Act, in order to address the issues. In one case, a public officer had been found guilty of the offence of possession of cocaine at the Fourth Magistrate's Court and discharged under section 71.1(a) of the Summary Offences Act, Chap. 4:20.

As a consequence, the Public Service Commission:

- (a) interdicted the officer from duty on one half salary with effect from the date of his receipt of notification of the Commission's decision, and
- (b) decided that the Permanent Secretary in his particular ministry should appoint an investigating officer to enquire into the allegation that he had brought the public service, of which he was a member, into disrepute when he was found guilty of the charge of possession of cocaine.”

Now, Mr. President, upon receipt of the investigating officer's report, the commission was of the opinion that facts therein established that there was sufficient evidence to support a charge and the officer was accordingly charged. The particulars of the charge outlined:

“A disciplinary tribunal was subsequently appointed to hear the evidence and find the facts and found the charge against the officer proven. The Commission, having considered the report of the disciplinary tribunal and representation from the officer, decided to remove him from the public service.”

In other words, they investigated the matter and decided to remove the person from the public service. His dismissal took effect from November 3, 1992 and he filed an Appeal with the Public Service Appeal Board which was dismissed on May 1, 1994.

On July 15, 1994, the officer filed an application in the High Court for judicial review of the decision of the Public Service Commission to dismiss him from the public service and on June 1, 1995, the presiding judge quashed the decision of the Public Service Commission. Therefore, the person who was convicted on cocaine charges, that matter went through its stages. The matter went to the Court of Appeal and it was quashed, overturned. I am just giving an example of what has been taking place.

The commission noted the decision of the High Court, reinstated the officer with immediate effect, and the person has since resumed duty in his former ministry. The order of interdiction which had been imposed on him was lifted and all salary and other benefits which were withheld from him were duly restored.

What we have here is that there are a number of cases in which, for instance, the chairman of the Public Service Commission is outlining, and what he is asking, Mr. President, is for us at this level to take some action to amend so that, for instance, the Public Service Commission can have the authority to dismiss public officers who have been convicted on criminal charges in the courts of law, as well as those who might be discharged, although convicted, under the Summary Offences Act.

Sen. Mohammed: Maybe I missed the part of the letter that dealt with the question of the exclusion of the ouster clause. Maybe you can read over that part of it? That little part where he asked for the removal of the ouster clause, please?

Sen. The Hon. W. Mark: What I can tell you is that we had extensive discussions with the chairman of the Public Service Commission before this Bill was brought to this Parliament. He had no problem with the ouster clause. He is the chairman of the Police Service Commission, he is on the Judicial and Legal Service Commission, and he is also the chairman of the Public Service Commission.

Sen. Mohammed: Was he the only person consulted, or were there other consultations?

Sen. The Hon. W. Mark: We have correspondence from the trade union movement calling for the removal of this ouster clause. Mr. President, we live in a democracy, and I think that, for instance, it is very healthy for workers, and so forth—whether they are police officers, teachers, civil servants, prison officers—I think that it is important for people to have a right if they feel aggrieved of something, if they feel that they have not been dealt with fairly, for these people to have a right to deal— Right now they are debarred.

Sen. Prof. Spence: No.

Sen. The Hon. W. Mark: Of course they are. There are changes taking place right now as we speak, gradually, but there is a specific section of the Constitution that precludes the courts from examining the decisions of the commission. Section 129(3) of the Constitution.

Sen. Mohammed: That is the ouster clause you are talking about.

Sen. The Hon. W. Mark: What we are saying is that there is a period of openness and transparency and accountability where we just passed, for instance, the Freedom of Information Act where, for instance, people can now have the right to access official documents of the state; where public officers whose personal files were not accessible to them in the past, and incorrect information recorded therein, can now access their personal files and alter inaccurate information in accordance with the Freedom of Information Act.

We are deepening the democratic process. We are levelling the playing field. We are allowing people to access the court. Justice must not only be for one section of the community. It must be for all the people. Poor and ordinary people in Trinidad and Tobago. [*Desk thumping*] That is what we are about.

This is about a measure in which ordinary people who are public officers can access justice. I totally support this measure. We totally support this measure on this side. We feel that, for instance, we have, in fact, allowed this amendment—a teacher who feels aggrieved can go to the courts of Trinidad and Tobago and seek some redress. What is wrong with that, Mr. President? What is going to result from this amendment is that the quality of decision-making at those institutions would be of a higher quality and standard and, therefore, if one is doing one's job properly, one does not have to be worried about a public officer taking one to court. If things are done in a fair way and there is justice, who is going to take one to court?

I think, Mr. President, that this is a matter that the trade union movement, representing public officers, would certainly welcome. The Attorney General will read to you correspondence to that effect.

Sen. Prof. Spence: We have Sen. Selwyn John.

Sen. The Hon. W. Mark: I am talking about public officers. Sen. John represents daily-rated workers in the Central Government Service. Mr. President, we feel that in the interest of transparency and scrutiny, this decision to amend this particular section is welcome. Of course, one could anticipate that the court may well throw out applications. If these applications are frivolous, the court is not going to entertain frivolous, vexatious applications. I would imagine that.

For instance, we feel that this particular amendment to section 129(3) of the Constitution would assist in promoting good governance based upon the principles of transparency and accountability in our Republic. This is something we feel is very important as we move into this global society of which we are all part.

9.45 p.m.

Mr. President, I feel, for instance, that as the Minister with responsibility for Public Administration, I am very mindful of the problems that are taking place in our public service where, for instance, you may have a person, as I said, who has been convicted on cocaine charges, but because the procedures involved are very slow and cumbersome, where witnesses and so forth are afraid to come to give evidence and as such, the tribunal set up by the Public Service Commission would have no choice but to dismiss the particular matter and you would have a person who has been convicted on fraud, cocaine or drug charges in the police force.

I am not saying that is the case, but let us say you have a sergeant who has been convicted in the courts of law for possession of cocaine and because of the cumbersome procedures involved in disciplining that person at the level of the Public Service Commission, that individual is fully reinstated into the police service even though he has been criminally convicted in the courts of Trinidad and Tobago and an officer who is his junior, a constable, has to salute the sergeant and that sergeant is a criminal.

Sen. Shabazz: You do not salute sergeants.

Sen. The Hon. W. Mark: Whatever. You are an ex-policeman; I was never there. The point I am making, Mr. President, is how are we going to clean up our public service when we have, for instance, in our public service, elements who have been convicted of criminal offences but they still continue to function on a daily basis in our police service, in the fire service, in the prison service, in the teaching service and in the civil service? How can we continue? So we are taking a measure; we are taking a step forward that has been called for over and over and over by the Chairman of the Public Service Commission in order for him to better execute his responsibility.

We are like a conduit. We are not bringing this amendment because we really had initiated this amendment. It is based on discussions we have had and based on the evidence.

Constitution (Amdt.) Bill
[SEN. THE HON. W. MARK]

Tuesday, August 8, 2000

Sen. Nafeesa Mohammed read from a report. It is the latest report and in it, again, there is a whole section on discipline. There, Mr. Lalla, as Chairman of the Commission, is calling on the Government and the country.

Mr. President: If you are quoting, identify it.

Sen. The Hon. W. Mark: It is the *Report of the Police Service Commission 1995—1998* and I am quoting from page 35 where, for instance, it reads:

"that section 129(4) of the Constitution be amended to allow summary dismissal of a public officer, where a criminal charge has been proved against him or where it is impracticable to hold a hearing that may result in the dismissal of the officer."

The commission has been awaiting a decision on this matter for a very long period and they have been calling on this—

Sen. Dr. St. Cyr: Mr. President, do I get the impression then that the objective is that dismissal would be automatic with no appeal?

Sen. The Hon. W. Mark: No. What is happening, Sen. Dr. St. Cyr, there is a discretion in the particular Bill before us where once you are convicted of a criminal offence, they do not have to go through the whole cumbersome procedure that is there. They can call on you to tell them why you should not be dismissed so you will have a chance. Also, some people spoke about traffic offences and the commission will have a discretion. As the Attorney General said, people can go for judicial review.

Sen. Mohammed: Is there a discretion?

Sen. The Hon. W. Mark: It is not going to be automatic, automatic but the point about it is that they will have the power [*Laughter*] to exercise discretion, both to dismiss immediately as well as to reinstate if they think it is necessary given the circumstances, but they will have a discretionary power.

Sen. Dr. St. Cyr: But, Sir, there would be no appeal from such a decision.

Sen. The Hon. W. Mark: Yes. They can apply to the court for a judicial review. They have that because you have to understand the removal of the ouster clause would provide the public officer with that kind of opportunity. He can now go to the courts of Trinidad and Tobago. Do you follow what I am saying? You are not following?

Sen. Dr. St. Cyr: But, they do now appeal because the case you read there tells me that a man is convicted; he is dismissed; he goes to the court and he is reinstated. So, what is new? That is what I am not clear on.

Sen. The Hon. W. Mark: I will leave that to my learned friend, the Attorney General, [*Laughter*] who will be able to give you greater clarification on this matter. On this particular one, I bow to the superior knowledge of my colleague.

Mr. President, I think the key point I am advancing here is that I am very happy to at least be associated with this particular amendment because I know that Mr. Kenneth Lalla has been really appealing for this particular matter to be addressed. We have been able to bring it to Parliament and I am sure we are going to get the full support of the Parliament on this matter so that we can deal with some of the difficulties and issues with which they are faced in addressing the matter of the public service of Trinidad and Tobago.

As I said, Mr. President, I wanted to make a limited intervention to deal with some clarification on this particular matter. It is very close to my heart because I know discipline in any organization is very essential for progress, for efficiency and for real advancement and any organization that does not have serious discipline, collapses. In the public service, we do have a problem with discipline—we know that—and this is one of the avenues we are taking steps to address this particular issue.

I would like to thank you for the limited opportunity to speak at this time and I give my total support to this particular measure which will really serve the interest of our public service and bring about a better arrangement for what I call better human resource management of our resources in the public service of Trinidad and Tobago.

I thank you very much, Mr. President.

Sen. Prof. John Spence: Mr. President, I have just listened to the most serious indictment that I can imagine on the disciplinary procedures in the services and coming from the Minister responsible for Public Administration, that, to me, is the most amazing statement that I have heard for a long time. If the disciplinary procedures are so archaic and so impossible to operate, why have they not been changed? [*Interruption*] No. You are not changing disciplinary procedures; you are bypassing them, but the disciplinary procedures as they apply to non-criminal cases would still be there. So there may be umpteen cases in the civil service where people need to be disciplined, but what you are telling me is that the system does not work and that, to me, is absolutely amazing coming from the Minister responsible for Public Administration.

Sen. Mark: Let me, again, just clarify for the enlightenment of Sen. Prof. Spence. I made the point that the Public Service Commission of Trinidad and Tobago is an independent institution under our Constitution. Until we are able to bring about comprehensive reform in that particular area where we would then be responsible at the level of the Parliament for adjusting and determining these matters in terms of discipline, promotion, transfer and appointment, it remains within the portfolio of the Public Service Commission. So whilst we are the employer as the Government, there is an institution that has been set up under the Constitution, to appoint and discipline people.

Sen. Prof. J. Spence: Mr. Chairman, can I ask the hon. Minister if, in response to Mr. Lalla's proposals for changes that would help in the disciplining of civil servants and other employees, whether he has said to Mr. Lalla, "Well, why are your disciplinary procedures so non-effective?" Has he asked him that question?

Sen. Mark: Yes.

Sen. Prof. J. Spence: My response, if I were the Minister, to that letter with Mr. Lalla would be, "Why do you not set your own house in order and if you set your house in order, we would not have to bring this Bill." If your disciplinary procedures worked, we would not have to bring this Bill, but the Minister quoted a case in which the disciplinary procedures did work but the higher court said no. That can still apply, so that the case which the hon. Minister quoted, where the superior court overturned the disciplinary procedures of the commission certainly is not an argument in favour of doing what he wants because when he went to the higher court, it said no. We do not think that the man, even though convicted of having cocaine, should be dismissed, so appeal to the court does not seem to help, therefore, it seems to me that we have a very confusing argument for what I thought was a fairly straightforward matter. I am just more confused now than I was when we started the debate.

Going back to the original issue of the Bill, there are two separate and distinct issues that we need to discuss. One is whether persons convicted of a criminal offence should be subject to the possibility of immediate dismissal or other forms of punishment by the commission without the normal procedure. That is one issue. The other issue is the removal of the protection, if you like, which the Constitution gave to the commission. They are two completely separate and distinct issues.

The hon. Minister, unfortunately, only addressed that of the disciplinary procedure. He did not address, to any great degree, the issue of the ouster clause, nor did he say whether representation had been made from Mr. Lalla with respect to that clause. He said that he had consulted but he did not really tell us whether there had been any initiative on the part of the commission to have that clause made.

The hon. Attorney General in his presentation said that every day there are situations in the service in which people are aggrieved about their appointments. If that is valid, if what he says is true, that every day there are cases, then what Sen. Daly has said is true. We would be overwhelmed by cases in the courts because it happens every day.

Mr. Maharaj: Would you deny people justice?

Sen. Prof. J. Spence: No, not at all. I would not. But it seems to me strange that we should have, if every day you are having cases of injustice in the system that, again, is another argument for looking seriously at the operations of the commission. I mean, we are being told: one, that the disciplinary procedures do not work and two, that there are injustices every day perpetrated on civil servants and other employees. That is what we were told. Perhaps in the heat of the moment, it may have been an exaggeration but that is what we have been told this evening. It seems to me that is a very serious indictment of how the system is working and surely we have to address that before we do anything else, because I am sure there are many more cases of indiscipline in the civil service than there are cases of persons being convicted of criminal offences.

The numbers would surely be very much greater so I think that, really, what we have opened up is a very serious issue and a very serious problem which does not seem to be being addressed, so even if we address the issue and we agree to the issue of the commission having the possibility of dismissal or other punishments for those who have been convicted of a criminal offence, we still have a whole area that needs, I would say, even more urgent attention than this one.

With respect to the ouster clause, I agree with the point that Sen. Daly has made about the Constitution. For example, when I first came to Parliament, the then government was arguing that there should be changes in the Constitution. They did not like Independent Senators. That was one of the issues that was very hot at the time, that they felt we should have changes that would remove Independent Senators.

Constitution (Amdt.) Bill
[SEN. PROF. SPENCE]

Tuesday, August 8, 2000

Perhaps we should, but the point is that the framers of the Constitution have built in certain balances and checks within the system. If you want to go to an American system of government where there are perhaps no commissions and so forth and no Independent Senators, there would be a different system there. We would have an elected Senate, an elected House of Representatives and an elected President.

10.00 p.m.

The Americans are very smart, that very seldom—I do not suppose more than once or twice in history—have they elected the same party in the three distinct arms of government; so they have a different system of checks and balances. That is why we say if you start altering certain things in the Constitution without a comprehensive look at the whole thing you will find that you will upset the balances that have been put into the system. You may find that you have done more damage than the correction you have put into effect, by the change that you have made.

I think, myself, that one effect of this ouster clause—I have absolutely no doubt about this in my own mind; now it may be incorrect, but I certainly think so—is that people would be much more reluctant to sit on service commissions if this clause were passed. I believe that is not going to have the effect which the hon. Minister has stated, of improving the system, it will worsen it, because the quality of commissioners will decrease, and, therefore, the problems of the commissions in running their affairs properly will get worse rather than better. Certainly, their remuneration is not of any high degree, so most people who sit on commissions are doing it for public service. Certainly, I do not see why somebody should go into public service and also be subjected to what they will be subjected to if this measure is passed.

Quite frankly, I am not happy about the fact that we are moving in that direction. Like Sen. Daly, on the whole, I will be inclined to go along with most of it, except that I think we have a serious problem in the case of the Judicial and Legal Service Commission for the reasons that Sen. Daly has outlined. I do not have to repeat them now. So, personally, in the committee stage I will move an amendment that will seek to exempt the Judicial and Legal Service Commission from this oustering.

In some sense it seems to me that what we are doing is trying to bring back into the consideration of that commission something which we dropped from the Bill when we were looking at parliamentary committees. I am very pleased to

hear the hon. Attorney General say that the parliamentary committee system will soon be in effect, because, certainly, I believe that that is a way to look at the commission.

If there has to be an annual report from these commissions to Parliament, we will see how many objections are being made by civil servants to the rulings that they have had, and we would be able to determine by those reports, I hope, if the parliamentary committees are doing their job properly—because they would be supervising the Judicial and Legal Service Commission—to scrutinize and to make apparent whether there are injustices in the system.

Quite frankly, I would rather we had waited to have those committees work, but, as I said, like Sen. Daly, I do not think we are doing the right thing, but I certainly would not make a big fight, except in the case of the Judicial and Legal Service Commission, and at the appropriate time I will move that amendment.

Thank you, Mr. President.

Sen. Diana Mahabir-Wyatt: Mr. President, I have never been a fan of the service commissions in any way. As far as I am concerned, historically they have been slow to act; they have been arrogant; they are like a law unto themselves; they would not answer letters; they would not reply to questions; they have ignored Parliament when questions are asked, and I have been of this opinion for a long time and very vocally.

I know that we all know of situations—and some have been mentioned by various Members of this honourable House—where civil servants, including teachers, police officers, officers of the Magistracy, behave abominably. They absent themselves for long periods of time; some go to university, we are told, while they are being paid full-time to do their jobs; there is a lot of absenteeism; people have neglected duties, and so on and so forth. In fact, they abuse the people that they are there to serve who, in fact, are the ones who pay their salaries—which is the taxpayers, not the Government.

There has been a whole litany of woes over the years about disciplinary problems in the police service, in the public service, in the teaching service—I could go into details, but I am not going to—and nothing has been done about it. As Sen. Spence said, it obviously points out that the disciplinary procedures are not working; they are falling apart, and if the service commissions themselves cannot clean up their own act, this is certainly not going to clean it up for them. I am told that the commissions are there for a good reason. I must respect this; I

Constitution (Amdt.) Bill
[SEN. MAHABIR-WYATT]

Tuesday, August 8, 2000

must respect the fathers of the Constitution, why they put the service commissions there in the first place, and I have a suspicion that 40 years ago they worked, or 50 years ago when they were put in, they worked; that there was a reason for them.

At that time, there was something like one-third of the people—the public servants, teachers, police, *et cetera* working—who had to be covered by these people, and as I understand it, the actual establishment that supports the service commissions has not changed in those years. So we have the same number of people being asked to do four times as much work. I gather one extra lawyer was added to the complement to be shared between two commissions a couple of months ago; big deal. After 40 years? The thing is that it is just not possible for them to do the work that they are set up to do.

I am not for them anyway for other reasons, for philosophical reasons, having to do with human resource management, but my point is that we have not allowed them to work, because no government, since Independence and since they were set up, has invested in the social capital to allow them to work. I know I beat this point over and over again, but people in this country have lost respect for their institutions. They have lost respect for the public service, the teaching service, the police service, partly because these commissions do not work.

We all know people who have, in some cases, been convicted of crimes; in other cases have not, but have done things that any organization would have them dismissed for, but the machinery is so cumbersome, the commissions are so bureaucratic and cannot ever get around to anything, that the public has lost respect for our institutions, including the institutions of the commissions.

The reason this is so is that government after government has insisted that we must invest our resources in raw material, capital, in getting oil and gas out of the ground; in infrastructure capital, building airports and what not; in equipment and machinery, refinery upgrades and what is now being called “human capital”, which always makes me think of slavery and cattle and what not. This is training people in technological skills so that they can serve these large new industries, and through trickle-down economics, provide wealth for everybody. It has never worked anywhere, mind you, but we are going in this direction in a big way. We do not invest in social capital, and that is making sure that, for example, there are enough people to support these service commissions, so that the systems provide, if they do not work, that there are disciplinary procedures. If they do not work—if they were in the private sector, whoever runs it, would have been fired a long time ago. But not us, we do not do things that way. We do not invest in our teachers, in our nurses, in our police officers, and so forth, and this is why they do not work.

As far as I am concerned, the commissions should not exist anyway, and as far as I am concerned, Sen. Mark was beating a dead horse when he was talking with such passion about this whole point that people who commit crimes should not be kept on; the commission should have a right to dismiss them. Of course they should; I do not know why anybody is arguing about that. The power is clearly discretionary. I think that perhaps the service commissions themselves may feel that they are being robbed of some power, and they probably do not like it. As far as I am concerned, if you are given power by the Constitution and you neglect to use that power when you should use it, that is just as much an abuse of power as using power in the wrong way when you do have it.

I do not believe that at this hour on this night there is any hope in trying to persuade this Government or any other government to invest in social capital, because I do not think for them the concept even exists. I will go at it again, just in order that we can return respect in this country to institutions, such as Parliament, such as ministries, such as the police service and the teaching service. If we could have done this first, then I would have argued that, at least, if there is any hope of it, let us delay until we get their procedures clear and then do it, but I do not see that there is any hope in that.

I am not going to argue it and I am not going to battle on the removal of the ouster clause either, except to support Sen. Spence's arguments in respect of the Judicial and Legal Service Commission. I cannot see, logically, how you can have them judge themselves; how the same people are going to be looking at the same people, kind of thing. I do not think it works.

My one worry is that when we do get rid of the ouster clause, because the Act still says that an officer shall be entitled to show cause why he should not be dismissed—once the ouster clause goes, of course, they can take the cases to court—I hope that the Minister of Finance has a lot of money to set up another Industrial Court and lots more judges, because the number of cases that will probably go to the Industrial Court, given the problems that are historical in the public service, are going to be enormous. My worry with this is that many cases that now go from the rest of us are going to be held back, but I suppose that is a small point. As the Attorney General said, if people have injustices they have to be heard.

Thank you, Mr. President.

Sen. Muhummad Shabazz: Mr. President, I stand to make probably two short points. One is that I was following the Bill clearly until the Minister of Public Administration explained the situation. I have become a bit more confused

Constitution (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, August 8, 2000

after his contribution, but he has said that he would leave it to the more knowledgeable person, the Attorney General, so I look forward very eagerly to that contribution. The Minister of Public Administration did confuse me a bit.

Secondly, the Minister of Public Administration said—and I tried to ask him the question, hoping that I would not have to get up—that there are scores of policemen still in the service who have been convicted. I find that so difficult to believe. If that is so, what are these people doing in the service? Are they serving? Are they working? He made the point that sergeants who were convicted for drugs have to be saluted by other people. To me, that does not sound correct at all, and I would really like, when his learned friend who knows more than he, gets up, if he would clear that confusion in my mind and in the minds of the other people on this side. I look forward to that.

The other point that I want to make I think is important. I think when you are talking about disciplining people, it is an important thing. You need to discipline people; people need to pay for what they do. I am sitting here and remembering a case of a gentleman I know from Morvant who worked for about 30-odd years in the public service. He went on drugs and he was to retire and leave the service in about two years' time. This man had young children, ages 10 and 11 years and so forth. One night he went into Port of Spain, broke off somebody's wing mirror and he was convicted. He lost his job, his pension, his gratuity and everything like that. The point here is this: he has a family; he has young children who need to be educated and things like that, and the wrong that he did has affected the lives of a number of other people around him.

I feel that the Government, in looking at this issue and taking disciplinary action, even if they do not give the man all his money, should find a way to give some sort of money from what is owed to him—because he worked for it already, even though he did something wrong, and we agree—to his children, at least, to help them until they reach age 18 or 16, or pay a part of that money to his family. I think the society needs—when we are looking to discipline people—to be a little more caring and loving. Maybe if it was not done previously, I would like to see that from here on we tend to look at things like that, and not just do things to show that we are correct and what we are doing is right and people must be disciplined, but trying to look at other people's family, other people's children, other people who may be affected by things people do, but did not intend to affect these other people.

This man did not want to know that his children could not go to school. As a matter of fact, he did not even live out the last two years; it bothered him so much; he was under so much pressure.

I believe that could have contributed to the type of pressure he had and I think we need to look at that. We need to look at people's family, even if the money does not go directly to him, choose some social service arrangement and get the money to go to his family so that other people would not suffer for some mistake that somebody else made. I make that point and hope that it would be given some consideration from here onwards.

Thank you, Mr. President.

10.15 p.m.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, may I say that I am very indebted to hon. Senators, those from the Opposition and the Independents as well who have made their contributions, but I think that this Bill should be understood in the context in which we have a situation in Trinidad and Tobago where there is a Constitution. A Constitution is not ever supposed to be a document which is cast in stone, it must change from time to time and the Constitution recognizes that.

As Sen. Daly has said, it recognizes that certain parts of the Constitution are not entrenched and the founders of the Constitution recognized that this ouster clause could be removed very simply by a simple majority of both Houses and the reason for that is that it must have been recognized in 1962 and 1976 that in the United Kingdom as in some other parts of the Commonwealth, it is recognized that a grave injustice is done to society when there are bodies not scrutinized by the court.

This has nothing to do with scrutiny by Parliament; I think with the greatest respect, there is a big difference and it cannot be equated with scrutiny by Parliament. Everybody in this country—anyone is entitled to go to court. Access to court is one of the pillars of a democracy and when people are denied access to court to challenge the actions of public bodies, that is an injustice and the Constitution recognizes that when it enshrines this ouster clause that this injustice would be corrected one day, otherwise it would have been entrenched and here it is today we are facing a matter of great constitutional and fundamental principle. What is the meaning of the rule of law? It means that no one is above the law, even the President of the country under the Constitution is not above the law. There are certain special considerations under which, in effect, the holder of that

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

office holds office. Nobody! Therefore, if you have to have a rule of law you cannot promote and propagate a system, a Constitution, which is the supreme law of the land in which people are going to be institutionalized as being above the law.

Here we have a situation in which as I said—and those of us who have had people coming to us on a daily basis, every day as a Member of Parliament—one would get several complaints about the action or inaction of service commissions and what do you tell people? How would they respect the courts or the law when it is unequal? Do you tell people that they cannot go to court and if you apply for a job you will not get an acknowledgement for 10 years. With this removal, a person would be entitled to go to court and be entitled to get a title of mandamus that they respond and that their application would be considered and there is no answer or argument to say it is a non-argument. With the greatest respect, to say that in a matter of justice to people that there would be a floodgate; justice is not for a few, it is for all. Men and women have died fighting for that principle. [*Desk thumping*] That is why we have courts. That is why we have judges. That is why you have magistrates and that is why taxpayers pay them. They are not paid to go to cocktail parties alone, they are paid in order to do judicial work and to dispense justice to people.

Mr. President, with the greatest respect, when one studies the history of judicial review, this started because the king was above the law and as history developed, the king had to permit people to challenge his actions, when I say his actions, his ministers and so forth and it was because that injustice was going to cause revolution and it did cause revolution. When in a society you have institutionalized people above the law, it breathes injustice and what happens when injustice is bred over a period of years?

Mr. President, I do not regard this—with the greatest respect—as a joke. This is a serious matter. [*Crosstalk*] I do not know what you are saying, because with the greatest respect, Sen. Job made a contribution in support of these measures and the Leader of the Opposition made a different submission against it. So this hon. Senator criticized that hon. Senator. I do not know what the Opposition is saying about this Bill. That is what is happening here, plain politics when people are suffering every day.

The Opposition is not concerned about people, they are concerned with making political points. They say they would support a measure and the measure they would support is yes, it is a good principle to have the disciplinary process amended but they are against the ouster clause. Sen. Mohammed is against the

ouster clause being removed. If we go along with that, let us take a case of fire officer "A" who is convicted for dangerous driving and the commission decides to show cause why he should not be dismissed from his job for dangerous driving, and the commission decides whatever he says, it is not concerned and he should be dismissed. According to them he would have no redress because he cannot go for judicial review, because with that ouster clause the court would say it does not have any jurisdiction because it does not involve a breach of the rules of natural justice, and it does not say they do not have jurisdiction to decide the matter. That is what has been happening in Trinidad and Tobago.

In the cases which have gone to the courts, judges in the High Court have tried to remove the shackles of the law to be liberal and give the jurisdiction in order to correct some of the injustices. Read some of the judgments! When you hear about it in the Deodath Rajkumar matter, for 31 years a man had not been promoted and he cannot find out why. The High Court judge is wrestling with this injustice. He wants to do something and he tries to carve the law in such a way, interpret it in such a way that he can give redress. What happens? He goes to the Court of Appeal and it takes the position that this ouster clause is now a Constitution, it is not in an ordinary law, it is the Constitution, the supreme law and it says we must not enquire and we are not going to enquire. It went to the judicial committee of the Privy Council, and representing the state, I give instructions to the lawyers to tell their Lordships that this is a very important matter, that right now before the Parliament we have passed in the House of Representatives a Bill to remove the ouster clause and it is before the Senate and I had every confidence that it was going to be passed and the Privy Council has granted leave to appeal. The fact of the matter is, people should not have to go to court to determine whether they have access to court, they should go to court to get justice for whether what is done is right or wrong. That is why you have courts.

Mr. President, how on the earth can anyone justify that you have a group or individual who agreed, made a sacrifice and who will be making sacrifices from time to time to perform administrative actions which impact upon the lives of individuals in respect of appointment, discipline, transfer, promotion which affect their rights and legitimate expectations and these persons who are making those decisions are not answerable to anyone? When we came with a Bill to make them answerable to the Parliament we were told you cannot do that with the Judicial and Legal Service Commission, you are going to take away their independence, you are going to be interfacing with politicians, they will be talking to politicians in the Parliament. Now we have brought a Bill in which we are saying they are

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

going to be accountable to the courts in which every vendor, police, person, in every other matter is accountable. But no, you cannot do this, these people are in a special category, they are the Judicial and Legal Service Commission. You could do it with other commissions, but not with them.

Mr. President, with the greatest respect, how can we read a Constitution which says the Constitution is founded upon moral and spiritual values and the rule of law, and how can we see such an injustice done, perpetrated against people every day and say we do not want it? I would have thought today that I would have heard Senators saying: "Thank God to emancipate people from this slavery and bondage by having courts not being able to scrutinize the actions of service commissions."

Mr. President, I ask your permission to read a letter from the Trinidad and Tobago Unified Teachers' Association. It says:

"31st March 2000

Mr. Ramesh Lawrence Maharaj
Honourable Attorney General
Ministry of the Attorney General
Richmond Street
Port of Spain.

Dear Attorney General,

Re: Amendment to section 129 (3) of the Constitution of the
Republic of Trinidad and Tobago.

The Association has been pursuing on behalf of its member... a Teacher 1 at ...School, a matter concerning the failure of the Teaching Service Commission to appoint her to the post of Principal 1 at the school although the Commission considered her the preferred candidate.

You may be aware that the ruling of the High Court in favour of...was overturned by the Appeal Court on, inter alia, a strict interpretation of Section 129(3) of the constitution that a decision of the Commission may not be challenged in a Court of Law.

The effect of such a judgement for Teachers and other public officers appointed by a commission is such as to take away a right of redress against decisions of Commissions no matter how wrong such decisions may be.

The Association believes that a Commission should be accountable for decisions which it makes and that such accountability lies within the public domain.

The institution to which Commissions should be accountable must be the Courts of Law since this would bring it into the public domain and would ensure that any review would be done by an impartial and independent body. It would further serve to avoid frivolous or malicious abuse of process by mischievous persons bent on subverting the authority of a Commission.

The Association is of the view that such an interpretation of the Constitution is allowed for by the terminology utilized in this Section.

We are also aware that in other jurisdictions, including the United Kingdom, upon which our system of jurisprudence is founded, is moving to eliminate such 'ouster clauses' from their legislation because of the very lack of accountability which it bestows on commissions...

For this reason we submit that progressive governments must ensure that legislation places a burden on commissions to be accountable to the nation for their decisions.

It is in this light we therefore seek your support and assistance in having the relevant section, i.e. section 129 (3), of the Constitution, amended to allow for the review of a decision of a Commission by a Court of Law."

10.30 p.m.

Mr. President, I had discussions with Mr. Kenneth Lalla on this matter. May I say that the Law Commission has reviewed this matter and the Law Commission also looked at comments made by the Judicial and Legal Service Commission and the Law Commission, having regard to what was originally drafted in this Bill. Its chairman, who was also at one time a member of a Service Commission, Justice Guya Persaud, has advised me—I have it in writing here—that the comments which the Judicial and Legal Service Commission made have been answered in the amendments which we made in the other place.

I just want Senators to understand because sometimes the law is very difficult to understand. As it stands now without this amendment, if a commission acts unreasonably, its decision is so perverse, the courts do not have any power to intervene. If a commission does an injustice to anyone outside, the person cannot go to court, cannot even get his Member of Parliament to take it up to bring the

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

commission before a committee. However, the court and individuals' rights are different from parliamentary committees because at parliamentary committees people are not determining matters like in a court.

For example, if this Bill is passed tonight and let us say another government, God forbid, comes into office and decides that it wants to bring this back, it would have to pass it with a special majority. The reason for that is because there is an unequal access to the law and to justice. It discriminates and it puts the commission in a more favourable position and prevents it from being scrutinized by the courts. The only reason it could have been done in the Constitution is because the Constitution is the supreme law of the land and that is why it was recognized that it was going to be changed one day and that is why there was a simple majority.

Mr. President, the other point that has been raised concerns section 71. I have read these Public Service Commission regulations over and over and over and over and, as I understand them, a public officer can be disciplined if there is misconduct in relation to an administrative offence or if he commits a criminal offence. If he commits a criminal offence it is phrased in such a way that he has committed that offence and therefore is unfit to be in the public service. When something is done under section 71, the court is not saying—let us say a policeman is charged for possession of cocaine.

In one of the cases that has been referred to where it happened, a policeman is charged with possession of cocaine and the court grants a section 71. The court recognizes that the offence has been proven that he, on so and so date, was in possession of cocaine. I do not understand, with the greatest respect to Sen. Daly, how double jeopardy comes into play? Unless the law has changed from the time I was at the Bar—and I suppose if it had changed I would have known about it—double jeopardy only applies in relation to the criminal law; that is to say, if a man is acquitted on one occasion before a court and then has to appear in court on another occasion for the same offence. This man, however, is acquitted on the basis that there is an offence that has been proven but, because of special circumstances, a conviction would not be recorded. It is not that the offence is not proven. So if a police officer gets a section 71, the offence of possession of cocaine is proven. Therefore he must juridically, jurisprudentially and in substance be regarded as a man who is unfit to be in the police service yet in law the amendment still gives the opportunity for him to show cause why he should not be dismissed. Mr. President, what is unfair in that?

As a matter of fact, that is giving effect to what was decided upon in regulation 113 and I want to read it. This was part of the original regulations and it was recognized only in 1991 that it needed to be passed. As a matter of fact, it may be that some Members of the Opposition know about this. The Opposition should have dealt with this since 1991. This was on the law books in the regulation. If an officer is convicted in any court of a criminal charge, the:

“...Commission may consider the relevant proceedings on such charge and if it is of opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the...”

offence of which he has been convicted:

“...the Commission may thereupon dismiss or otherwise punish the officer without the institution of any disciplinary proceedings.”

Under these regulations. The only change we made to this is the section 71. This has been there. All the commissions agreed to this. The Judicial, Public Service, Teaching Service, everyone, Mr. President, agreed to this. All the unions agreed to this. So what is wrong? As a matter of fact, we should be rejoicing that today we are privileged to be given the opportunity to put measures in place to redress injustices where injustices have occurred and people have been turned away.

Mr. President, I want hon. Senators to know that when a poor man, who sometimes cannot even afford a lawyer, receives unjust treatment from a Service Commission and then finds that he cannot go to court because he is told that those people are beyond the reach of the law, in his mind he could break down the whole country. In his mind he could break down courts. So what is the problem with this law, Mr. President?

It is late in the night, Mr. President. [*Desk thumping*]

Sen. Dr. St. Cyr: Mr. President, may I just ask a question? Does that section 71 not have to do with the gravity of the criminal offence on which the person has been convicted?

Hon. R. L. Maharaj: I will read it. I know it is troubling, Sen. Dr. St. Cyr. I will read it.

“Where any person is charged before a Court with an offence punishable by the Court, and the Court thinks that the charge is proved, but is of opinion that having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment...”

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

That means punishment for the crime, not for the administrative wrong, for the crime, jail or fine or both:

“...or any other than a nominal punishment, the Court may, without proceeding to conviction, make an order either—

- (a) dismissing the complaint or charge; or
- (b) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on...”

So what it does is recognize that the charge is proven but the conviction is not recorded. So that on January 6, 1999 at Coffee Street in San Fernando he was in possession of cocaine. That is proven; but the court decides that because of his age, *et cetera*, not to send him to jail or to give him a fine.

Sen. Dr. St. Cyr: Or he might have ridden his bicycle the wrong way up a one-way street, Sir.

Hon. R. L. Maharaj: Oh yes, if it is a bicycle charge. However, if it is a drug charge it may be that instead of having 10 grammes he had five or he had three, but we are not on a bicycle case here, Mr. President, with the greatest respect. What we are discussing here is if a person has committed a criminal offence and if he rides up a bicycle on a one-way street, taking the example of Sen. Dr. St. Cyr, technically speaking that would be a criminal offence. *[Interruption]* Okay, well I am coming to you with that.

So if we go along with the Opposition and do not remove the ouster clause, and if the commission—because those people are not perfect, they are not gods: they probably make more mistakes than you or I—decides to remove the person from office, he cannot go to the courts. Under this he can go. He cannot go to the courts under the present system because the courts do not have jurisdiction, even though the decision is unreasonable or irrational or plainly wrong. It does not have jurisdiction. I know it is difficult for you to understand that but it is true.

Sen. Dr. St. Cyr: May I please, Sir? The sense I got, Sir, is that the disciplinary procedures of the commission were almost non-existent, so my understanding would be that they would not apply any punishment at all.

Sen. Shabazz: Mr. Attorney General, are all traffic offences criminal offences, or are they categorized differently?

Hon. R. L. Maharaj: Mr. President, all traffic offences are regarded as criminal offences. In any law there are two kinds of offences, civil matters or criminal matters. There are quasi-criminal matters, like ejectment matters, but in the law that is what it is. That is why the law had to be drafted. If we look at the original Bill it specified what the offences were. So the law had to be drafted to give to the commission discretion in respect of all convictions.

Mr. President, I want an attempt to be made to try to understand it because it is important for hon. Senators to understand it. Under the present law, as Sen. Daly also has said, one can only judicially review a Service Commission if one can show bias, that is a failure to observe the rules of natural justice, not hearing one side or if the commission does something it had no jurisdiction to do. That is to say, if it attempts to appoint people it does not have any power to appoint, to do something it does not have any power to do, apart from disciplining, promotion, whatever it is. Apart from that, one could suffer whatever wrong, the courts do not have any power.

In the Court of Appeal there was this famous case of Rodwell Murray. The judge found that there was injustice in him being penalized because he exposed certain matters. The allegation was that he was involved in some indecent assault and he was saying it was fabricated and the court found that there was no basis for this, and the commission was wrong. The Court of Appeal said, "This ouster clause is in the Constitution so although it is an injustice we cannot correct it". That is on paper. It is part of the judicial records of the country. Mr. President, it is time that we sometimes give Government its due.

Sen. Prof. Spence: Mr. President, I know it is very late but it is the hon. Minister of Public Administration who has kept us here. Is the hon. Attorney General aware that in two cases, in one case the Privy Council, Lord Diplock, and in the other case the Court of Appeal, Justice Sharma, both supported the ouster clause?

Hon. R. L. Maharaj: Mr. President, judges are entitled to express their view but judges do not run for election. They do not face people.

Sen. Prof. Spence: I appreciate that. I trust that you were quoting both the Privy Council and the court as saying that the ouster clause should not be there but in these two cases they happen both to have said yes, they should be there. That is all I was saying. I was just putting a balance to what you were saying.

Hon. R. L. Maharaj: Yes, the judges are saying the ouster clause is there in the Constitution and, in effect, "It is there in the Constitution and it is an injustice and we are not doing it". That is what the Court of Appeal said. However, you are

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

on a different matter, that they have expressed an opinion that they would like the ouster clause to remain. Was it not Sen. Daly who talked about a club, Mr. President, and the fact that everybody is in the club? That is the problem in Trinidad and Tobago. We have clubs, we have privileged clubs and nobody wants to offend anybody.

So Mr. President, here it is that because judge A says so or judge B said so, we accept it. However, even Lord Diplock could be criticized and Lord Diplock sits in the Privy Council as a court—well he is deceased—of the Commonwealth but in England, the country in which he resided, they got rid of it because it was archaic and unjust. So it is unjust in England but it is just in Trinidad and Tobago? Therefore, as long as Lord Diplock said so, even though it is unjust, as parliamentarians who took an oath to uphold the Constitution and the law, we must go ahead?

Sen. Prof. Spence: I am just bringing it to your attention. That is not really my argument.

10.45 p.m.

Hon. R. L. Maharaj: I am not saying so, Senator, but I feel that I owe a duty in this matter in which a lot of things have been said to make it look as if this Government is coming with these draconian laws. I am sorry Sen. Daly is not here, but he said this is also draconian. Mr. President, I want it to go on the record that that is a most unfair statement by Sen. Daly. Most unfair! How could such a law be unfair? As a matter of fact, what he has proposed is very unfair. He has proposed that if he had time, if it was not so late, he would have moved an amendment to exclude the Judicial and Legal Service Commission. Why? Who are they? Are they gods?

Mr. President, the argument also is that it is not right, because one will have the same people. As it stands now, with the limited jurisdiction, we have cases which are being done in which there is a Chief Justice, head of the Judiciary, there is a Registrar of the Supreme Court and there is a judge deciding matters. Nobody has said that is wrong, that there should not be a Chief Justice as head of a Judicial and Legal Service Commission. When the Government talked about it and said that these were some of the problems that would happen, we were criticized. Nobody got up to defend the Government, but here it is today we are saying this is not right.

When Justice Crane's case was before the court, the Chief Justice was a member of the Commission, the Chairman, and judges were deciding it. It went to the Court of Appeal and to the Privy Council. It cost the taxpayers over \$10 million. If we had this law, all those arguments would not have taken place, because, Mr. President, if you look at the records you would see that days and months were spent arguing as to whether the court had jurisdiction or not.

Mr. President, may I just remind hon. Members that when we see the *Guardian* editorial is praising the Government for removing the ouster clause, it has to be very, very good! [*Desk thumping*] It is on July 18, 2000, and that is a company of which I think Sen. Daly is chairman. [*Laughter*] I am not going to read it. The *Newsday*, which is more friendly, has an article called "Ousting the Ouster" on July 16, 2000. [*Laughter*]

Mr. President, Sen. Daly spoke about "bawling up" and so forth. I think I should put it on the record because these things are very important. The future generation would read these matters. They would not know that it was late in the night, but Sen. Daly must understand that he alone does not have the right to criticize and say what he wants. Therefore, when he criticizes and receives responses and criticism, he must learn to take it. It cannot be one-sided.

There was no question of bawling up here. I have heard Sen. Daly speak louder in this Senate than I speak, and Sen. Daly naturally has a very loud voice, as I have a very loud voice. Therefore, I am very sorry that all this "bawling up" talk and these draconian measures, and so forth, came about, but what I do agree with him about is that he recognizes that there are these clubs, and different people and it could be very difficult. That is exactly what we have been saying for years, that when we have these service commissions and they have applications—

Mr. President, we had in this country, a public Commission of Enquiry into the administration of justice. Over 300 persons and groups submitted memoranda. As a matter of fact, I was told that it was one of the largest responses this country ever got to a commission of enquiry. People who gave evidence, almost everybody came and criticized the service commission. People talked about instances where persons would apply to be a judge and then there would be nothing about it again. Then we would see somebody else who is appointed and of perceived lesser quality. Right now in Trinidad and Tobago there is a High Court Judge who has been bypassed several times for the Court of Appeal, but if there are measures like these, people will have to give reasons. This is to improve the lives of people.

Constitution (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, August 8, 2000

Mr. President, I would say to hon. Senators that the time has come that we must not be inhibited in giving praise where praise is due. These measures are not easy measures for any Government to take, and some of the reforms which are happening in Trinidad and Tobago would make Trinidad and Tobago a completely different place to live:

Whatever happens from now on in Trinidad and Tobago, this would not be the same place, because people would have to account to the courts, they would have to account under the Freedom of Information Act, they would have to account to parliamentary committees. What would happen because of that is not that governments are going to become weaker. Governments are going to become stronger and more accountable and the people would respect governments more and that is why governments would become stronger. Let us all rejoice tonight and let us demonstrate that we are going to support these measures by voting for this Bill.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. Prof. Spence: Mr. Chairman, I would like to make a comment on clause 3. I realize I have not circulated an amendment in advance, but this is because of the way we have had to proceed at this late hour on this Bill. I think it is most unfortunate. I would like to suggest that we would do much better if we had altered section 129 of the clause rather than deleted it. I would suggest that we alter it in this way.

Clause 3 reads: “to question whether a service commission” and I would substitute for “a service”, “the Judicial and Legal Service”, and thereafter, I would also substitute it in (b) and (c), so this would have the effect of keeping the Judicial and Legal Service Commission exempt and bring the other two under the ouster regime.

Mr. Maharaj: Mr. President, I want to put firmly on the record that the Government is totally against that. There is no way that the Independent Senators or Sen. Spence would persuade us. To leave out the Judicial and Legal Service Commission would be totally discriminatory, would undermine the principles in the Constitution, would in effect promote an institutionalized commission which would be above the law and it would defeat the whole purpose of this measure.

Sen. Prof. Spence: I appreciate that it could not be changed now anyhow, Mr. Chairman, because I had not circulated the amendment in advance, but for the record, I wanted to have it on record that I had made the proposal and I happen not to agree with the Attorney General in his interpretation of what it would do.

Thank you, very much.

Sen. Dr. St. Cyr: Mr. Chairman, in the explanatory note which does not form part of the Bill, it seems that the section 129 which is being repealed is subsection 4, but in the actual Bill, I see subsection 3. I do not know whether that is a typo.

Secondly, Sir, my concern about section 71 was that where a court has adjudged that an offence, though proven, was trivial and did not deserve punishment, it really would have been, in my view, preferable if that were allowed to stand and the service commission not override and apply punishment to the offender.

Mr. Maharaj: Mr. Chairman, all I can say is that whatever is in the explanatory note, it does not matter if there is a typographical error. It is what is in the Bill. In respect of any proposed amendment to give effect to which the Senator has said, I regret very much that I cannot accede to it. The Government feels that it would not be doing its duty in allowing the situation in which a public officer, if it can be proven, has committed a criminal offence, but because the law provides that because of its trivial nature or any other factor, it would not record a conviction when, what is important is whether the conduct of the officer, it is proven, affects his employment. We cannot agree that in respect of those matters, one will have to go through the whole process to prove the same thing before the administrative tribunal. What one will have to prove is the same thing as to whether he had cocaine.

11.00 p.m.

Sen. Dr. St. Cyr: I was thinking more of a bicycle rider up a one-way street and I am, perhaps, thinking that one should be merciful, though just.

Mr. Maharaj: But the person, a bicycle rider who rides up a one-way street, if it is that the hon. Senator believes that any member of a commission would dismiss him for that, then that is an even greater reason why there should be the removal of the ouster clause.

Sen. Dr. St. Cyr: Oh! I am fully in support of the removal of the ouster clause.

Mr. Maharaj: You are fully in support. All right. Then, it does not mean that the commission can remove from office a bicycle rider who rides up a one-way street without accountability and, on the face of it, any commission which removes from office a public officer who is a bicycle rider and rides up a one-way street, *prima facie*, it would be an unreasonable action.

Sen. Dr. St. Cyr: I was going a little further, that where the court had extended mercy, I would not allow the commission any discretion in that area.

Mr. Maharaj: But, Senator, would that not be two different situations? Because, let us say a person rides a bicycle up a one-way street. Well, we know that in those circumstances, that certainly cannot be a removal from office, but assuming there is that action, the person would go to court like anybody else.

Sen. Dr. St. Cyr: That is what I would like to prevent, Sir.

Mr. Maharaj: But you would never be able to pass laws to prevent people from having to go to court because no institution would be perfect.

Sen. Dr. St. Cyr: But, you see, what I am really getting at is, the correct direction in which we are going in removing the ouster clause, which I think has with it some measure of the undermining of the court system.

Mr. Maharaj: But you just said that you were in agreement with the ouster clause.

Sen. Dr. St. Cyr: I am, Sir.

Mr. Maharaj: But, instead of undermining the court system, it is, in effect, strengthening the court system because it is giving the court the power which it did not have before, so that it is strengthening the court system.

Sen. Dr. St. Cyr: Mr. Chairman, if it were 11.00 o'clock in the day, we would pursue this but, at this time, I concede.

Sen. Prof. Spence: Mr. Chairman, can I just make a comment? It would give lawyers a lot of work so the profession, at least, would be very thankful.

Mr. Maharaj: Mr. Chairman, I think that I cannot not respond to that because I think our whole system is based on rights and the ventilation of rights, and if it is that we object to measures because lawyers and litigants would have more opportunities of challenging matters, then may I say with the greatest respect, it really is not, in my respectful view, a real objection because what we are saying is that we would only take measures to solve injustices where you would not have many people challenging things.

In the United Kingdom and in Trinidad and Tobago, you have to get leave first for judicial review so you have to pass that stage, but I think that if lawyers have to get a lot of work out of this and if legal aid has to be used, the society would be better and the commissions would work better.

Sen. Prof. Spence: Mr. Chairman, I really feel that we could have approached the thing differently. If there are many injustices in the system and we really wanted to help small, poor people, then we would not set up a system where they would have to go to court. Because, quite frankly, that is an expensive business and also a rather frightening one for many people. So, if we really wanted to help more poor civil servants and more teachers and all the rest who are being badly treated, what we would do is to set up some system of review of the commission's work other than a court procedure and still leave the court procedure there.

Perhaps because the Attorney General is a lawyer, he thinks in terms of going to court, but, quite frankly, there are many citizens like myself, who would think of court as the absolutely last resort and, if so, any other system. I would rather go to the Ombudsman to say I have been badly treated. If so, any other system which would allow ordinary common or garden people not to have to go to see a lawyer and pay—even though they have not got to review yet, they still have to pay the lawyer—then I would consider that we have done a great deal for poor, ordinary people. I do not think we have done it with this Bill.

Mr. Maharaj: Mr. Chairman, many of these public officers are represented by unions, but if Sen. Prof. Spence goes to see the Ombudsman or sees anybody, there may be different considerations. I do not know but I have walked and I see poor people and what happens to them. People on this side see that and they also see what happens with people in clubs, therefore, the courts must be able to scrutinize actions of service commissions and any objection to that, in my respectful view, is a section to perpetrate an injustice.

Sen. Prof. Spence: Mr. Chairman, what I was suggesting is that we could make for better justice if we could give them an alternative system than going into the court and that is what I hope we would think of in the future. We should have some system whereby persons in the civil service, if they are treated unjustly, can have the matter reviewed without going to court.

On the subject of clubs, I was very glad to hear the Attorney General speak of clubs again, because at one time, he had said the clubs like Club Coconuts would have been shut down. They are still doing what they were doing some years ago.

Sen. Rev. Teelucksingh: Can I just ask a question of the hon. Attorney General? Are you seeing an expression, or possibly expressing it yourself, of the growing irrelevance of the service commissions? It is not now but this is possibly another step to tell us as an independent nation that for a long time this colonial relic needed examination. Are you seeing, Sir, that with the next regime maybe in the next five years, we are going to have a general overhaul of the service commissions—that part of the Constitution? Do you see that?

Mr. Maharaj: Mr. Chairman, I have put this Bill on a simple basis that on the face of it, there is an injustice by having people above the law and I have asked Senators to support a measure which would give equal access to the courts. There may be other considerations for the service commissions and I would prefer, at this stage, not to express any view on that because I am sure that it may be that other measures in the Constitution may have to be looked at, but, at the present time, every day persons are denied access to the courts and other people are given access to the courts, and people are given immunity from scrutiny by the courts.

Sen. Rev. Teelucksingh: Do you see the need to have a general review and overhaul of all the legislation concerning service commissions?

Mr. Maharaj: I think the hon. Senator would recognize that is something totally different and I would not want to be—

Sen. Rev. Teelucksingh: Thank you very much.

Sen. Dr. Mc Kenzie: Mr. Chairman, I would just like to make one comment. I have not said anything for the day. I think that we seem to forget that a part of the problem with our service commissions is down the line. It comes from the groups that feed the information or do not feed the information into the service commissions. We have many problems with those officers who are sending people bad reports and all sorts of reports that you do not see and you never hear about, so I think when they are dragged before the courts, they will have to say

where they got the information from that caused them to make the decision. That is where I think Sen. Mark will have his work cut out for him, to ensure that the groups that feed the information, *et cetera*, could say when you have a vacancy, “Yes, you have gotten an application that you stuffed in a drawer and did not send up to the service commission”, and “We want to blame the service commission.” All of that will be exposed, so let us have the clause. This is where the biggest part of the problem lies.

Mr. Chairman: We are still on the proposed amendment by Sen. Prof. Spence. Are you pursuing it?

Sen. Prof. Spence: Well, I cannot be pursuing it, Sir, because I had not circulated it in advance so I just expressed my opinion and will leave it at that.

Mr. Chairman: All right.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I think it would be a great injustice to proceed from this point [*Laughter*] and as such, seeing that we are talking about access to justice, I have seen some very red eyes around me.

Mr. President, I propose at this point in time that we adjourn this honourable Senate but, before doing so, let me inform fellow Senators that the Bills we are going to deal with next week, seeing that we are not going to come on Thursday, we will come on Tuesday and I can ask colleagues to be prepared for a long sitting next week as well.

We are going to deal with a Bill to provide for the licensing of bailiffs and for other related matters; a Bill to amend the Patents Act, 1996; a Bill to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review; a Bill to amend the Citizenship of the Republic of

Adjournment

Tuesday, August 8, 2000

[SEN. THE HON. W. MARK]

Trinidad and Tobago Act and then we continue with debate on the Bill to regulate mining in Trinidad and Tobago. So, we have five bills with which to deal. We will start at 10.30 a.m.

[Confers with Attorney General]

Mr. President, I have been informed by the hon. Attorney General that he would not be here early in the morning so we will want to reverse the order of business. We will deal with a Bill to amend the Citizenship of the Republic Trinidad and Tobago, then we shall proceed with the Mining Bill and we would then go to the Bill to provide for licensing of bailiffs, the Bill to amend the Patents Act, 1996 and the Bill to provide for an application to the High Court of the Supreme Court of Judicature for relief by way of judicial review. That is the order. Bill No. 6 would be one; Bill No. 7 would be two and then we go on to Bills Nos. 3, 4 and 5.

Mr. President, I beg to move that this Senate do now adjourn to Tuesday, August 15, 2000 at 10.30 a.m. We would have a long session on that day.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 11.14 p.m.